

**EXHIBIT A**

## **SETTLEMENT AGREEMENT**

Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes (“Plaintiffs”) and Defendant Volkswagen Group of America, Inc. (“VWGoA” or “Defendant”) (collectively, the “Parties”), by and through their counsel, enter into this Settlement Agreement (“Settlement Agreement” or “Agreement”), providing for settlement (“Settlement”) of all claims that were asserted or that could have been asserted in the Action described below, pursuant to the terms and conditions set forth below, and subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure. Unless otherwise defined, all capitalized words and terms used herein shall have the meanings ascribed to them in Section I of this Agreement, entitled “Definitions.”

## **RECITALS**

WHEREAS, Plaintiff Valeria Mercado filed a putative class action against Defendant on November 9, 2018 entitled *Valeria Mercado, individually and on behalf of all others similarly situated v. Audi of America, LLC, Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.*, Case No. 5:18-cv-02388, in the United States District Court for the Central District of California (hereinafter, the “Action”), asserting claims alleging brake noise in the Settlement Class Vehicles;

WHEREAS, several Amended Complaints were filed in the Action as a result of Motions to Dismiss by VWGoA, which the Court granted in part and denied in part;

WHEREAS, following said motion practice and the Court's decisions, Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes filed a Fourth Amended Class Action Complaint on May 29, 2020;

WHEREAS, Defendant denies Plaintiffs' allegations and claims, and maintains, *inter alia*, that the brake system of the Settlement Class Vehicles was properly designed and manufactured, was not defective, was safe and functioned properly in all respects, that no warranties, express or implied, were breached, no applicable statutes, laws, rules or regulations were violated, and no wrongdoing occurred with respect to the design, manufacture, testing, inspection, distribution, marketing, advertising, warranting, sale and servicing of the Settlement Class Vehicles' brakes;

WHEREAS, the Parties, following certain pretrial proceedings, discovery, investigation and careful analysis of their respective claims and defenses, and with full understanding of the risks, expense and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were or could have been brought in the Action by or on behalf of Plaintiffs and members of the Settlement Class based upon the terms set forth in this Settlement Agreement;

WHEREAS, the Parties agree that neither this Settlement Agreement, the underlying Settlement, nor anything else, shall constitute or, in any way, be construed as any admission or evidence of liability or wrongdoing on the part of Defendant or any Released Party, which is expressly denied, or as to any of Plaintiffs' claims and allegations, or that the Plaintiffs' claims would be suitable for class treatment if the Action proceeded through litigation and trial;

WHEREAS, this Settlement Agreement is the result of vigorous arm's length negotiations between the Parties of highly disputed claims, and the Parties maintain that the Settlement is fair, reasonable and adequate and satisfies the requirements for a class settlement under Fed. R. Civ. P. 23;

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

**I. DEFINITIONS AND DEFINED TERMS**

A. "Action" or "Lawsuit" means the action entitled *Valeria Mercado and Andrea Kristyanne Holmes, individually and on behalf of all others similarly situated v. Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.*, Case No. 5:18-cv-02388, pending in the United States District Court for the Central District of California.

B. "Administration Expenses" means any and all fees, costs, and charges incurred, charged, or invoiced by the Claim Administrator in relation to this

Settlement and to provide the notice, distribution and other administrative tasks of this Settlement.

C. “Agreement,” “Settlement,” or “Settlement Agreement” means this Settlement Agreement and the settlement embodied in this Settlement Agreement, including all attached Exhibits (which are an integral part of the Settlement Agreement and are incorporated herein in their entirety by reference).

D. “Claim Administrator” means Angeion Group, subject to the Court’s approval.

E. “Claim” or “Claim for Reimbursement” means the timely and proper submission of the required fully completed and signed Claim Form, together with the required Proof of Repair Expense documents (as defined in Section I.(U) of this Agreement), in which a Settlement Class Member seeks to claim reimbursement, pursuant to the terms of this Settlement Agreement, for paid and unreimbursed out-of-pocket expenses for a Covered Repair performed on the Settlement Class Vehicle prior to the Notice Date.

F. “Claim Form” means the form that must be fully completed, executed and timely submitted to the Claim Administrator in order to make a Claim for Reimbursement under the terms of this Settlement Agreement, which Claim Form will be substantially in the form attached hereto as **Exhibit A**.

**G.** “Claim Period” means one hundred and forty (140) days after the Notice Date. Claims (including fully executed Claim Forms and any required documentation) must be submitted by mail post marked within the Claim Period.

**H.** “Class Counsel” or “Plaintiffs’ Counsel” means the law firms of Greg Coleman Law, PC, Ahdoot & Wolfson, PC and Whitfield Bryson, LLP, collectively.

**I.** “Class Notice” means the Class Notice attached hereto as **Exhibit B**.

**J.** “Class Notice Plan” means the plan for disseminating Class Notice to the Settlement Class as set forth in Section IV of this Settlement Agreement and includes any further notice provisions agreed upon by the Parties.

**K.** “Covered Repair” means one (1) repair (parts and labor) of a diagnosed condition of a squealing noise from the front brakes of a Settlement Class Vehicle, performed prior to the Notice Date and within four (4) years or forty-eight thousand (48,000) miles (whichever occurred first) from said vehicle’s In-Service Date, consisting of replacement of front brake pads and insertion of one new lower spring in each front brake caliper consistent with Technical Service Bulletins 2050735 (for model year 2017 Audi Q7 Settlement Class Vehicles) and 2050737 (for model year 2018 Audi Q7 Settlement Class Vehicles).

**L.** “Court” means the United States District Court for the Central District of California.

**M.** “Defense Counsel” means Michael B. Gallub, Esq. and Brian T. Carr, Esq. of Herzfeld & Rubin, P.C.

**N.** “Effective Date” means the third business day after (1) the Court enters a Final Order and Judgment approving this Settlement Agreement, and (2) all appellate rights with respect to said Final Order and Judgment, other than those related solely to any award of attorneys’ fees, costs/expenses or class representative service awards/payments, have either expired with no appeals filed, or all appeals have been exhausted and fully resolved in such a manner as to affirm the Final Order and Judgment.

**O.** “Fee and Expense Application” means Class Counsel’s application for a combined award of reasonable attorneys’ fees, costs and expenses (“Class Counsel Fees and Expenses”), and for Class Representative Service Awards.

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

**Q.** “Final Order and Judgment” means the Final Order and Judgment approving this Settlement Agreement and dismissing the Action with prejudice as to Defendant.

**R.** “In-Service Date” means the date on which a Settlement Class Vehicle was first delivered to either the original purchaser or original lessee; or if the vehicle

was first placed in service as a “demonstrator” or “company” car, on the date such vehicle was first placed in service.

**S.** “Notice Date” means the date by which Notice of this Settlement is to be mailed to the Settlement Class. The Notice Date shall be within one hundred and fifteen (115) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as **Exhibit C**.

**T.** “Opt-Out and Objection Deadline” means the date that is thirty (30) days after the Notice Date, by which a Settlement Class Member must opt out of the Settlement or make any objection to the proposed Settlement, the Fee and Expenses Application, in accordance with the procedures set forth herein and/or in any order of the Court.

**U.** “Proof of Repair Expense” means the documents required to be submitted, together with a fully completed and signed Claim Form, in support of a Settlement Class Member’s Claim for Reimbursement of past paid out-of-pocket expenses incurred for a Covered Repair (parts and labor) of a Settlement Class Vehicle. Such Proof of Repair Expense shall take the form of an original or legible copy of a repair invoice, receipt or similar records containing the Settlement Class Member’s name; the make, model and vehicle identification number (VIN) of the Settlement Class Vehicle; the fact that this was a Covered Repair – i.e., that a squealing noise from the front brakes was diagnosed and was the reason for the



repair; the name and address of the authorized Audi dealer or other repair entity/facility that performed the Covered Repair; a description of the repair work (parts and labor) performed that establishes that it was a Covered Repair; the cost of the Covered Repair (parts and labor); the vehicle's mileage at the time of the Covered Repair; and proof of the Settlement Class Member's payment for the Covered Repair and the amount of that payment.

