UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division

MDL No. 2599
Master File No.: 15-MD-02599-MORENO
S.D. Fla. Case No. 1:14-cv-24009-MORENO

IN RE: TAKATA AIRBAG PRODUCT LIABILITY LITIGATION
THIS DOCUMENT RELATES TO: **ECONOMIC LOSS TRACK CASES AGAINST VOLKSWAGEN GROUP OF AMERICA, INC. AND AUDI OF AMERICA, LLC**

PLAINTIFFS' OMNIBUS RESPONSE TO OBJECTIONS TO THE VOLKSWAGEN SETTLEMENT AND CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES

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I. INTRODUCTION.

The objections to the Volkswagen Settlement are the same as those the Court properly overruled when it approved the prior seven settlements in this MDL. So too are the attorneys raising the objections, confirming that they are serial objectors unconcerned with the merits of the Settlement. The result should be the same too. The Court should overrule the regurgitated, misguided objections and grant final approval to the Volkswagen Settlement.

Among the Class at large, the Settlement has been exceedingly well received. From a total of 2,244,844 potential Class Members who were sent the Direct Mail notice, only *seven* objections were submitted, much fewer than consumer settlements typically attract, and even fewer than the first seven settlements in this MDL received.[1] And even that number is inflated, for several objections are taken verbatim from the same document, with only the objectors' names changed.[2] The objections represent a microscopic .0003% of the Class. This extremely "low percentage of objections points to the reasonableness of [the] proposed settlement and supports its approval." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (Altonaga, J.).[3]

The same features of the Settlement that were unsuccessfully attacked before are targets here again. Objectors challenge the Outreach Program—a central benefit of the Settlement that improves the safety of Class Members—with inaccurate arguments concerning Volkswagen's NHTSA-mandated outreach obligations and the effectiveness of the first seven settlements' outreach efforts. And a so-called intra-class conflict is conjured, where none exists.

As is typical in this context, however, the primary target of most objections is Class

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[1] An extensive empirical review determined that the average number of objections to settlements of consumer class actions is ***233***. *See* Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 Vand. L. Rev. 1529, 1550 (2004). More recently, a settlement approved in the Volkswagen Clean Diesel MDL received ***462*** objections, even though the class there was a small percentage of the size of the Class in this Settlement. *See In re: Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB, 2016 WL 6248426, at *16 (N.D. Cal. Oct. 25, 2016). By any measure, the number of objections received here is remarkably low.

[2] A set of three objections are identical (ECF Nos. 4156; 4157; 4158), so only Mr. Adams's objection will be specifically referenced (ECF No. 4156), for the sake of efficiency. And another set of two objections are identical (ECF Nos. 4154; 4155), so only Mr. Miron's objection will be referenced (ECF No. 4154).

[3] As reflected in the Supplemental Declaration of the Notice Administrator, just 17 opt-out requests have been submitted, amounting to less than .0007% of the Class. (ECF No. 4159-1, Ex. A.)

Counsel's fee request. By any measure—whether this Settlement is considered alone or collectively with the prior seven settlements—Class Counsel's fee request is consistent with the prevailing benchmark for reasonable attorneys' fees from a common fund. Yet the objectors largely ignore prevailing law, as well as fee awards approved from serial settlements reached in similar multi-defendant MDLs, many of which exceed Class Counsel's fee request here. The objectors ask this Court to ignore the actual value of the Settlement, apply the wrong law, and use the wrong method to award fees. These misguided requests should be rejected, as they were seven times before.

Even considering all seven settlements in this MDL collectively, Class Counsel's fee request still falls below the Eleventh Circuit's benchmark for reasonableness, even using the most conservative valuation of the settlements, i.e., without attributing any value to their non-cash benefits. Of the $1,597,346,448 in aggregate Settlement Amounts, the $381,381,020 in previously awarded fees—for work performed by more than two-dozen law firms—together with the $12,600,000 in fees and expenses requested here would amount to 24.66% of the aggregate common fund. Under Eleventh Circuit law, this is a reasonable fee.

