UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JULIE KIMBALL, individually and on behalf of all others similarly situated, Plaintiffs, v. VOLKSWAGEN GROUP OF AMERICA, INC., Defendant.	Civil Action No. 2:22-cv-04163-MAH

PLAINTIFF'S BRIEF IN REPONSE TO OBJECTIONS

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INTRODUCTION

Judicial policy favors resolution of litigation before trial, "particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995).

ARGUMENT

I. The Settlement Class Overwhelmingly Favors the Settlement

One of the factors to be considered by the Court in evaluating a settlement is the reaction of the Settlement Class.[1] The reaction of the Settlement Class here is overwhelmingly positive, with only 15 objections and 237 requests for exclusion out of a Settlement Class of 3,929,515 members![2] *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993) (a "paucity of protestors . . . militates in favor of the settlement"); *Stoetzner v. U. S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990)

[1] All capitalized terms here have the meanings ascribed to them in the Settlement Agreement.

[2]Some, but not all objectors are indexed on the Docket at ECF Doc. Nos. 109 (Oliver Larson), 110 (Gunter Meyer), 111 (Tracy Daniel Venters), 112 (Adam Scher), 113 (Barbara Roches), 114 (Scher), 115 (Jorge Eduardo Parra Osorio), 116 (Mary Shaheen and Matthew Glogowski), 117 (Anthony Kibom Kim), 118 (Howard Breslau), 119 (Geoffrey Donaldson), and 122 (Wendong Song). Objections sent either directly to Class Counsel, Defendant's Counsel, or the Claim Administrator and not filed on the docket (*e.g.* Objectors Alicia Bankston, Straker Carryer, Shady Ali and Roger Campos) are attached to the Declaration of Gary S. Graifman ("Graifman Decl.") filed concurrently herewith. The objections that fall into more than one category are categorized based on Plaintiff's understanding of the primary objection. Among the fifteen objections, Objector Alicia Lynn Bankston (Graifman Dec. Ex. 1) appears to be complaining about a water pump failure which is not a component involved in this matter. Also, Objectors Geoffrey Donaldson and Rodger Campos filed late objections post-marked October 16, 2025 (and which was filed in the Clerk's office October 21, 2025) and October 28, 2025 respectively, clearly missing the October 15, 2025 deadline. Additionally, Objector Anthony Kibom Kim's request for additional time to file an objection was denied by the Court, and he never filed an objection. *See* ECF Doc. 121.

(objections by 29 members of a class comprised of 281 "strongly favors settlement").

When evaluating the objections "the court must balance the reaction of the class with all the other factors examined in considering the settlement, and can find the settlement terms fair, notwithstanding objections from the class." *Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 654 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir. 1983); *see also Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 235 (D.N.J. 2005) (Linares, J.) ("[T]he issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement.").

Here, irrespective of their lack of merit, the tiny number of objections clearly show that the second factor articulated in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) ("*Girsh*") - reaction of the Class to the settlement - is overwhelmingly satisfied.

II. MOST OF THE PURPORTED OBJECTIONS FAIL TO COMPLY WITH THE COURT-ORDERED REQUIREMENTS FOR A VALID OBJECTION AND SHOULD BE OVERRULED

Most of the purported objections fail to comply with the Court-Ordered requirements for submitting a valid objection. Pursuant to the Preliminary Approval Order (ECF Doc. 106 at ¶ 16), objectors were required to submit the following information and documentation in order to be valid objection: (1) the objector's full

name, address, and telephone number; (2) the model, model year and VIN of the Settlement Class Vehicle, along with proof that the objector is a current or former owner or lessee; (3) a written statement of grounds for the objection; (4) copies of any papers, briefs or other documents upon which the objection is based; (5) the name, address and telephone number of any counsel representing the objector; (6) a statement of whether the Objector intends to appear at the Final Fairness Hearing; and (7) a list of all objections submitted by the objector or objector's counsel within the last 5 years. (ECF 106 ¶16(b)). Yet, the objections of Campos, Carryer, Scher, Shaheen and Glogowski, Donaldson, Larson, Meyer, Venters, Breslau and Ali (*i.e*, 10 out of 15 objection) were all deficient and failed to comply with the straightforward Court-Ordered requirements for a valid objection as required by the Preliminary Approval Order. Of those 10 objections:

5 objections (Larson, Meyer, Venters, Breslau and Ali) did not include the required statement of whether they intend to appear at the Final Fairness Hearing and the required disclosure of whether they have objected to other class settlements in the last 5 years;

3 objections (Campos, Ali and Carryer) failed to file their objections with the Court;

2 objections (Campos and Straker) failed to provide the model, model year and VIN of the vehicle, proof of lease or ownership, the required statement of if they intend to appear at the Final Fairness Hearing, and the disclosure regarding whether they have objected to any class settlements in the last 5 years;

1 objection (Scher) failed to include the model and model year of the vehicle, the required statement whether he intends to appear at the Final Fairness Hearing and the disclosure of whether he has objected to a class settlement in the last 5 years;

1 objection (Shaheen/Glogowski) failed to include the statement of whether they intend to appear at the Final Fairness Hearing, the disclosure of whether they have objected to any class settlements in the last 5 years and did not include a phone number as required; and,

1 objection (Donaldson) does not include the model year of the vehicle, the statement of whether he intends to appear at the Final Fairness Hearing, the disclosure regarding whether he has objected to any class settlement in the last 5 years and a telephone number, as required.