V. "Released Claims" means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, regardless of any legal or equitable theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members (including their successors, heirs, assigns and representatives) which in any way relate to brake noise in Settlement Class Vehicles, including but not limited to all matters that were or could have been asserted in the Action, and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, arising under any state, federal or local statute, law, rule and/or regulation, under any federal, state or local consumer protection, consumer fraud, unfair business practices or deceptive trade practices statutes or laws, under common law, and/or under any legal or equitable theories whatsoever including tort,

contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi-contract, unjust enrichment, express and/or implied warranty, implied covenants, the Magnuson-Moss Warranty Act, California Consumer Legal Remedies Act, California Business and Professions Code, California Song-Beverly Consumer Warranty Act and any federal, state or local derivations thereof or similar laws, any state Lemon Laws, secret warranty and/or any other theory of liability and/or recovery, whether in law or in equity, and for any and all injuries, losses, damages, remedies, recoveries or entitlements of any kind, nature and description, in law or in equity, under statutory and/or common law, including, but not limited to, compensatory damages, actual damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, and any other legal or equitable relief. This Settlement Agreement expressly exempts claims for personal injuries and property damage (other than damage to the Settlement Class Vehicle itself).

W. “Released Parties” means Volkswagen Group of America, Inc., Audi AG, Audi of America, Inc., Volkswagen AG, Volkswagen Credit, Inc., Audi of America, LLC, Audi of America, Inc., Volkswagen de México S.A. de C.V., Volkswagen Group of America Chattanooga Operations LLC, all designers, manufacturers, assemblers, distributors, importers, retailers, marketers, advertisers,

testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, repairers and servicers of the Settlement Class Vehicles and each of their component parts and systems, all of their past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns and representatives, and all of the aforementioned persons' and entities' attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives.

**X.** "Settlement Class Vehicle" means any model year 2017 or 2018 Audi Q7 vehicle that was imported and distributed by VWGoA for sale or lease in the United States or Puerto Rico.

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

Excluded from the Settlement Class are (a) all Judges who have presided over the Action and their spouses; (b) all current employees, officers, directors, agents and representatives of Defendant, and their family members; (c) any affiliate, parent or subsidiary of Defendant and any entity in which Defendant has a controlling interest; (d) anyone acting as a used car dealer; (e) anyone who purchased a Settlement Class Vehicle for the purpose of commercial resale; (f) anyone who

purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who acquired a Settlement Class Vehicle as a result of a total loss; (g) any insurer of a Settlement Class Vehicle; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to the date of this Agreement, settled with and released Defendant or any Released Parties from any Released Claims, and (j) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class.

## **II. SETTLEMENT CONSIDERATION**

In consideration for the full and complete Release of all Released Claims against all Released Parties, and the dismissal of the Action with prejudice, Defendant agrees to provide the following consideration to the Settlement Class:

### **A. Warranty Extension for Current Owners or Lessees of Settlement Class Vehicles**

Effective on the Notice Date, Volkswagen Group of America, Inc. will extend its New Vehicle Limited Warranties applicable to the Settlement Class Vehicles to cover one (1) repair of a diagnosed condition of squealing of the front brakes, by an authorized Audi dealer, during a period of four (4) years or forty-eight thousand (48,000) miles (whichever occurs first) from the In-Service Date of the Settlement Class Vehicle (hereinafter, the "Extended Warranty" or "Warranty Extension"). The Extended Warranty repair will consist of replacement of the front brake pads and installation of one new lower spring in each caliper of the front brake so that there

are two springs per caliper, in accordance with Technical Service Bulletins 2050735 (applicable to model year 2017 Audi Q7 Settlement Class Vehicles) and 2050737 (applicable to model year 2018 Audi Q7 Settlement Class Vehicles).

The Extended Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's original New Vehicle Limited Warranty and Warranty Information Booklet.

Squealing of the front brakes resulting from misuse, abuse, alteration or modification, a collision or crash, vandalism, lack of or improper maintenance, and/or damage from an environmental or outside source, shall be excluded and not covered by the Extended Warranty.

This warranty, as extended, is fully transferable to subsequent owners or lessees to the extent the extended warranty period (time and/or mileage) has not expired.

**B. Reimbursement for Past Unreimbursed Out-of-Pocket Expenses Paid for One (1) Covered Repair Prior to the Notice Date and Within 4 years or 48,000 Miles (Whichever Occurred First) from the Vehicle's In-Service Date**

Subject to the limitations set forth in Section II.(C) below, if, prior to the Notice Date and within four (4) years and forty-eight thousand (48,000) miles (whichever comes first) of the Settlement Class Vehicle's In-Service Date, a Settlement Class Member incurred and paid out-of-pocket expenses for a Covered Repair of a Settlement Class Vehicle that was not otherwise reimbursed, and timely

submits a valid, complete and signed Claim Form, together with the required Proof of Repair Expense pursuant to the terms of this Agreement, the Settlement Class Member will be entitled to reimbursement of said past paid and unreimbursed out-of-pocket expenses (parts, labor and taxes) for one (1) such Covered Repair as follows:

(1) If the Covered Repair was performed by an authorized Audi dealer, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost (parts, labor and taxes) of one (1) Covered Repair during that period.

(2) If the Covered Repair was performed by a service entity or facility that is not an authorized Audi dealer, the Settlement Class Member shall be entitled to receive reimbursement of fifty percent (50%) of the paid invoice cost (parts, labor and taxes) of one (1) Covered Repair during that period.

**C. Requirements for and Limitations on Entitlement to Reimbursements Set Forth in Section II.(B)**

(1) To qualify for reimbursement of past paid and unreimbursed out-of-pocket expenses under Section II.(B) above, the Settlement Class Member must mail to the Claim Administrator, by first-class mail post-marked no later than one hundred forty (140) days after the Notice Date, a fully completed Claim Form, signed under penalty of perjury, together with all required Proof of Repair Expense defined in Section I.(N) of this Agreement, demonstrating that the Claim for

Reimbursement is valid and complies in all respects with the terms of this Settlement Agreement.

(2) Any squealing of the front brakes caused by modification of/to brake components, misuse, abuse, alteration or modification, a collision or crash, lack of or improper maintenance, and/or damage from an environmental or other outside source, does not qualify for reimbursement.

(3) If the claimant is not a person to whom the Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the mailed Claim Form, the Claim shall contain proof that the claimant is a Settlement Class Member, that the vehicle is a Settlement Class Vehicle and that the Settlement Class Member paid and was not reimbursed for a Covered Repair;

(4) Any Claim for Reimbursement shall be reduced by the amount of any payment, concession or goodwill accommodation or discount(s) already received, from any other source (including Defendant, an Audi dealer, an insurer, service contract provider, or extended warranty provider, or any other person or entity), for all or part of the amount of the Covered Repair that is the subject of the Claim for Reimbursement. The Claim Form shall contain a statement in which the Settlement Class Member must verify either that no such payment, concession or

goodwill accommodation or discount(s) was received from another source, or if it was, the amount received and from whom/what source it was received.

(5) The Claim Administrator's denial of all or part of any Claim shall be binding and non-appealable, except that a Settlement Class Member may seek attorney review of said denial by so requesting it from the Claim Administrator within fourteen (14) days of the date of mailing of the decision. If attorney review is timely requested, Class Counsel and Defense Counsel will confer and attempt to resolve any disputed denial by the Claim Administrator in good faith. This provision does not apply to claims that, based on the proof submitted, do not qualify for reimbursement benefits under the terms of the Settlement.

### **III. CLAIMS ADMINISTRATION**

#### **A. Claims for Reimbursement under the Settlement Shall Be Administered by the Claim Administrator.**

Defendant shall be responsible for the costs of Class Notice, including costs and expenses related to Defendant's compliance with CAFA, and Claim Administration under this Settlement Agreement. The Parties retain the right to audit and review the claim handling by the Claim Administrator, and the Claim Administrator shall report to both Parties jointly.



**B. Administration**

(1) For each approved Claim for Reimbursement, the Claim Administrator, on behalf of Defendant, shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check to be sent within one hundred fifty (150) days of the date of receipt of the completed Claim (i.e., a fully complete and signed Claim Form with all required supporting documentation), or within one hundred fifty (150) days of the Effective Date, whichever is later.

(2) Disputes as to the sufficiency of the Claim and/or Proof of Repair Expense submitted in support of a Claim for Reimbursement shall be submitted to and resolved by the Claim Administrator. In the event the Claim Administrator makes a preliminary determination that the Claim and/or Proof of Repair Expense submitted is insufficient, the Claim Administrator will send the Settlement Class Member a letter advising of the deficiencies. The Settlement Class Member will have thirty (30) days from the date of that letter to cure the deficiencies or the claim will be denied.

**IV. NOTICE**

**A. To Attorneys General:**

In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”), the Claim Administrator shall provide notice of this proposed Settlement to the Attorney General of the United

States, and the Attorneys General of each state in which a known Settlement Class Member resides.