Class Counsel's fee request not only is consistent with prevailing law and awards in similar cases but is well justified. The Settlement is an outstanding result for the Class. Although the structural features of the Settlement are similar to those of the prior seven agreements, the litigation path against Volkswagen was distinct and unique. The litigation against Volkswagen began only after the first seven settlements were reached. Depositions of Volkswagen's witnesses, review of Volkswagen's documents, and litigation of Volkswagen's dispositive motions all proceeded on a separate and distinct track than the litigation against the first seven automakers.

The Volkswagen Settlement is fundamentally sound and provides substantial benefits to millions of consumers. It more than fulfills the standards for final approval set forth in Federal Rule of Civil Procedure 23(e). And the attorneys' fees sought in Class Counsel's application are fair, reasonable, and entirely consistent with Eleventh Circuit precedent. Accordingly, Plaintiffs respectfully urge the Court to grant final approval of this Settlement to enable its prompt implementation, and to award Class Counsel the requested attorneys' fees.

II. THE OBJECTIONS TO THE SETTLEMENT SHOULD BE OVERRULED.

Because objections to the Settlement largely overlap and often are repetitive, they are addressed by general topic below. *Every* objection raised against the current Settlement has been overruled by this Court before, when approving the seven prior settlements. More importantly, not

one of these objections calls into question the fairness, reasonableness, or adequacy of the Settlement.

A. The Outreach Program Provides A Substantial Benefit To The Class.

The Outreach Program, designed to ameliorate the public safety concerns giving rise to this litigation, should be the least controversial aspect of the Settlement. Several objectors, however, take issue with it. Their objections are misguided, resting on flawed assumptions about both the Outreach Program and Volkswagen's NHTSA-mandated outreach obligations.

Some objectors claim that the Outreach Program is merely duplicative of the Rule 23(c) Notice Plan. (ECF Nos. 4153 at 6-10; 4156 at 2-4.) This objection betrays a fundamental misunderstanding of the Settlement, as well as the Outreach Program. The objective of the discrete Rule 23(c) Notice Plan—which is now complete and was implemented by the Court-appointed Notice Administrator, Epiq Systems, following preliminary approval of the Settlement (ECF No. 4159-1)—was simply "to apprise interested parties of the pendency of the action and afford[] them an opportunity to present their objections." *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691 (S.D. Fla. 2014) (Moreno, J.) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–812 (1985)). In contrast, the objective of the Outreach Program, a crucial component of the Settlement that will be administered for at least four years, is to "maximiz[e], to the extent practicable, completion of the Recall Remedy in Subject Vehicles for the Takata Airbag Inflator Recalls" (ECF No. 4105-1, § III.B.1)—i.e., to remove as many defective, and potentially dangerous, Takata inflators from Volkswagen vehicles as practicable. Unlike the Notice Plan, the Outreach Program will not be informing Class Members of their rights under the Settlement, but instead will be encouraging and motivating Class Members to bring their vehicles to dealerships to have the defective Takata inflators replaced.

The low completion rates for the Recall Remedy that preceded the prior seven settlements confirm that mere awareness of the defect is insufficient to motivate many drivers to bring their vehicles to dealerships. The Takata Inflator Recalls have received ample news coverage across the country, and aside from the Settlement's Direct Mail Notice, many Class Members have received recall letters or postcards from Volkswagen. But Recall Remedy completion rates remain depressed, with approximately 275,000 Volkswagen vehicles still unrepaired. (*See* ECF No. 4143-4 at 21.) The Notice Plan, although reaching an estimated 95% of the Class and indisputably satisfying the requirements of Rule 23(c) and due process, alone cannot be expected to drive Recall

Remedy completion rates much higher, particularly because most of the information in the Direct Mail Notice sent to Class Members concerns the Settlement, not the Recall Remedy. Instead, innovative techniques and approaches, including targeted and personalized messaging, door-to-door canvassing, incentives, and mass media, such as the Morgan Freeman public service announcement commissioned by the Settlement Special Administrator, must be utilized. The Outreach Program serves this purpose.