These objections, while lacking in merit for the reasons discussed below, should be overruled, stricken or dismissed for failing to comply with the mandatory Court-Ordered requirements for a valid objection.

III. FOUR OF THE OBJECTIONS HAVE BEEN WITHDRAWN

Four of the objections have been withdrawn, subject to Court approval, based on individual customer satisfaction settlements between the objectors and VWGoA. The objections of Adam Scher (ECF Doc. 112), Alicia Bankston (ECF Doc. 114), Howard Breslau (ECF Doc. 118) and Shady Ali (Graifman Decl. Exh. 2) should all be withdrawn.

IV. ALL OF THE OBJECTIONS LACK MERIT

In addition to these invalidities and withdrawals, the objections are all without merit. They essentially boil down to subjective beliefs of a small handful of Settlement Class Members, **out of almost 4 million**, who chose not to opt out of the Settlement but nevertheless complain that the coverage period of 8.5-years/85,000 miles from In-Service Date for the reimbursement and warranty extension does not cover their own individual circumstances. They argue either that there should be no time/mileage limitation, or that the time/mileage limitation should be extended forever depending on their own particular circumstance (*see, e.g.*, objections of Oliver Larson (ECF 109); Gunter Meyer (ECF 110); Tracy Daniel Venters (ECF 111); Adam Scher (ECF Doc. 112); Mary Shaheen & Matthew Glogowski (ECF Doc. 116); Howard L. Breslau (ECF Doc. 118); Wendong Song (ECF Doc. 122).

Courts have uniformly rejected these types of objections in the context of automobile-related class actions. *See Alin v. Honda Motor Co., Ltd.*, 2012 WL 8751045, at *12 (D.N.J. Apr. 13, 2012) (finding class settlement with auto manufacturer was reasonable where "largest category of objections comes from customers whose cars were too old or had too many miles to be eligible for recovery according to the lines drawn in the agreement"). Since class action settlements such as this are compromises of disputed claims and issues, "lines must be drawn somewhere" and time/mileage durations "need not be indefinite to be reasonable." *Skeen v. BMW of N. Am., LLC,* No. 2:13-CV-1531-WHW-CLW, 2016 WL 4033969, at *9 (D.N.J. July 26, 2016); *see also, Herremans v BMW of N.A.*, LLC, CV 14-2363-GW(PJWX) (C.D. Cal. Nov. 26, 2016) (decision granting final approval, annexed to Graifman Decl. as Exhibit 5). *Herremans* was a class settlement involving coolant pumps in BMW of North America, LLC ("BMW NA") distributed vehicles. The court approved a nationwide settlement providing reimbursement only for pre-notice repairs that occurred up to a period of *seven (7) years/84,000 miles*, and up to a maximum reimbursement amount of $500.00 (as opposed to the 40%-50% cost of repair or replacement reimbursed here, where Class Vehicle repair costs exceed $3,000 and also includes a prospective Extended Warranty for certain

vehicles). The court rightfully found the settlement in *Herremans* to be fair, reasonable and adequate and approved the settlement.

Negotiating a cut-off at some point is "necessary and is reasonable because settlement is the result of compromise and 'full compensation is not a prerequisite for a fair settlement'" and, as long as the settlement is fair, reasonable and adequate to the class as a whole, "it is not the role of the Court to determine where that cut-off should be and impose that line on the parties." *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946 at * 12 (S.D.N.Y. May 30, 2013) ("*In re Nissan Radiator/Transmission"*) (quoting *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 11292479 at *9 (D.N.J. March 22, 2013)). *See also*, *McBean v. City of New York*, 233 F.R.D. 377, 382 (S.D.N.Y. 2006) (Court serves as a "fiduciary" to protect the interest of absent class members, but even in this role, "it is not the Court's prerogative to pick and choose terms of the settlement, redact portions of the agreement, or substitute terms more to the Court's liking."). Indeed, "[a]ge and mileage limitations are common in automotive defect cases and reflect manufacturers' strong arguments that vehicles ordinarily fail after a number of years or miles due to wear and tear." *Aarons v. BMW of N. Am., LLC, No*. 11-7667-PSG, 2014 WL 4090564, at *12 (C.D. Cal. Apr. 29, 2014) (explaining that all limits on compensation are "by their nature somewhat arbitrary" but approving the mileage

cut-off for compensation given that it "was the product of arms'-length negotiation").