**B. To the Settlement Class:**

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

(1) On an agreed-upon date with the Claim Administrator, and no later than one hundred and fifteen (115) days after entry of the Preliminary Approval Order, the Claim Administrator shall cause individual Class Notice, together with the Claim Form, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Defendant may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it and Class Counsel approves all changes and formatting, and so long as such the Class Notice is substantially the same as that approved by the Court. The Claim Administrator shall be responsible for dissemination of the Class Notice.

(2) For purposes of identifying Settlement Class Members, the Claim Administrator shall obtain from Defendant the VINs of the Settlement Class Vehicles, and shall obtain from Polk/IHS Markit, the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained.

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

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

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

(6) On or before the Notice Date, the Claim Administrator shall implement a Settlement website containing:

- (a) instructions on how to submit a Claim for Reimbursement;
- (b) instructions on how to contact the Claim Administrator, Defense Counsel and Class Counsel for assistance;
- (c) in .pdf downloadable format, the following: the Claim Form, Class Notice, this Settlement Agreement, the Preliminary and Final Approval Orders, the motion(s) for Final Approval, Class Counsel Fees/Expenses and Class Representative Service Awards, and other pertinent orders and documents to be agreed upon by counsel for the Parties; and
- (d) relevant deadlines, the date/time of the Final Fairness Hearing and any other relevant information agreed upon by counsel for the Parties.

(7) The Settlement website shall appear at a URL address to be agreed upon by the Parties.

(8) On or before the Notice Date, the Claim Administrator shall establish a toll-free number, which will be staffed by the Claim Administrator, to assist in answering questions about the Settlement.

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

## **V. RESPONSE TO NOTICE**

### **A. Objection to Settlement**

(1) Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement or the requested amount of Class Counsel Fees/Expenses and/or Settlement Class Representative Service Awards, must, by the date specified in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, file any such objection with the Court (a) either in-person with the Clerk of the Court or via the Court's electronic filing system, or, if not filed in either manner, (b) by mailing the objection to the Court and to the following persons by first-class mail postmarked no later than thirty (30) days after the Notice Date: Ahdoot & Wolfson, PC, 2600 West Olive Avenue, Suite 500, Burbank, California 91505-4521 on behalf of Class Counsel; and Michael B. Gallub, Herzfeld & Rubin, P.C., 125 Broad Street, New York, New York 10004 on behalf of Defendant; and the Claim Administrator, Angeion Group, 1650 Arch Street, Suite 2210, Philadelphia, Pennsylvania 19103. Settlement Class Members may personally object or object through an attorney retained at their own expense; however, each individual Settlement Class Member objecting to the Settlement, in whole or in part, shall personally sign the objection.

(2) Any objecting Settlement Class Member must include with his, her or its objection:

- (a) the objector's full name, address, and telephone number;
- (b) the model, model year and Vehicle Identification Number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);
- (c) a written statement of all grounds for the objection accompanied by any legal support for such objection;
- (d) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;
- (e) the name, address and telephone number of any counsel representing said objector; and
- (f) a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his, her or its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/it shall affirmatively so state in the objection.

(3) Any Settlement Class Member who has not filed a timely and proper objection in accordance with the deadline and requirements set forth herein, will be deemed to have waived any objections to the Settlement and any adjudication or review of the Settlement, by appeal or otherwise.

(4) Moreover, subject to the approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should not be approved as fair,

reasonable, and adequate, or to object to any motion for Class Counsel Fees and Expenses or Class Representative Service Awards. In order to appear, the objecting Settlement Class Member must, by the objection deadline, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the Final Fairness Hearing. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence and identity of witnesses that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) intends to present to the Court in connection with the fairness hearing. Any Settlement Class Member who does not provide a timely and proper Notice of Intention to Appear in accordance with the deadline and requirements set forth herein, will be deemed to have waived the right to appear at the Final Fairness Hearing in person or by counsel.

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

(1) Any Settlement Class Member who wishes to be excluded from the Settlement Class must, by the date set forth in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date, submit a request for exclusion ("Request for Exclusion") to the Claim Administrator at the address specified in the Class Notice. To be effective, the Request for Exclusion must:

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

- (b) identify the model, model year and VIN of the Settlement Class Vehicle;
- (c) state that he/she/it is or was a present or former owner or lessee of a Settlement Class Vehicle; and
- (d) specifically and unambiguously state his/her/its desire to be excluded from the Settlement Class.

(2) Any Request for Exclusion must be sent by first class mail postmarked on or before the deadline set by the Court in the Preliminary Approval Order, which date shall be approximately thirty (30) days after the Notice Date. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper addresses, shall not be excluded from this Settlement and shall be subject to and bound by this Settlement Agreement, the Release and every order or judgment entered relating to this Settlement Agreement.

(3) Any Settlement Class Member who submits a timely and proper Request for Exclusion cannot also submit an objection to the Settlement.

(4) The Claim Administrator will receive purported Requests for Exclusion and will consult with Class Counsel and Defense Counsel in determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member intended to be excluded from the Settlement Class will be evaluated jointly by counsel for the Parties, who shall make a good faith



evaluation, if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class shall be submitted to the Court for resolution. The Claim Administrator shall maintain a database of all Requests for Exclusion, and shall send the original written communications memorializing those Requests for Exclusion to Class Counsel and Defense Counsel. The Claim Administrator shall report the names and addresses of all such persons and entities that submitted timely and proper Requests for Exclusion, to the Court, Class Counsel and Defense Counsel at least eighteen (18) days prior to the Final Fairness Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

## **VI. WITHDRAWAL FROM SETTLEMENT**

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

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

(2) The preliminary or final approval of this Settlement Agreement is not obtained without modification, and any modification required by the Court for approval is not agreed to by both Parties, and the withdrawing party deems any required modification in good faith to be material (e.g., because it increases the cost of the Settlement, or deprives the withdrawing party of a benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material);

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

(4) The Defendant shall, in addition, have the option to withdraw from this Settlement Agreement, and to render it null and void, if more than five percent (5%) of the persons and entities identified as being members of the Settlement Class exclude themselves from the Settlement Class in accordance with the provisions of Section V.(B) of this Settlement Agreement.

**B.** To withdraw from this Settlement Agreement under this Section VI, the withdrawing party must provide written notice to the other party's counsel and to the Court within ten (10) business days of receipt of any order or notice of the Court

modifying, adding or altering any of the material terms or conditions of this Agreement. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in the Action or any other litigation for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, and documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendant and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

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

**D.** Notwithstanding any provision of this Agreement, in the event, for reasons other than Plaintiffs' or Class Counsel's breach of this Agreement or wrongdoing, the Agreement is not approved by any court, or terminated for any

reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any Administration Expenses, or taxes, or any other expenses, including any costs of notice and administration associated with the Settlement or this Agreement, and each Party shall bear its own attorneys' fees and costs.

## **VII. ADMINISTRATIVE OBLIGATIONS**

**A.** In connection with the administration of the Settlement, the Claim Administrator shall maintain a record of all contacts from Settlement Class Members regarding the Settlement, any Claims submitted pursuant to this Settlement Agreement and any responses thereto. The Claim Administrator, on a weekly basis, shall provide to Class Counsel and Defense Counsel summary information concerning the number of claims made, number of claims validated, number of returned claims for incompleteness, and total dollar amount of payouts on approved claims made, the number of claims rejected and the total dollar amount of claims rejected, such that Class Counsel and Defense Counsel may inspect and monitor the claims process.

**B.** Except as otherwise stated in this Agreement, all costs and fees of the Claim Administrator including, without limitation, the cost of the Class Notice and

of distributing and administering the benefits of the Settlement Agreement, shall be paid by Defendant.

## **VIII. SETTLEMENT APPROVAL PROCESS**

### **A. Preliminary Approval of Settlement**

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

### **B. Final Approval of Settlement**

(1) If this Settlement Agreement is preliminarily approved by the Court, Class Counsel shall present a motion for final approval of the Settlement at least twenty-one (21) days prior to the Final Fairness Hearing, requesting that the Court issue a Final Order and Judgment directing the entry of judgment pursuant to Fed. R. Civ. P. 54(b) and the terms of this Settlement Agreement.

(2) The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court,

or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. Such best efforts shall include taking all reasonable steps to secure entry of a Final Order and Judgment of the Settlement terms contained herein, as well as supporting the Settlement and the terms of this Settlement Agreement through any appeal.