The Outreach Program also differs from the Notice Plan in that the Outreach Program will be coordinated with Volkswagen's availability of replacement parts. The Direct Mail Notice was sent to every Class Member soon after preliminary approval of the Settlement, as required by Rule 23(c) and due process. The Outreach Program, however, will ensure that innovative outreach efforts are directed to Class Members at a time when they can immediately repair their vehicles and link them directly to dealerships to make repair appointments. It is simply inaccurate to claim, as certain objectors do, that the Outreach Program is "redundant" of the Notice Plan. (*E.g.*, ECF No. 4153 at 6-10.)

Nor are objectors' attacks on the effectiveness of the Outreach Program well-founded. The most recent Status Report filed by the Settlement Special Administrator demonstrates how successful the Outreach Programs of the first seven settlements have been. (ECF No. 4140.) Since the Outreach Programs began, 9,102,337 Recall Remedies have been completed on Subject Vehicles of the seven prior settling defendants. (*Id.* at 5.) ***More than nine million people, therefore, are now much safer because of the outreach efforts funded by the first seven settlements.*** This is a remarkable success story, not grounds for criticizing the Settlement.

And the Settlement Special Administrator continues to develop new outreach methods and carefully measure the effectiveness of each effort, so that resources can be allocated to the most effective methods for each population going forward. (ECF No. 4140 at 2.) This scientific approach to outreach, previously absent from the recall industry, is a critical innovation that the Settlement Special Administrator has introduced.

Several objectors also persist in mistakenly claiming that the Outreach Program is not a benefit attributable to the Settlement because it is coextensive with Volkswagen's NHTSA-mandated obligations. (ECF Nos. 4153 at 6-10; 4156 at 2-4.) The same misguided and ill-informed objection was raised and properly overruled as to the first seven settlements. (ECF Nos. 2063 at

1-2; 2066 at 5-6; 2073 at 2; 2084 at 4-7.; 2262 at 6, 8-10; 2272-5 at 5-9; 2266 at 2; 2264 at 4-8; 2272-1 at 2.)

Federal law governing recall notifications initially obligates an automaker to mail just one recall notice to car owners. *See* 49 U.S.C. § 30119(a)-(d); 49 C.F.R. § 577.7. It also empowers NHTSA to require automakers to send additional notifications to car owners. *See* 49 U.S.C. § 30119(e); 49 C.F.R. §§ 577.10, 577.12. With this authority, NHTSA issued the Third Amendment to the Coordinated Remedy Order ("ACRO") on December 9, 2016, which is included as an exhibit to and referenced in the Settlement. (ECF No. 4105-1 at 80.) The ACRO effectively establishes the baseline outreach obligations of automakers for the Takata recalls. (ECF No. 4105-1 at 102-03, ¶ 42.) It requires automakers to conduct "supplemental notification efforts," but ultimately leaves the scope, means, and sophistication of such efforts to the discretion of each automaker, unless specifically instructed to issue a particular notification by the Independent Monitor overseeing the ACRO. (*Id.*)[4]

The unique benefit of the Settlement's Outreach Program is that it picks up where the baseline obligations of the ACRO leave off, expressly obligating Volkswagen to expand or go beyond its current outreach efforts. (ECF No. 4105-1, § III.B.1.) Far from leaving outreach to the discretion of Volkswagen, the Settlement's Outreach Program *mandates* that Volkswagen provide massive funding—more than $13 million—for outreach efforts and empowers the Settlement Special Administrator, Patrick A. Juneau, to oversee and administer a dynamic, state-of-the art program.