In determining where these limitations should be drawn, Plaintiff negotiated vigorously at arm's length, weighing carefully the goal of obtaining fair, reasonable and adequate recovery for Class Members against the very substantial risks of non-recovery, substantially reduced that can take years to obtain even if plaintiff were to prevail, and the risk of failure to obtain (and maintain to the end) class certification in the litigation context, as opposed to a settlement context where issues of manageability of a trial do not exist. The settlement benefits here are very substantial, providing for 50% reimbursement of the past paid cost of turbocharger repairs or replacements performed prior to the Notice Date and within 8.5 years or 85,000 miles (whichever occurred first) from the vehicle's original In-Service Date, and on top of that, a warranty extension for the more recent model year Generation 3 Settlement Class Vehicles to cover 50% of the cost of turbocharger repair or replacement at an authorized Volkswagen or Audi dealer for a period of 8.5 years or 85,000 miles (whichever occurs first) from the vehicle's In-Service Date. This is a substantial increase from the standard New Vehicle Limited Warranty periods for the Settlement Class Vehicles, and an excellent class settlement overall, especially when balancing the risks discussed above.

The remaining objections are a smattering of complaints which are also without merit and do not come close to justifying a denial of final approval of this excellent Settlement. For example, Tracey Daniel Venters (ECF Doc. 111) and Shady Ali (Graifman Decl. Ex. 3) have objected on the ground that the reimbursement amount for past repairs is insufficient. However, it is not uncommon for auto defect class action settlements to reimburse past repairs for a portion of the repair cost. As the Court in *In re Nissan Radiator/Transmission* observed:

> Although the Court appreciates that it would have been better for Class Members if they did not need to make any contributions toward the cost of repair, the Court agrees with class counsel and defendant's counsel that the co-payments reflect a reasonable compromise between the risks of further litigation and the benefit of providing immediate relief to Class Members who would not otherwise have received anything absent winning the litigation. In particular, as defense counsel explained, the co-pay requirement reflects the "inverse relationship between the number of trouble-free miles driven by a [Class Member] and the strength of the [Class Member's] claim."

In re Nissan Radiator/Transmission, *supra*, at *10.

Here the reimbursement of 50% of the cost of a past repair or replacement of the turbocharger during the agreed-upon period is substantial, as the average repair cost of the turbocharger generally exceeds $3,000, and is an excellent settlement compromise of the disputed claims that is more than fair, reasonable and adequate. In fact, turbochargers can malfunction for any number of possible reasons totally

unrelated to the claims in this case, especially as the vehicle gets older and is driven more. Yet, the reimbursement program still affords 40% coverage if the repair documents do not state whether the mechanism of the turbocharger failure was related to Plaintiff's claims. The prospective Extended Warranty's coverage of 50% of the cost of replacement of the turbocharger during the agreed period for the Gen. 3 Settlement Class Vehicles is likewise very substantial and is more than fair, reasonable and adequate under all of the circumstances.[3]

In assessing final approval, the Court must determine whether the terms of the settlement as a whole are fair and reasonable, "'and not whether every member of the class is fully compensated.'" *In re Nissan Radiator/Transmission, supra*, at *11 (quoting *Careccio v. BMW of N. Am, LLC*, 2010 WL 1752347, at *6). The *Nissan Radiator/Transmission* Court further noted that "members who are not satisfied with the level of compensation provided may opt-out of the class and pursue their own claim." *Id*. These objectors all had that opportunity and chose not to opt-out.

Settlement Class Members Anthony Kibom Kim (ECF. Doc. 117) and Roger Campos (Graifman Decl. Ex. 2) provide no basis for why they would purportedly take issue with the Settlement. Equally unavailing is Geoffrey Donaldson's objection (ECF Doc. 119) that the Settlement should not require Class Members to

[3] A qualifying repair must be a turbocharger failure caused by wastegate failure due to fork head and/or link pin corrosion, as alleged in the Third Amended Class Action Complaint.

come forth with any proof of repair and proof of payment, which, quite frankly, has no support in fact or law, and ignores the fact that these are basic and reasonable documentary proof requirements for a reimbursement claim which prevent fraudulent claims and have routinely been accepted by courts including this Court in preliminarily approving the Settlement.

Three objectors (Wendong Song (ECF Doc. 122), Straker Carryer (Graifman Decl. Ex. 4); and Shady Ali (objection withdrawn subject to Court Approval) (Graifman Decl. Ex. 3) claim, without any support, that they could not afford to have their turbochargers repaired, and should not have to pay for failures of the turbochargers in order to get reimbursement from the Settlement. Similarly, Objector Jorge Eduardo Parra Osorio (ECF Doc. 115), who elected not to replace his allegedly malfunctioning turbocharger, argues that the Settlement fails to compensate for out of pocket expenses to purchase extra motor oil. Yet, he provides no evidence that his vehicle actually experienced a turbocharger failure, let alone that his vehicle's need for motor oil had anything to do with any turbocharger failure, and in fact, a vehicle's oil consumption is entirely unrelated. Thus, his criticisms, besides being without merit, are unrelated to the claims in this case. The Settlement, negotiated at arm's length, provides substantial reimbursement for certain past repairs of malfunctioning turbochargers and Extended Warranty coverage. If a Class

Member was unable to pay the cost of repair and wishes to preserve their rights, here, only a few out of several million – that Class Member could easily have opted-out. *See*, *Henderson*, 2013 WL 1192479, at *9 ("complaining that the settlement should be 'better' is not a valid objection") (citations omitted).