**C. Plaintiffs' Application for Class Counsel Attorney Fees and Costs, and Class Representative Service Awards**

(1) The Parties agree that Class Counsel may apply to the Court ("Fee and Expense Application") for a combined award of reasonable attorneys' fees, costs and expenses (hereinafter, collectively, "Class Counsel Fees and Expenses"), to be paid by Defendant separate and apart from any benefits to the Settlement Class pursuant to this Agreement, in an amount up to, but not exceeding, the total combined sum of One Million and Nine Hundred Sixty Thousand Dollars and No Cents (\$1,960,000.00). Class Counsel may apply for such an award on or before twenty-one (21) days prior to the Opt-Out and Objection Deadline. Defendant will not oppose, object, appeal, or otherwise comment on any such fee, cost and expense request that does not exceed an amount equal to One Million Nine Hundred Sixty Thousand Dollars and No Cents (\$1,960,000.00). Class Counsel shall not seek or be awarded, and shall not accept, any amount of Class Counsel Fees and Expenses exceeding said total combined amount.

(2) The Parties also agree that Class Counsel may apply to the Court for a reasonable Service Award not to exceed the amount of Five Thousand Dollars

and No Cents (\$5,000.00) for each of the named Plaintiffs, Valeria Mercado and Andrea Kristyanne Holmes, who have served as putative class representatives in the Action (“Settlement Class Representatives”) to be paid by Defendant. Defendant will not oppose Plaintiffs’ request, made as part of the Fee and Expense Application, that Defendant pay a Service Award of \$5,000 each to Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes.

(3) The Class Counsel Fees and Expenses and Settlement Class Representative Service Awards, as awarded by the Court, shall be paid by Defendant by wire transfer, check or other mutually agreeable fashion as designated and instructed by all Class Counsel, within the later of (a) thirty (30) days after the Effective Date of the Settlement, or (b) assuming the Effective Date of the Settlement has occurred, thirty (30) days after entry of the Final Order and Judgment for attorney fees, expenses, and service awards, including final termination or disposition of any appeals relating thereto. Said payments shall fully satisfy and discharge all obligations of Defendant and the Released Parties with respect to payment of the Class Counsel Fees and Expenses and Settlement Class Representative Service Awards.

(4) The procedure for and the grant or denial or allowance or disallowance by the Court of the Fee and Expense Application are not part of this Settlement Agreement, and are to be considered by the Court separately from the

Court's consideration of the fairness, reasonableness and adequacy of the Settlement Agreement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Effective Date of this Agreement. Payment of Class Counsel Fees and Expenses and the Settlement Class Representative Service Awards will not reduce the benefit being made available to the Settlement Class Members, and the Settlement Class Members will not be required to pay any portion of Class Counsel's Fees and Expenses or the Settlement Class Representative Service Awards.

(5) The Parties negotiated the above-described amount of attorneys' fees and expenses to be sought by Class Counsel and the amount of the Service Awards to be applied for on behalf of Class Representatives, only after reaching an agreement upon the relief provided to the Settlement Class, with the assistance of a professional third-party neutral Mediator at JAMS.

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

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



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

(3) Upon the Effective Date, the Action will be deemed dismissed with prejudice.

## **IX. MISCELLANEOUS PROVISIONS**

### **A. Effect of Exhibits**

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

### **B. No Admission of Liability**

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

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

**C. Entire Agreement**

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

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

The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

**E. Continuing Jurisdiction**

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

**F. Binding Effect of Settlement Agreement**

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

**G. Extensions of Time**

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

**H. Service of Notice**

Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to Defense Counsel or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below,

unless those individuals or their successors give notice to the other Parties in writing,  
of a successor individual or address:

As to Plaintiffs: GREG COLEMAN LAW PC  
16748 McCormick Street  
Los Angeles, CA 91436

AHDOOT & WOLFSON, PC  
2600 W. Olive Ave., Suite 500  
Burbank, CA 91505

WHITFIELD BRYSON LLP  
900 W. Morgan Street  
Raleigh, NC 27603

As to Defendant: HERZFELD & RUBIN, P.C.  
Michael B. Gallub, Esq.  
Brian T. Carr, Esq.  
125 Broad Street  
New York, NY 10004

**I. Authority to Execute Settlement Agreement**

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

**J. Discovery**

Defendant will cooperate and participate in reasonable confirmatory discovery, to the extent reasonably deemed necessary by Plaintiffs and agreed by the Parties.

**K. Return of Confidential Materials**

All documents and information designated as “confidential” and produced or exchanged in the Action, shall be returned or destroyed.

**L. No Assignment**

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

**M. No Third-Party Beneficiaries**

This Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of this Agreement.

**N. Construction**

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


**O. Captions**

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

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

**PLAINTIFFS**

Dated: May \_\_, 2021

  
\_\_\_\_\_  
Valeria Mercado (May 5, 2021 09:14 PDT)  
Valeria Mercado


Dated: May \_\_, 2021

\_\_\_\_\_  
Andrea Kristyanne Holmes

**DEFENDANT**

Dated: May \_\_, 2021

Klapper Antony  
VWPKI  
A57DB1BAB1F6DD4E  
\_\_\_\_\_  
Volkswagen Group of America, Inc.

 Digitally signed by Klapper Antony VWPKI  
A57DB1BAB1F6DD4E  
Date: 2021.05.12 18:27:29 -04'00'

**O. Captions**

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

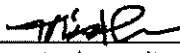
IN WITNESS HEREOF, the Parties have caused this Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on the lines below.

**PLAINTIFFS**

Dated: May \_\_\_, 2021

\_\_\_\_\_  
Valeria Mercado

Dated: May \_\_\_, 2021

  
\_\_\_\_\_  
Andrea Holmes (May 5, 2021 08:22 PDT)  
Andrea Kristyanne Holmes


**DEFENDANT**

Dated: May \_\_\_, 2021

\_\_\_\_\_  
Volkswagen Group of America, Inc.

**PLAINTIFFS' COUNSEL**

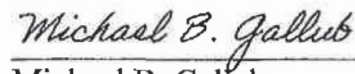
GREG COLEMAN LAW, PC

  
Greg Coleman

Dated: May 25, 2021


**DEFENDANT'S COUNSEL**

HERZFELD & RUBIN, P.C.

  
Michael B. Gallub

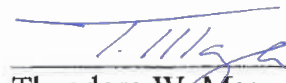
Dated: May 13, 2021

WHITFIELD BRYSON, LLP

  
Daniel K. ~~May~~ Bryson

Dated: April \_\_, 2021

AHDOOT & WOLFSON, PC

  
Theodore W. Maya

Dated: May 25, 2021



**EXHIBIT A**

## **FIVE STEPS FOR SUBMITTING A CLAIM FOR REIMBURSEMENT:**

```
<<FIRSTMILASTNAME1>>  
<<ADDRESS1>>  
<<ADDRESS2>>  
<<ADDRESS3>>  
<<CITY>> <<ST>> <<ZIPCODE>>  
<<TELEPHONE NUMBER>>  
<<VIN>>
```

[illegible]

11

[illegible][illegible][illegible]

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[illegible][illegible][illegible]

- (e) A description of the repair work performed (demonstrating that this was a Covered Repair) including the parts repaired/replaced and a breakdown of the parts and labor costs;
- (f) The vehicle's mileage at the time of repair or replacement; and
- (g) Proof of payment, including the amount paid, for the covered repair of the front brakes.

Total Dollar Amount Claimed For Repair:

\$  •

**(3) Answer the Following Question:**

For the amount of the front brake repair cost for which you are seeking to be reimbursed, did you receive any payment, credit, coverage, concession, or reimbursement for all or any part of that amount from any other source, including from Audi, any warranty, maintenance program, goodwill, coupon or reduction, or other full or partial reimbursement or refund (for example, by an Audi dealership or any insurance company, under any extended warranty or service contract, or by any other source)?

☐ Yes ☐ No

If you answered YES, list the total amount of the cost for which you received a payment, reimbursement, coverage, credit, or concession:

\$  •

**(4) Sign & Date:**

All the information that I (we) supplied in this Claim Form is true and correct to the best of my (our) knowledge and belief, and this document is signed under penalty of perjury.

Signature

Date:

MM

DD

YYYY

**(5) Mail Claim Form and all Documents/Paperwork, postmarked no later than \_\_\_\_\_, 2021, to:**

Angeion  
P.O. Box 58220  
Philadelphia, PA 19102

For more information, please view the Class Notice, call the Claims Administrator at 1-\_\_-\_\_-\_\_, or visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

**EXHIBIT B**

***Mercado v. Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.,***  
U.S. District Court, Central District of California, Civil Action No. 5:18-cv-02388-JWH-SP

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

**THIS NOTICE OF A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**  
**PLEASE READ IT CAREFULLY.**

- A Settlement has been proposed in a class action lawsuit against Volkswagen Group of America, Inc. (“VWGoA”) in which Plaintiffs have alleged that the front brakes in certain Audi Q7 vehicles contain a defect that allegedly causes a squealing sound. The class action, pending in the United States District Court for the Central District of California, is entitled *Mercado v. Volkswagen Group of America, Inc. d/b/a Audi of America, Inc.*, Civil Action No. 5:18-cv-02388 (the “Action” or “Lawsuit”). VWGoA has denied the claims and maintains that the front brakes are not defective. The Action has not gone to trial and the Court has not decided in favor of the Plaintiffs or VWGoA. Instead, the Plaintiffs and VWGoA agreed to settle the Action.
- You are a “Settlement Class Member” and are affected by this Settlement if you are a current or past owner or lessee of a model year 2017 or 2018 Audi Q7 vehicle that was imported and distributed by VWGoA in the United States or Puerto Rico (hereinafter, collectively, “Settlement Class Vehicles”).
- This Notice explains the Action, the Settlement, your legal rights, your available benefits and who is eligible for them, how to obtain them if you are eligible, and applicable time deadlines. As a Settlement Class Member, you have various options that you may exercise before the Court decides whether to approve the Settlement. Additional information is available online at [www.vwgoa.com](http://www.vwgoa.com).
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after appeals, if any, are resolved.

## BASIC INFORMATION

### 1. Why did I receive this Notice, and what are the settlement benefits?

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

According to records, you are a current or past owner or lessee of a model year 2017 or 2018 Audi Q7 imported and distributed by Volkswagen Group of America, Inc. ("VWGoA") in the United States or Puerto Rico (hereinafter, collectively, "Settlement Class Vehicles"):

As a current or past owner or lessee of a Settlement Class Vehicle, you are considered a "Settlement Class Member." A class action lawsuit was filed alleging that a defect caused the front brakes of the Settlement Class Vehicles to emit a squealing noise. VWGoA has denied the claims and maintains that the front brakes are not defective, that no applicable warranties were breached, no statutes or laws were violated, and that no wrongdoing occurred with respect to the Settlement Class Vehicles. The Lawsuit has been resolved through a Settlement under which the following benefits will be provided:

#### **A. Warranty Extension for Current Owners and Lessees of Settlement Class Vehicles**

Effective on \_\_\_\_\_, 2021 [The Notice Date], VWGoA will extend its New Vehicle Limited Warranties applicable to the Settlement Class Vehicles to cover one repair of a diagnosed condition of squealing of the front brakes, by an authorized Audi dealer, of front brakes of said vehicles within four years or 48,000 miles, whichever occurs first, of the Settlement Class Vehicle's In-Service date, by replacing the brake pads and inserting an additional spring in each caliper of the front brakes (hereinafter, the "Warranty Extension" or "Extended Warranty"):

##### General Terms and Conditions of the Extended Warranty:

- (a) The Extended Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's New Vehicle Limited Warranty and Warranty and Maintenance Booklet, except that repairs to the front brakes under this Settlement are permissible pursuant to the extended time and mileage limitations set forth above and in the Settlement Agreement, which is available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).
- (b) Front brake squeal resulting from misuse, abuse, alteration or modification, a collision or crash, vandalism, lack of or improper maintenance and/or damage from an environmental or outside source shall be excluded and not covered by the Extended Warranty.
- (c) The Extended Warranty will, until its expiration, be fully transferable to subsequent owners of Settlement Class Vehicles.
- (d) A vehicle is not eligible for an Extended Warranty if it was purchased with a salvaged title or if it was acquired by an insurance company as a result of a total loss.
- (e) VWGoA shall not be responsible for, and shall not warrant, repair or replacement work performed on a Settlement Class Vehicle by an independent service center that is not an authorized Audi dealer.

#### **B. Reimbursement for Past Unreimbursed Out-of-Pocket Expenses for Covered Repairs**

If, prior to the Notice Date and within four years or forty-eight thousand (48,000) miles (whichever comes first) of the Settlement Class Vehicle's In-Service Date, a Settlement Class Member incurred and paid out-of-pocket expenses for a Covered Repair (a repair of a diagnosed condition of squealing noise from the front brakes of a Settlement Class Vehicle consisting of replacement of front brake pads and/or insertion of one new lower spring in each front brake caliper) of a Settlement Class Vehicle that was not otherwise reimbursed, and timely submits a valid, complete and signed Claim Form, together with the required Proof of Repair Expense documentation pursuant to the terms of the Settlement Agreement, the Settlement Class Member will be entitled to reimbursement of said past paid and unreimbursed out-of-pocket expenses (parts, labor and taxes) for one such Covered Repair as follows:

(a) If the Covered Repair was performed by an authorized Audi dealer, the Settlement Class Member shall be entitled to receive reimbursement of the full amount (100%) of the paid invoice cost (parts, labor and taxes) of one Covered Repair during that period.

(b) If the Covered Repair was performed by a service entity or facility that is not an authorized Audi dealer, the Settlement Class Member shall be entitled to receive reimbursement of fifty percent (50%) of the paid invoice cost (parts, labor and taxes) of one Covered Repair during that period.

**C. Requirements for and Limitations on Entitlement to Reimbursements Set Forth in Sections B Above**

To qualify for reimbursement of past paid and unreimbursed out-of-pocket expenses provided under Section B above, Settlement Class Members must comply with the following requirements:

(a) Mail to the Claim Administrator, by first-class mail **postmarked no later than one hundred forty (140) days after the Notice Date**, a fully completed Claim Form, a copy of which is attached to this Notice and available at [www.audiusa.com](http://www.audiusa.com), signed under penalty of perjury, together with all required Proof of Repair Expense documentation listed in the Claim Form.

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

(c) Each Claim for Reimbursement must include, in the Claim Form(s), a statement that the Settlement Class Member has not previously been reimbursed, from any other source, for all or part of the out-of-pocket expense for which reimbursement is being sought under this Settlement, or if any full or partial reimbursement was previously received, delineate the amount of the reimbursement received and the source of the reimbursement.

(d) Any reimbursement pursuant to this Settlement shall be reduced by any previous warranty, carefree maintenance, goodwill, reimbursement, refund, or other payment or concession for the brake repair that was paid or provided by Defendant, an authorized Audi dealer, or any other entity (including insurers and providers of extended warranties or service contracts).

(e) Front brake squeal resulting from misuse, abuse, alteration or modification, a collision or crash, vandalism, lack of or improper maintenance and/or damage from an environmental or outside source, does not qualify for reimbursement.

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

In a class action, one or more persons, called the Class Representatives, sue on behalf of other people who have similar claims. Together all of these people are a Class or Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

The Class Representatives in this case are the Plaintiffs Valeria Mercado and Andrea Kristyanne Holmes, and the company they sued is called the Defendant.

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

### WHO IS PART OF THE SETTLEMENT?

Questions? Call \_\_\_\_\_ or visit [www.audiusa.com](http://www.audiusa.com)

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

The Court has conditionally approved the following definition of a Settlement Class Member: All persons or entities who purchased or leased a Settlement Class Vehicle imported and distributed by Volkswagen Group of America, Inc. for sale or lease in the United States of America and Puerto Rico.

Excluded from the Settlement Class are (a) all Judges who have presided over the Action, and their spouses; (b) all current employees, officers, directors, agents, and representatives of Volkswagen Group Companies, 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; (h) issuers of extended vehicle warranties and service contracts; (i) any Settlement Class Member who, prior to \_\_\_\_\_ settled with and released Defendants or any Released Parties from any Released Claims; and (j) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class.

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

If you are still not sure whether you are included, you can call \_\_\_\_\_ or visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com) for more information.

## SETTLEMENT BENEFITS – WHAT YOU GET

### 5. What does the Settlement provide?

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

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

Any United States or Puerto Rico resident who purchased or leased a Settlement Class Vehicle can send in a timely Claim for Reimbursement for money spent within the parameters and within the time period described in Question 1.

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

To submit a Claim for Reimbursement, you must do the following within the required deadline:

- A. Complete, sign under penalty of perjury, and date the Claim Form(s) (copies of which are enclosed with this Class Notice and available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)). It is recommended that you keep a copy of the completed Claim Form.
- B. Mail the completed, signed, and dated Claim Form(s) and your supporting Proof of Repair Expense documentation (e.g., repair record[s], receipts, and proof of payment) by First-Class Mail, **postmarked no later than \_\_\_\_\_, 2021**, to the address provided on the Claim Form(s). The information that must be reflected in your records is described on the Claim Form(s). It is recommended that you keep a copy of your records and receipts.