Oliver Larson's objection is similarly without merit. Larson opposes the Release provision of the Settlement, as he does not believe that the Settlement provides him with any benefit in exchange for the Release, which he believes is overly broad. *See*, ECF Doc. 109. However, the Release is entirely proper, reasonably tailored to the claims and issues in this case, and was already reviewed and approved by this Court in its Preliminary Approval of the Settlement. ECF Doc. 106. Mr. Larson had the opportunity to opt-out of the Settlement and not be bound by its Release, but chose not to, and his subjective criticism is both meritless and provides no justification to deny final approval when the almost 4 million other Settlement Class Members have not so complained.

The objection of Barbara A. Roches (ECF Doc. 113) is also without merit. Ms. Roches claims that she did not get a qualifying repair because her dealer gave her an "excessively high estimate" and "failed to inform [her] that a potential Class Action Settlement was in process." *Id.* Ms. Roches' objection is more accurately directed at her local dealer, not with the Settlement, and in any event, Ms. Roches

received an estimate for work on her vehicle when it was already over 11 years old and over 96,402 miles, making ineligible for settlement benefits.

The Bankston objection (Graifman Decl. Ex. 1, objection withdrawn subject to Court approval), vaguely asserts that the Court should analyze the settlement benefits that should be received by Generation 1 class members as compared to the other generation class members, arguing that the Generation 1 class members as the oldest vehicles would likely receive the greatest benefits. To the extent this objection can be interpreted as an argument that Settlement Class Members are not treated equally, this objection is likewise without merit. Bankston has no evidence to support the claim, and the generous reimbursement benefit is identical for all generations of Settlement Class Vehicles.

None of the Objectors articulate an objection to the service payment to the Settlement Class Representative. Federal courts have generally permitted such service awards to named class representatives in Rule 23 class action settlements, recognizing the favorable public policy and fairness underlying these awards. *In Re Riddell Concussion Reduction Litig*., 2016 WL 7325512, at *1 (D.N.J. Jan. 19, 2016) ("class representatives should be rewarded for taking action that is in the public interest and [because] public policy favors compensation for class representatives for taking on the risks of litigation on behalf of absent class members." (citing

Sullivan v. DB Investments, Inc., 2008 WL 8747721, at *37 (D.N.J. May 22, 2008))); *Sullivan v. DB Investments, Inc*., 667 F.3d 273, 333, n.65 (3d Cir. 2011) (rejecting an objection to a District Court's decision to grant incentive awards to class representatives).

In this case, the requested $3,500.00 service award to Plaintiff Settlement Class Representative Julie Kimball, in recognition of her services to the Class is modest under the circumstances and comports with awards approved by federal courts in New Jersey and elsewhere. Courts in this district have often granted higher incentive awards to compensate named plaintiffs for services they provided and the risks they incurred. *See* Motion for Attorneys' Fees, Expenses and Incentive Awards § V (ECF Doc. 107-1); *Bernhard v. TD Bank, N.A*., 2009 WL 3233541, at *2 (D.N.J. 2009) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.") (quoting *Cullen*, 197 F.R.D. at 145); *McGee*, 2009 WL 539893 at *18 (quoting *In re Lorazepam & Clorazepate Antitrust Litig*., 205 F.R.D. 369, 400 (D.D.C.2002)) ("Incentive awards are 'not uncommon in class action litigation'" where the class representatives have created value "'for the benefit of the entire class.'"); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, 263 F.R.D. 226, 245 (E.D. Pa. 2009) (awarding representative plaintiffs incentive

payments in the amounts of $10,500.00 and $5,000.00, for a total of $115,000.00, finding those amounts to be "reasonable compensation considering the extent of the named plaintiffs' involvement and the sacrifice of their anonymity"); *Bezio*, 655 F. Supp. 2d at 168 (incentive awards in the amount of $5,000.00 each are "within the range of awards found acceptable for class representatives").

As with the negotiated fee-and-expense award (subject, of course, to this Court's approval), the service award of $3,500.00 to the Settlement Class Representative is paid separately by Defendant, and does not reduce or in any way affect the benefits afforded by the Settlement. Plaintiff Kimball stepped up and performed a service to the class, without which there would be no reimbursement program or extended warranty for class members to avail themselves. For a full discussion, *see* Plaintiff's Brief in Support of Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards. ECF Doc. 107-1, at pp. 33-34.