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

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

If the Claim Administrator determines your Claim is valid, your reimbursement will be mailed to you after the Settlement becomes final, which is called the “Effective Date.” The Court will hold a Final Fairness Hearing on \_\_\_\_\_, to decide whether to approve the Settlement as fair, reasonable, and adequate. Information about the progress of the case will be available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

If the Claim Administrator determines your Claim should not be paid, you will be mailed a letter telling you this. If the



reason for rejecting your Claim is due to a deficiency in your Claim Form(s) and/or supporting documentation, the letter will notify you of the deficiency in your Claim and what you need to submit, and by when, to correct the deficiency. To check on the status of your Claim, you can call \_\_\_\_\_.

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

Unless you exclude yourself by taking the steps described in Question 10 below, you are staying in the Settlement Class, which means that you will be bound by the release of claims in the Settlement Agreement, and cannot sue, continue to sue, or be part of any other lawsuit about the same matters, claims, and legal issues that were asserted or could have been asserted in this case (except for claims of personal injury or property damage other than damage to the Settlement Class Vehicles, which are not excluded by the release of claims). It also means that all of the Court's orders and judgments will apply to you and legally bind you. The specific claims and parties you will be releasing are set forth in the Settlement Agreement, which is available for review on the settlement website, [www.\\_\\_\\_\\_\\_](http://www._____).

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

10. How do I get out of this Settlement?

To exclude yourself from the Settlement, you must send a written request for exclusion by U.S. Mail, **postmarked no later than** \_\_\_\_\_, clearly stating that you want to be excluded from the settlement. Your Request for Exclusion must also include your full name, address, telephone number, and signature, the model year and VIN of your vehicle, state whether you are a current or former owner or lessee of a Settlement Class Vehicle and specifically state your desire to be excluded from the Settlement Class. You must mail your Request for Exclusion, **postmarked no later than** \_\_\_\_\_, to each of the following:

CLAIM ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
BRAKE CLAIM ADMINISTRATOR 1650 Arch Street, Suite 2210 Philadelphia PA 19103	GREG COLEMAN LAW PC 16748 McCormick Street Los Angeles, CA 91436  AHDoot & Wolfson, PC 2600 W. Olive Ave., Suite 500 Burbank, CA 91505  WHITFIELD BRYSON LLP 900 W. Morgan Street Raleigh, NC 27603	Michael B. Gallub, Esq. HERZFELD & RUBIN, P.C. 125 Broad Street New York, NY 10004

You cannot exclude yourself on the phone or by email. If you timely submit your request to be excluded by U.S. Mail or express mail, you will not get any benefits of the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit.

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

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

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

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

13. Do I have a lawyer in this case?

The Court has appointed the law firms of Greg Coleman Law PC, Ahdoot & Wolfson, PC and Whitfield Bryson LLP to represent Settlement Class Members. These law firms are called "Class Counsel."

14. Should I get my own lawyer?

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

15. How will the lawyers be paid, and will the Settlement Class Representatives receive service awards?

Class Counsel have prosecuted this case on a contingency basis. They have not received any fees or reimbursement for costs and expenses associated with this case. Class Counsel will file an application with the Court requesting an award of reasonable attorney fees and reasonable costs and expenses ("Fees and Expenses") in an amount not exceeding a combined total sum of \$1,960,000. VWGoA has agreed not to oppose Class Counsel's application for Fees and Expenses to the extent not exceeding that combined total sum, and Class Counsel have agreed not to accept any Fees and Expenses in excess of that combined total sum. You won't have to pay these Fees and Expenses. Any Fees and Expenses awarded to Class Counsel will not affect your Settlement amount.

Class Counsel will also apply to the Court for service awards to the named Plaintiffs, who have conditionally been approved as Settlement Class Representatives, in the following amounts, for their efforts in pursuing this litigation for the benefit of the Settlement Class: \$5,000 each to Plaintiffs Valeria Mercado and Andrea Kristy Anne Holmes.

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

Class Counsel's application for Fees and Expenses and Settlement Class Representative service awards will be filed no later than 21 days before the deadline for you to comment or object to the Settlement, and a copy will be made available for review at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**SUPPORTING OR OBJECTING TO THE SETTLEMENT**

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

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

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

- (i) Submit your written objection or comment, and any supporting papers or materials, to the Court. You may do so by mailing them by U.S. First-Class Mail, **postmarked no later than** \_\_\_\_\_, addressed to Clerk of the Court, United States District Court for the Central District of California, Eastern Division, 3470 Twelfth Street, Room 134, Riverside CA 92501; or
- (ii) File your written objection or comment, and any supporting papers or materials, with the Court in person at any location of the United States District Court for the Central District of California, no later than \_\_\_\_\_; or
- (iii) File your written objection or comment, and any supporting papers or materials, on the Court's ECF online docket for this case, no later than \_\_\_\_\_.

If you choose to mail your written objection to the Court, you must also, no later than the above date, mail copies of

the objection and supporting papers or materials to:

- Ahdoot & Wolfson, PC, 2600 W. Olive Ave., Suite 500, Burbank, CA 91505
- Michael B. Gallub, Esq., Herzfeld & Rubin, P.C., 125 Broad Street, New York, NY 10004 on behalf of Defendant; and
- Brake Claim Administrator, \_\_\_\_\_

Regardless of which method you choose, your written objection must state clearly that you are objecting to the Settlement, Fees and Expenses and/or Settlement Class representative service awards in *Mercado v. Volkswagen Group of America, Inc.*, Civil Action No. 5:18-cv-02388, and must include your full name, current address, and telephone number, the model, model year, and VIN of your vehicle, proof that you own(ed) or lease(d) the vehicle (e.g., a true copy of a vehicle title, registration, or license receipt), a written statement of all your factual and legal grounds for objecting, any documents and/or briefs supporting your objection, a statement of whether you intend to appear at the Final Fairness Hearing, the name, address and telephone number of any counsel representing the objector, and your signature. Any Settlement Class Member objecting to the Settlement must also provide a detailed list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements in any court in the previous five (5) years, or affirmatively state that the Settlement Class Member, or his or her counsel, has not objected to any other class action Settlement in the previous five (5) years, in the written materials provided with the objection. If you intend to appear at the Final Fairness Hearing through counsel, your comment must also state the identity of all attorneys representing you who will appear at the Final Fairness Hearing.

If you do not submit a written objection in accordance with the deadline and procedure set forth above, you will waive your right to be heard at the Final Fairness Hearing and to appeal from any order or judgment of the Court concerning the matter.

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

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

### FINAL FAIRNESS HEARING

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

The Court will hold a Final Fairness Hearing at \_\_\_\_\_ on \_\_\_\_\_, before the Honorable Judge John W. Holcomb at the United States District Court for the Central District of California, Courtroom 2, 3470 Twelfth Street, Riverside CA 92501, to determine whether the Settlement should receive final approval. At this Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider Class Counsel's application for Fees and Expenses and service awards to Settlement Class Representatives.

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

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

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

If you do not exclude yourself, you may ask the Court's permission to speak at the Final Fairness Hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' Fees and Expenses and Settlement Class Representative service awards. To do so, you must send in a letter saying that it is your intention to appear at the Final

Fairness Hearing in *Mercado v. Volkswagen Group of America, Inc.*, Civil Action No. 5:18-cv-02388. The letter must state the position you intend to present at the Final Fairness Hearing, state the identities of all attorneys who will represent you (if any), and must include your full name, current address, and telephone number, the model year and VIN of your vehicle(s), and your signature. **You must either send your letter by U.S. First-Class Mail to the Clerk of the Court, Class Counsel, and defense counsel at the three addresses listed under Question 16 above, postmarked no later than \_\_\_\_\_, 2021, or file your letter with the Court either in person or on the Court's on-line ECF docket (as specified under Question 16 above) no later than \_\_\_\_\_, 2021.** You may combine this letter and your comment (described under Question 16) in a single document. You cannot speak at the Final Fairness Hearing if you excluded yourself from the Settlement.

#### IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it.

#### MORE INFORMATION

22. Where can I get more information?

For more information, please visit the website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), where you can find extra Claim Forms, a copy of the settlement Agreement, certain applicable court filings and other pertinent documents, and more information on this litigation and Settlement. Updates regarding the case, including important dates and deadlines, will also be available on the website. You may also call the Claim Administrator at \_\_\_\_\_ or email [info@\\_\\_\\_\\_\\_.com](mailto:info@_____.com).

**EXHIBIT C**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VALERIA MERCADO and ANDREA  
KRISTYANNE HOLMES,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF  
AMERICA, INC. d/b/a/ AUDI OF  
AMERICA, INC.,

Defendant.