Finally, objector Adam Scher erroneously attacks Class Counsel, claiming they are not entitled to their fees because, in Scher's belief, the monetary reimbursement in the Settlement should have extended to more Class Members. The Scher objection is just plain wrong, and notwithstanding, has been withdrawn subject to the Court's approval. Plaintiff's Brief in Support of an Award of Attorneys' Fees, Expenses and Incentive Awards (ECF Doc. 107-1) as well as the

Joint Declaration in Support of that motion (ECF Doc. 107-2), and the individual Declarations of Class Counsel, Gary S. Graifman (ECF Doc. 107-4) and Thomas P. Sobran (ECF Doc. 107-5) set forth in extensive detail the work performed to support their fee application. Notably, Scher is the sole objector challenging the fee request. Furthermore, the issue of reasonable attorney fees and expenses was not even addressed until after the parties had reached agreement on the material settlement terms, and the amount of the requested attorneys' fees do not, in any way, provide a legitimate basis for not granting final approval to this excellent Settlement which, clearly, is fair, reasonable and adequate under the circumstances. *See infra.*

Accordingly, the Court should reject the objections, and grant final approval of the Settlement.

V. LEGAL STANDARD – THE OBJECTIONS SHOULD BE OVERRULED AND THE COURT SHOULD APPROVE THIS FAIR, REASONABLE AND ADEQUATE CLASS SETTLEMENT

Class action settlements may be approved upon the Court's finding that the settlement is "fair, reasonable, and adequate" under the circumstances. Fed. R. Civ. P. 23(e)(2); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). The Third Circuit has adopted a nine-factor test, known as the *Girsh* factors, to guide the Court's analysis of whether a settlement is "fair, reasonable, and adequate." *See Girsh v. Jepson*, 521 F.2d at 157; *see also In re Am. Family Enters.*, 256 B.R. 377,

418 (D.N.J. 2000) ("These factors are a guide and the absence of one or more does not automatically render the settlement unfair.").

There is a strong policy favoring settlements, especially in class actions which are complex, expensive to litigate, and very protracted, often lasting for years with the ultimate results uncertain. *In re GMC Pick-Up Fuel Tank Prods. Liab. Litig. ("GM Trucks")*, 55 F.3d 768 (3rd Cir. 1995).

A settlement is presumed fair and reasonable where, as in this case, the settlement is vigorously negotiated at arm's-length by experienced counsel who are fully familiar with all aspects of class action litigation. *See In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 785. "The role of a district court is not to determine whether the settlement is the fairest possible resolution—a task particularly ill-advised given that the likelihood of success at trial (on which all settlements are based) can only be estimated imperfectly." *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 173-74 (3d Cir. 2013). Rather, "[s]ignificant weight should be attributed 'to the belief of experienced counsel that the settlement is in the best interest of the class.'" *In re Am. Family Enters.*, 256 B.R. at 421 (internal citation omitted).

A. The Mere 15 Purported Objections (4 of Which Were Resolved and Withdrawn) Do Not Support Denial of the Final Approval of This Settlement Involving 3,929,515 Class Members

As demonstrated in Plaintiffs' Motion for Final Approval of Class Action Settlement (the "Final Approval Motion"), the *Girsh* factors weigh in favor of approval of the Settlement. Since these factors were addressed at length in the Final Approval Motion, we need address all of them here. The bottom line is that this Settlement provides excellent and robust benefits, was vigorously negotiated at arm's-length, is fair, reasonable, and adequate, and the small number of objections to the Settlement do not, in number or in substance, warrant its rejection. *See id.*; *see also In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d at 785; *In re Telectronics Pacing Sys.*, 137 F. Supp. 2d 985, 1009 (S.D. Ohio 2001) ("those objecting to the proposed settlement have a heavy burden of proving the unreasonableness of the settlement"); *Varacallo*, 226 F.R.D. at 240 ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness.").

The fact that only 15 out of the 3,929,515 Settlement Class Members have voiced any purported criticism of the Settlement (some of which, like Kim and Campos are not even objections and/or do not articulate any objection) speaks particularly to one of the major *Girsh* factor—the reaction of the Class to the Settlement. This factor, which "attempts to gauge whether members of the class support the Settlement," *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 148 F.3d

283, 318 (3d Cir. 1998) ("*Prudential II*"), considers, "the number and vociferousness of the objectors." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig*., 55 F.3d at 812. Generally, "silence constitutes tacit consent to the [settlement] agreement." *Id.* (internal quotation omitted), and here, the mircroscopic number of objectors, amounting only to approximately 0.0004% of Settlement Class Members, shows resoundingly the Settlement Class's support for this Settlement. *Varacallo*, 226 F.R.D. at 235, 259 (approving settlement where "only about .003% of the Class submitted objections to the Court" and finding "this is a tiny percentage of the total Class"). Under *Girsh*, such a small number of objections supports approval of the Settlement. *See Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *7 n.5 (D.N.J. Aug. 31, 2016) ("There can be little doubt that the initial presumption [of fairness] applies here . . . [in part] because the proposed settlement drew only thirty-four objections."); *In re Prudential Ins. Co. of Am. Sales Practices Litig*., 962 F. Supp. 450, 537 (D.N.J. 1997) (small number of negative responses to settlement favors approval), *aff'd*, 148 F.3d 283 (3d Cir. 1998); *Weiss v. Mercedes-Benz of N. Am., Inc*., 899 F. Supp. 1297, 1301 (D.N.J.) (100 objections out of 30,000 class members weighs in favor of settlement), *aff'd*, 66 F.3d 314 (3d Cir. 1995).[4]

[4] *See also Sullivan v. DB Investments, Inc*., 667 F.3d 273, 321 (3d Cir. 2011) ("minimal number of objections and requests for exclusion are consistent with class settlements we have previously approved"); *Stoetzner*, 897 F.2d at 119 (small number of objections favors settlement); *Bell Atl. Corp.*, 2 F.3d at 1314 (same); *In re S. Ohio Corr. Facility*, 173 F.R.D. 205, 214 (S.D. Ohio 1997)

The objections that have been lodged do not support denial of the Settlement which is fair, reasonable, and adequate, and robust in comparison to other automotive class settlements. *See Walsh*, 96 F.R.D. at 654; *Schwartz v. Avis Rent a Car Sys., LLC*, No. 11-4052 (JLL), 2016 U.S. Dist. LEXIS 80387, at *18 (D.N.J. June 21, 2016) (approving settlement and noting "[i]mportantly, of course, the settlement [ ] provides the Class with immediate and definite relief"). Accordingly, the objections should be overruled, and the Court should grant final approval of the Settlement.

1. Objections to the Time and Mileage Limitations Are Without Merit and Do Not Warrant a Denial of Final Approval

The majority of the objections subjectively complain that the time and mileage limitations of 8.5 years or 85,000 miles (whichever occurred first) from the Settlement Class Vehicle's In-Service date for the reimbursement program and warranty extension should be higher – some maintaining that there should be no limitation at all. Specifically, these objections complain that the limit of a 8.5-year time period and/or 85,000 miles is unreasonable because the turbocharger in their vehicles may not fail until after the proposed limitation periods expire. These

(where only twenty-five objections were filed, the "relatively small number of class members who object is an indication of a settlement's fairness") (citation omitted).

subjective complaints, which the Settlement Class obviously does not share, are without merit for several reasons.

First, the Third Circuit has recognized that "[s]ettlements are private contracts reflecting negotiated compromises." *In re Baby Prod. Antitrust Litig.*, 708 F.3d at 173-74 (citation omitted). As such, "[t]he Court must determine whether the compromises reflected in the settlement—including those terms relating to the allocation of settlement funds—are fair, reasonable, and adequate when considered from the perspective of the class as a whole." *Id.*; *see also Varacallo,* 226 F.R.D. at 235. As demonstrated in the Final Approval Motion, the Settlement is fair, reasonable, and adequate when considered from the perspective of the Settlement Class as a whole.

Second, objections to a settlement's age and mileage limitations have been uniformly rejected in the context of automotive class settlements involving past reimbursement programs and warranty extensions, where courts recognize that class settlements are compromises where lines must be drawn somewhere. *See Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *17 (D.N.J. Aug. 31, 2016) ("Like any compromise, a case could be made for the longer warranty period advocated by these objectors, or for the status quo that [defendant] might achieve if the settlement were rejected and it ultimately prevails on its legal and factual

arguments. . . . Of course, for those in aggravated situations there was the opportunity to opt out of this class and to pursue one's own remedies. That the proposed settlement does not provide a second 100,000 mile warranty upon the remedial parts is not reason for this Court to reject it."); *Skeen*, 2016 WL 4033969, at *9 ("The Court agrees with Plaintiffs [ ] that the Court's job is 'not to determine whether the settlement is the *fairest possible* resolution.' . . . With regard to the amount of relief offered under the settlement and the Class members receiving that relief, 'lines must be drawn somewhere.' . . . [Plaintiff] does not convince the Court that the seven-year warranty provided by the settlement, though perhaps not the fairest possible resolution, is unreasonable.") (citations omitted).[5]

[5] *See also Seifi v. Mercedes-Benz USA, LLC*, 2015 WL 12964340, at *2-4 (N.D. Cal. Aug. 18, 2015) ("'Age and mileage limitations are common in automotive defect cases, and reflect manufacturers' strong arguments that vehicles ordinarily fail after a number of years or miles due to wear and tear.' . . . The Court also finds this Settlement is similar to other approved automotive class action settlements, which overruled the same types of objections. . . . Time/mileage limitations are inherent to automotive settlements that are regularly approved by courts, and the limitations here represent a compromise that was negotiated at arms'-length through a venerated mediator by experienced counsel after extensive discovery and consultation with their experts.") (citations omitted); *Aarons v. BMW of N. Am., LLC*, 2014 WL 4090564, at *12-13 (C.D. Cal. Apr. 29, 2014) ("The Court is not persuaded that the vehicle age limitations set out in the settlement render the settlement unfair. Age and mileage limitations are common in automotive defect cases, and reflect manufacturers' strong arguments that vehicles ordinarily fail after a number of years or miles due to wear and tear."); *Careccio v. BMW of N. Am. LLC*, 2010 WL 1752347, at *6 (D.N.J. Apr. 29, 2010) ("These objections essentially criticize the way relief is tiered in the settlement. Fashioning relief this way, lines inevitably are drawn. At the end of the day, the appropriate test on the adequacy of the settlement terms is whether they are 'fair and reasonable,' . . . and not whether every member of the class is fully compensated. On that basis, while recognizing the objectors' positions are not without a basis, the Court must conclude that full compensation is not a prerequisite for a fair settlement.").