Case No. 5:18-cv-02388-JWH-SP

[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT

Hon. John W. Holcomb, presiding

Date: June 25, 2021  
Time: 9:00 a.m.  
Location: Courtroom 2

1           **THIS MATTER** having been opened to the Court by Plaintiff's Unopposed  
2 Motion for Preliminary Approval ("Motion for Preliminary Approval") of the  
3 proposed Settlement ("Settlement") in the above Action;

4           **WHEREAS**, the Court having reviewed and considered the Motion for  
5 Preliminary Approval and supporting materials filed by Settlement Class Counsel  
6 including the Settlement Agreement with annexed Exhibits; and

7           **WHEREAS**, this Court, after due deliberation, has fully considered the record  
8 and the requirements of law, and good cause appearing;

9           **IT IS THIS** \_\_\_\_\_ day of \_\_\_\_\_, 2021 **ORDERED** that the  
10 proposed Settlement is hereby **PRELIMINARILY APPROVED**. The Court further  
11 finds and orders as follows:

12           1.     The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d), and  
13 venue is proper in this district.

14           2.     The Court has personal jurisdiction over the Plaintiffs, the Settlement  
15 Class Members, and the Defendant.

16           3.     To the extent not otherwise defined herein, all defined terms in this Order  
17 shall have the meaning assigned in the Settlement Agreement ("Settlement  
18 Agreement").

19           4.     The Settlement Agreement was entered into by experienced class action  
20 counsel after extensive arm's length negotiations of disputed claims, which included  
21 the participation of an experienced and neutral third-party mediator. The Settlement  
22 Agreement is not the result of collusion.

23           5.     The proceedings that occurred before the Parties entered into the  
24 Settlement Agreement gave counsel the opportunity to adequately assess this case's  
25 strengths, weaknesses and the risks to each Party, and thus, to negotiate a Settlement  
26 Agreement that reflects those considerations.

27           6.     After careful review of the Settlement Agreement, the Court hereby  
28 preliminarily finds that the Settlement Agreement is fair, reasonable and adequate

1 under Fed. R. Civ. P. 23, and has no obvious deficiencies that would preclude  
2 preliminary approval. Accordingly, the Court hereby preliminarily approves all terms  
3 of the Settlement Agreement and its Exhibits.

4 7. The Court preliminarily finds, for settlement purposes only, that all  
5 requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied. As such, the Court  
6 hereby preliminarily certifies the following Settlement Class:

7 All persons and entities who purchased or leased any model year 2017 or  
8 2018 Audi Q7 vehicle that was imported and distributed by Volkswagen  
9 Group of America, Inc. for sale or lease in the United States or Puerto  
Rico.

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

21 8. The Court preliminarily finds that the requirements of Rule 23(a) are  
22 satisfied, for settlement purposes only, as follows: (a) the members of the Settlement  
23 Class are so numerous that joinder of all members is impracticable, (b) there are  
24 common issues of law and fact for the Settlement Class, (c) the claims of the Plaintiffs  
25 Valeria Mercado and Andrea Kristyanne Holmes are typical of the claims of the  
26 Settlement Class that they seek to represent, and (d) Plaintiffs will fairly and  
27 adequately protect and represent the interests of all members of the Settlement Class as  
28 the Class Representatives, and their interests are not antagonistic to those of the



1 Settlement Class.

2 9. The Court further preliminarily finds that the requirements of Rule  
3 23(b)(3) are satisfied, for settlement purposes only, in that (a) common questions of  
4 law and fact pertaining to the Settlement Class Members predominate over questions  
5 that may affect only individual members; and (b) a class action is superior to other  
6 available methods for the fair and efficient adjudication of this controversy.

7 10. The Court hereby preliminarily appoints Plaintiffs Valeria Mercado and  
8 Andrea Kristyanne Holmes to serve as the Class Representatives for the Settlement  
9 Class.

10 11. The Court also hereby preliminarily appoints the law firms of Greg  
11 Coleman Law, PC, Ahdoot & Wolfson, PC and Whitfield Bryson, LLP to serve as  
12 Settlement Class Counsel for the Settlement Class.

13 12. The Court preliminarily appoints Angeion Group as the Settlement  
14 Administrator (hereinafter, "Settlement Administrator" or "Claims Administrator") to  
15 supervise and administer the Class Notice Plan as well as the processing and review of  
16 Claims that are timely and properly submitted and comply with the terms of the  
17 Settlement.

18 13. This Preliminary Approval Order shall neither preclude nor in any way  
19 affect Defendant's rights to assert that this action may not be certified as a class action,  
20 other than for settlement purposes only. The Court also concludes that, because the  
21 action is being settled rather than litigated, the Court need not consider manageability  
22 issues that might be presented by the trial of a nationwide class action involving the  
23 issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

24 14. The Court has reviewed, and finds, that the content of the proposed form  
25 of Class Notice attached as Exhibit B to the Settlement Agreement, and the Claim  
26 Form attached as Exhibit A to the Settlement Agreement, satisfy the requirements of  
27 Fed. R. Civ. P. 23(c)(2) and 23(e)(1), and Due Process. Accordingly, the Court hereby  
28 approves the proposed Class Notice and Claim Form.

1           15. The Court further hereby approves the proposed method for providing  
2 notice of the Settlement to the Settlement Class Members, as reflected in the Class  
3 Notice Plan in the Settlement Agreement. The Court has reviewed the Class Notice  
4 Plan and finds that the Settlement Class Members will receive the best notice  
5 practicable under the circumstances. The Court specifically approves the Parties'  
6 proposal that on an agreed upon date with the Claims Administrator, but in no event  
7 later than \_\_\_\_\_, 2021 [one hundred fifteen (115) days after entry of this order],  
8 the Claims Administrator shall cause individual Class Notice, substantially in the form  
9 attached to the Settlement Agreement as Exhibit B, together with the Claim Form,  
10 substantially in the form attached to the Settlement Agreement as Exhibit A, to be  
11 mailed, by first class mail, to the current or last known addresses of all reasonably  
12 identifiable Settlement Class Members (the "Notice Date"). The Court specifically  
13 approves the procedures set forth in the Settlement Agreement for identifying  
14 Settlement Class Members, and for re-mailing notice packets and performing advanced  
15 address searches for Settlement Class Members' addresses if returned as undeliverable.  
16 The Court further approves the payment of notice costs by Defendant as provided in  
17 the Settlement Agreement.

18           16. The Court finds that these procedures will constitute the best notice  
19 practicable under the circumstances and satisfy the requirements of Fed. R. Civ. P.  
20 23(c)(2), Fed. R. Civ. P. 23(e)(1), and Due Process.

21           17. The Departments of Motor Vehicles within the United States and Puerto  
22 Rico are ordered to provide approval to Polk/IHS Markit, or any other company so  
23 retained by the parties and/or the Claims Administrator, to release the names and  
24 addresses of Settlement Class Members in this action associated with the titles of the  
25 Vehicle Identification Numbers at issue in this action for the purposes of disseminating  
26 the Class Notice to the Settlement Class Members. Polk/IHS Markit or any other  
27 company so retained is ordered to license, pursuant to agreement between Defendant  
28 and said company, and/or the Claims Administrator and said company, the Settlement

1 Class Members' contact information to Defendant and/or the Claims Administrator  
2 solely for the use of providing Class Notice in this action and for no other purpose.

3 18. The Court directs that pursuant to Fed. R. Civ. P. 23(e)(2), a Final  
4 Fairness Hearing will be held by this Court in the Courtroom of The Honorable John W.  
5 Holcomb, United States District Court for the Central District of California, United  
6 States Courthouse, 3470 12th St., Riverside, California 92501 at \_\_\_\_\_.m. on  
7 \_\_\_\_\_, 2021 ("Final Fairness Hearing"), to consider (a) the grant of  
8 final approval of the Settlement pursuant to the terms of the Settlement Agreement, (b)  
9 certification of the Settlement Class, (c) appointment of Plaintiffs as the Settlement  
10 Class Representatives, (d) appointment of Class Counsel as Settlement Class Counsel,  
11 (e) appointment of Angeion Group as the Settlement Administrator, (f) Class  
12 Counsel's application for reasonable attorney fees and expenses and Settlement Class  
13 Representative service awards, (g) any objections to and/or requests for exclusion from  
14 the proposed Settlement, and (h) entry of a Final Approval Order and Judgment. The  
15 Final Fairness Hearing may be adjourned by the Court, and the Court may address the  
16 above or other matters, without further notice to the Settlement Class other than notice  
17 that may be issued by the Court and/or on the Court's and settlement websites.

18 19. The Court directs that no later than \_\_\_\_\_, 2021 [twenty-one  
19 (21) days prior to the Final Fairness Hearing], Settlement Class Counsel shall file their  
20 Motion for Final Approval of the Settlement.

21 20. The Court directs that Settlement Class Counsel shall file their Motion for  
22 reasonable attorney fees and expenses, and Settlement class Representatives service  
23 awards, no later than \_\_\_\_\_, 2021 [fourteen (14) days before the Objection Deadline].  
24 No later than \_\_\_\_\_, 2021 [fourteen (14) days before the Final Fairness Hearing],  
25 reply papers, if any, may be filed with respect to said Motion.

26 21. The Court further directs that no later than \_\_\_\_\_, 2021 [ten (10)  
27 days prior to the Final Fairness Hearing], Settlement Class Counsel and Defendant  
28 may file any supplemental memoranda addressing any objections and/or opt-outs, and

1 any other matters in further support of final approval of the Settlement.

2 22. Any Settlement Class Members wishing to object to the proposed  
3 Settlement and/or the requests for Settlement Class Counsel fees and expenses and/or  
4 Settlement Class Representative service awards, must adhere to the following deadline  
5 and procedures in order for the objection to be considered by the Court:

- 6 a) To object, a Settlement Class Member, individually or through  
7 counsel, must, no later than \_\_\_\_\_, 2021 [thirty (30) days  
8 after the Notice Date] (hereinafter, the “Objection Deadline”), file  
9 a written objection, with all supporting documents and/or  
10 memoranda, with the Court in person at United States Courthouse,  
11 3470 12th St., Riverside, California 9250, or via the Court’s  
12 electronic filing system, or, if not filed with the Court by either  
13 method, mail the objection to the Court and to the following  
14 persons by first-class mail postmarked no later than the  
15 \_\_\_\_\_, 2021 Objection Deadline:

16 **Settlement Class Counsel**

17 Robert Ahdoot, Esq.  
18 Ahdoot & Wolfson, PC  
2600 W. Olive Ave., Suite 500  
Burbank, CA 91505

19 **Defendant’s Counsel**

20 Michael B. Gallub, Esq.  
21 Herzfeld & Rubin, P.C.  
125 Broad Street  
22 New York, NY 10004

23 **Claims Administrator**

24 Brake Claims Administrator  
25 c/o Angeion Group  
P.O. Box 58220  
26 Philadelphia, PA 19102

- 27 b) Any objecting Settlement Class Member must include with  
28 his/her/their/its objection:

- i. the objector's full name, address, and telephone number;
  - ii. the model, model year and VIN of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);
  - iii. a written statement of all grounds for the objection accompanied by any legal support for such objection;
  - iv. copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;
  - v. the name, address and telephone number of any counsel representing said objector; and
  - vi. a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his/her/their/its counsel has not objected to any other class action settlement in the United States in the previous five years, he/she/they/it shall affirmatively so state in the objection.
- c) Subject to the approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should not be approved as fair, reasonable and adequate, or to object to any motion for attorneys' fees and expenses or Settlement Class Representative service awards. Any Settlement Class Member that wishes to appear in person or by counsel must, by the Objection Deadline, file with the Clerk of the Court and serve

1 upon all counsel designated in the Class Notice, a Notice of  
2 Intention to Appear at the Fairness Hearing. The Notice of  
3 Intention to Appear must include copies of any papers, exhibits or  
4 other evidence, and the identity of witnesses that the objecting  
5 Settlement Class Member or their counsel intends to present to the  
6 Court. Any Settlement Class Member who does not provide a  
7 Notice of Intention to Appear in accordance with the Objection  
8 Deadline and requirements set forth in the Settlement Agreement  
9 and Class Notice shall not be entitled to appear and present any  
10 arguments at the Final Fairness Hearing.

11 d) Any Settlement Class member who has not filed an objection in  
12 accordance with the Objection Deadline and requirements set forth  
13 in the Settlement Agreement and Class Notice, shall be deemed to  
14 have waived their right to object to, and shall forever be barred  
15 from objecting to, any aspect of the proposed Settlement and to  
16 Settlement Class Counsel's motion for reasonable attorney fees  
17 and expenses and Settlement Class Representative service awards,  
18 and, if the Settlement is granted final approval, will be bound by  
19 the Settlement Agreement including the release of claims and by  
20 any orders and judgements of this Court relating to the Settlement.

21 23. Any Settlement Class Member who wishes to be excluded from the  
22 Settlement Class must mail a request for exclusion ("Request for Exclusion"), by first-  
23 class mail postmarked no later than \_\_\_\_\_, 2021 [thirty (30) days after the Notice  
24 Date], to the Claims Administrator at:

25 Brake Claims Administrator  
26 c/o Angeion Group  
27 P.O. Box 58220  
28 Philadelphia, PA 19102

24. To be effective, the Request for Exclusion must:

- a) include the Settlement Class Member's full name, address and telephone number;
- b) identify the model, model year and VIN of the Settlement Class Vehicle;
- c) state that he/she/they/it is a present or former owner or lessee of a Settlement Class Vehicle; and
- d) specifically and unambiguously state his/her/their/its desire to be excluded from the Settlement Class.

25. The Claim Administrator shall report the names and addresses of all persons and entities that submitted timely and proper Requests for Exclusion to the Court, Settlement Class Counsel and Defendant's Counsel no later than \_\_\_\_\_, 2021 [eighteen (18) days prior to the Final Fairness Hearing].

26. The Claim Administrator shall consult with Class Counsel and Defendant's Counsel in determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member intended to be excluded from the Settlement Class shall be evaluated jointly by Class Counsel and Defendant's Counsel, who shall make a good faith evaluation. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class shall be submitted to the Court for resolution.

27. Any Settlement Class Member who does not properly and timely submit such a Request for Exclusion shall automatically be included in the Settlement Class and, if the Settlement is granted final approval, shall be bound by all the terms and provisions of the Settlement Agreement and the Settlement, including but not limited to the release of claims and any orders and judgment of this Court relating to the Settlement.

28. Upon final approval of the Settlement, all Settlement Class Members



1 who have not timely and properly excluded themselves from the Settlement shall be  
2 deemed to have, and by operation of the Final Order and Judgment shall have, fully  
3 and completely released, acquitted and discharged all Released Parties from all  
4 Released Claims as set forth in the Settlement Agreement.

5 29. Pending the Court's determination of whether to grant final approval of  
6 this Settlement, all Settlement Class Members and/or their representatives are  
7 preliminarily barred from commencing, prosecuting, continuing to prosecute, or  
8 participating in any action or proceeding against any of the Released Parties (as defined  
9 in the Settlement Agreement), in any court, tribunal or other forum, asserting any of the  
10 matters, claims or causes of action that are to be released in the Settlement Agreement.  
11 Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this  
12 preliminary injunction is necessary and appropriate in aid of the Court's continuing  
13 jurisdiction and authority over the Action pending its determination as to final approval  
14 of this Settlement.

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

- 19 (a) All orders and findings entered in connection with the  
20 Settlement shall become null and void and have no further force  
21 and effect, shall not be used or referred to for any purposes  
22 whatsoever, and shall not be admissible as evidence or  
23 discoverable in this or any other proceeding, judicial or  
24 otherwise;
- 25 (b) All of the Parties' respective pre-Settlement claims, defenses  
26 and procedural rights will be preserved, and the parties will be  
27 restored to their positions *status quo ante*;
- 28 (c) Nothing contained in this order is, or may be construed as, any  
admission or concession by or against Defendant, any Released  
Party or any Plaintiff on any claim, defense, or point of fact or



1 law;

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

7 (e) Neither the fact of, nor any documents relating to, either party's  
8 withdrawal from the Settlement, any failure of the Court to  
9 approve the Settlement, and/or any objections or interventions  
10 may be used as evidence;

11 (f) The preliminary certification of the Settlement Class pursuant to  
12 this order shall be vacated automatically, and the Action shall  
13 proceed as though the Settlement Class had never been  
14 preliminarily certified; and

15 (g) The terms in Section VI of the Settlement Agreement shall  
16 apply and survive.

17 31. The Parties and their counsel are hereby authorized to use all reasonable  
18 procedures in connection with approval and administration of the Settlement that are  
19 not materially inconsistent with the Preliminary Approval Order or the Settlement  
20 Agreement, including making, without further approval of the Court, minor changes to  
21 the Settlement, to the form and content of the Class Notice and/or Claim Form, or to  
22 any other exhibits that the Parties jointly agree are reasonable and necessary.

23 **IT IS SO ORDERED.**

24 Dated: \_\_\_\_\_

25 Hon. John W. Holcomb  
26 United States District Judge