For example, in *Collado v. Toyota Motor Sales, U.S.A., Inc*., 2011 WL 5506080, at *2 (C.D. Cal. Oct. 17, 2011), *rev'd in part on other grounds*, 550 F. App'x 368 (9th Cir. 2013), the district court rejected objections that the settlement's 5-year/50,000-mile limitation was unfair, stating that "there has to be some reasonable limit to the warranty period. . ."

Third, "any Class Member who objected to the adequacy of relief had the option of opting out of the Settlement and pursuing his or her own case against [VWGoA]." *Henderson*, 2013 WL 1192479, at *9.[6]

Fourth, in the Settlement, Plaintiff has obtained from Defendant robust benefits that will cover 50% of the costs expended up to 85,000 miles or 8.5 years (whichever occurred first). All Class Members received the benefit of a reimbursement for 50% of actually expended money for failures that occurred up to 85,000 miles or 8.5 years (with no cap for repairs performed at authorized dealers and a $3,850 cap for repairs performed at independent facilities). Those Class Members who have driven their vehicles beyond the 85,000 miles or 8.5 years without a failure have received the benefit of a vehicle which has exceeded the time and mileage duration of both the NVLW and the Extended Warranty. It is incorrect

[6] And, here, a mere 265 individuals—out of some 3.9 ***million*** (only 0.0067% of the class)—opted out of the Settlement, further supporting the class's favorable reaction to the Settlement.

to claim these Class Members did not receive a benefit when they owned a vehicle that exceeded the mileage and time durations.

2. The Objection of Different Treatment of Class Members is Without Merit

Objector Alicia Bankston, who has withdrawn her objection (subject to Court approval) argues, without any basis or support, that class "subset Generation One vehicle owners" are "most impacted by the turbochargers in dispute [and] are not provided fair, reasonable, or adequate injunctive relief." Graifman Decl. Ex. 1. She goes on to request that the Court "review the differences of subset class Generation One with regard to the total value of their submitted claims in comparison to the other class subsets." *Id.* It is difficult to decipher what Bankston means, but to the extent that she is suggesting that the different engine generation owners are not treated equally she is completely incorrect. In fact, the Settlement makes no distinction with respect to eligibility for, or amount of, reimbursement based on Class Vehicle Generation. None of Ms. Bankston's imagined differences in treatment between the so-called "subsets" or Class Vehicles is accurate, and they certainly do not impact the fairness, reasonableness or adequacy of the Settlement.

It is well-settled that the mere fact that some Class Members would not be eligible for compensation under the Settlement's terms is not a basis for disapproving the Settlement, as "the possibility that the settlement does not provide

for a payout to every conceivable class member who in some way may have been affected by the purported defect does not establish that the settlement is unfair or unreasonable." *Asghari*, 2015 WL 1273262, at *22. That a settlement does not compensate some class members does not render it unfair or unreasonable. *See, e.g.*, *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 461-63 (9th Cir. 2000) (approving settlement allocation plan that would leave some class members without settlement payments because they "could never get damages should they proceed to trial").

The Settlement should not be disapproved simply because it offers the possibility that many Class Members will receive a benefit while others, who have experienced no failure and expended no money for repairs and therefore cannot meet objective eligibility requirements for benefits, receive nothing. *See Aarons*, 2014 WL 4090564, at **11-12 (approving settlement releasing transmission-related claims of owners who may not qualify for any compensation); *see also Henderson, supra* (releasing all class members' claims regarding a transmission defect, even though the settlement only provides benefits for vehicles that exhibited problems within 100,000 miles).

Those who contend "his or her personal claim was being sacrificed for the greater good . . . had the right to opt-out of the class." *Hanlon*, 150 F.3d at 1027; *Eisen*, 2014 WL 439006, at *7 (citing cases overruling objections because "class

members could have opted out if they objected to the benefits offered by the settlement."); *Aarons*, 2014 WL 4090564, at *13 (overruling objections that the settlement did not provide adequate compensation for certain categories of Class Members because "[t]o the extent those individuals believe the settlement to be unfair, they could have opted out of the class"); *Henderson v. Volvo Cars of N. Am., LLC*, *supra* at *9 ("any Class Member who objected to the adequacy of relief had the option of opting out of the Settlement and pursuing his or her own case against [VW or Audi]"). If any objector here believed that they could have done better, they should have opted out to pursue their claim, rather than objected.

3. Objections to the 50% Reimbursement do not Have Merit

The arguments made by those few objectors who take issue with the fact that the Settlement reimburses 50% of past paid costs lack merit. The Settlement was reached only after the parties had engaged in vigorously-contested litigation, including motion to dismiss practice, and after Class Counsel performed an extensive investigation and informally exchanged confirmatory discovery with VWGoA, consulted with experts, and engaged in vigorous and extensive arm's-length negotiations.

Recognizing that settlements are a compromise between the parties, courts have regularly rejected challenges to a settlement's reimbursement amounts or rates.

See Dickerson v. York Int'l Corp., 2017 WL 3601948, at *9 (M.D. Pa. Aug. 22, 2017) (The argument that "the settlement is unreasonable for failure to reimburse [plaintiffs] 100 percent of their out-of-pocket costs . . . fundamentally misapprehends the bargained-for nature of the benefit provided: a settlement necessarily requires all parties to make calculated concessions. . . . These [negotiated] amounts were the result of intense and informed negotiations with the assistance of the mediator. In view of the risks of proving liability and causation, these awards are quite reasonable."); *Henderson*, 2013 WL 1192479, at *8-9 ("[S]everal objectors indicate their disappointment with the agreed-upon reimbursement rates or relief. . . . The objections submitted by Class Members do not show that the Settlement is unreasonable or unfair. 'This Court's role is to determine whether the proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class. A settlement is, after all, not full relief but an acceptable compromise.'") (citations omitted).[7]

[7] *See also Seifi*, 2015 WL 12964340, at *2-3 ("The percentage of replacement costs reimbursed or to be paid by [defendant] for future repairs was determined by a vigorously-disputed and highly-negotiated schedule according to the number of miles driven or the amount of time the subject vehicles have been on the road. In negotiations over the portion of the replacement costs to be reimbursed/covered under the Settlement, plaintiffs faced real litigation risk from [defendant's] defenses . . . . in light of these risks, the Settlement's reimbursement and extended warranty schedules are reasonable and a fair compromise for the Class."); *Aarons*, 2014 WL 4090564 at *12 ("The Court is also not moved by the objections to the reimbursement rates provided by the settlement . . . ."); *Henderson*, 2013 WL 1192479, at *9 ("complaining that the settlement should be 'better' is not a valid objection") (citations omitted).

Objections to the reimbursement amounts or rates should be overruled.

4. Objection to the Settlement Release Language Should Be Overruled

One objector (Oliver Larson (ECF Doc. 109)) incorrectly asserts that the release language of the Settlement Agreement is overly broad because he asserts that Settlement Class Members that receive no settlement benefits are still subject to the release. However, as discussed *supra*, there is no requirement that every single benefit of a class settlement be available to every single class member. *Oliver, supra*. Further, the Settlement's release is properly tailored to be limited to the component at issue—class engine turbochargers and their component parts. *See*, Settlement Agreement at I.A. (ECF Doc. 123-3). That language releases claims "which, in any way, arise from, involve or relate to the Settlement Class Vehicles' turbochargers (and any of their component and related parts including wastegate linkages and actuators)," the precise components at issue herein. Thus, the limited release is part of this fair, reasonable and adequate settlement.

5. Requests for Exclusion

Only 237 requests for exclusion were received, representing 0.006% of the Settlement Class. Certain of those requests failed to meet the requirements of the Preliminary Approval Order (ECF Doc. 106). Plaintiff refers to Volkswagen Group

of America, Inc.'s Brief in Response to Objections to the Proposed Class Settlement and Certain Requests for Exclusion for a discussion of those requests for exclusion that do not meet the Settlement's requirements.

6. Objection to the Requested Attorneys' Fees Should Be Overruled

As noted earlier, there is a single objection to the requested attorneys' fees, which was lodged by Objector Scher. First, Mr. Scher has withdrawn his objection, subject to Court approval. While this groundless objection is discussed *supra*, it bears repeating that this objection should be overruled for the additional reason that, *inter alia*, as previously shown by Class Counsel, the requested fee amount is in line with fee amounts requested in similar cases. (*See* ECF Doc. 107-1, at 33-34 (citing cases). The value of the Settlement demonstrates a significant benefit conferred on the class (*Id.* at pp. 4-6, 9-12, 19-21) and the lodestar demonstrates that the award is well within reason (*Id*. at pp. 29-32) (citing cases). Additionally, the requested attorneys' fees and expenses were negotiated at arm's length, and will be paid independently of the award to the class and do not diminish the benefit to the class and is fair, adequate and reasonable under the circumstances. *Id.* at pp. 14-19.

CONCLUSION

For the foregoing reasons, the Court should enter an order: (1) accepting the withdrawal of the objections of Adam Scher, Alicia Bankston, Howard Breslau, and Shady Ali; (2) denying the remaining objections to the Settlement; and (3) granting Final Approval of the Settlement because, as set forth in the Final Approval Motion (ECF Doc. 123-1), the Settlement is fair, reasonable, and adequate, and the Settlement Class meets all requirements of Rule 23(a) and 23(b)(3).

Dated: November 19, 2025

Respectfully submitted,

By: */s/ Gary S. Graifman*_____

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