As reflected in Mr. Juneau's prior declaration, the "sole focus" of the Outreach Program "will be to increase remedy completion," which will significantly decrease the number of vehicles with recalled Takata inflators. (ECF No. 2127-2, ¶ 4.) Utilizing a secure database with up-to-date information on Subject Vehicles and Class Members, the program will "develop and implement specific campaign strategies, optimized based on the unique characteristics of individual subgroups of the overall targeted population, to utilize personal and relevant messaging, graphics, content,

[4] One objector (ECF No. 4153 at 8) highlights general "recommendations" made by the Independent Monitor in late 2016 to suggest that the Outreach Program amounts to Volkswagen's efforts to comply with the ACRO. This argument, however, ignores the clear language of the ACRO, which does not require Volkswagen to implement specific "supplication notification efforts" unless specifically instructed by the Independent Monitor. The "recommendations" cited by the objector are just that—general recommendations, not specific obligations or directives.

media and channels, to increase remedy rates beyond those produced by generic outreach efforts." (*Id.*, ¶ 9.) The program also "will monitor and test strategies utilized across various targeted populations to determine which outreach efforts resulted in successful remedies so that the process can continually evolve and be refined over time." (*Id.*, ¶ 10.) In short, with these strategies and others highlighted by the Settlement Special Administrator, the Outreach Program will employ advanced marketing strategies that are not currently being used in outreach efforts to motivate Class Members to bring their vehicles to dealerships for removal and replacement of the recalled inflators, far exceeding the baseline requirements of the ACRO.

Moreover, the Outreach Program's flexibility and active oversight by the Settlement Special Administrator will ensure that resources are efficiently allocated to the most effective forms of outreach. As mandated in the Settlement, the Outreach Program "is not intended to be a static program with components that are fixed for the entire settlement period." (ECF No. 4105-1, § III.B.6.) Rather, the Settlement Special Administrator, with input from Class Counsel and Volkswagen, is empowered to "adjust and change its methods of outreach as is required to achieve its goal of maximizing the completion of the Recall Remedy." (*Id.*) And because the Settlement is non-reversionary, any funds from the Outreach Program budget—which is capped at 33% of the Settlement Amount—that the Settlement Special Administrator determines cannot be effectively spent to maximize Recall Remedy completion rates will not be returned to Volkswagen but will be made available for cash payments directly to Class Members.

Several objectors also unwittingly advance arguments that actually support the Outreach Program. Objector Pentz, for example, highlights a colloquy between the Court and Class Counsel at the fairness hearing for a prior settlement in which the Court suggested the use of incentive payments to encourage vehicle owners to bring their vehicles to dealerships for the Recall Remedy. (ECF No. 4153 at 11.) Mr. Pentz faults the Volkswagen Settlement for not utilizing such incentive payments. (*Id.*) But the Volkswagen Settlement does, in fact, incorporate the Court's suggestion, expressly identifying "incentives for Class Members to bring their Subject Vehicles to Volkswagen Dealers for the completion of the Recall Remedy" as a permissible form of outreach in the Outreach Program. (ECF No. 4105-1, § III.B.2.) In addition, out-of-pocket and residual cash payments are conditioned on having the Recall Remedy performed for current vehicle owners, supplying the cash incentive that even objectors recognize value in. This objection, far from presenting a challenge to the Settlement, only reveals the objectors' failure to review the actual Settlement agreement.

Hundreds of thousands of defective Takata airbag inflators remain in Class Members' vehicles. The Outreach Program targets this problem and aims to "significantly increase Recall Remedy completion rates." (ECF No. 4105-1, § III.B.1.) It hardly can be disputed that making Class Members substantially safer by motivating them to remove Takata inflators that have caused serious injuries and deaths from their vehicles provides a direct benefit to Class Members.[5] Indeed, by advancing this public safety objective, it is likely that the actual value of the Outreach Program to Class Members will far exceed the amount of money allocated to it. Because the Outreach Program obligates Volkswagen to fund outreach efforts that far *exceed* both its current efforts and legal requirements, it unquestionably represents a significant benefit to Class Members.

B. There Are No Intra-Class Conflicts That Preclude Certification Of The Class Or Approval Of The Settlement.

A few objectors claim that there are intra-class conflicts between certain Class Members, which should preclude certification of the Settlement Class. The purported conflicts, objectors claim, are between former owners of Subject Vehicles and current owners, and those who have had their vehicles repaired and those who have not. (ECF Nos. 4153 at 2-7; 4156 at 4-5.) These objections are groundless; no such conflicts exist, nor would they preclude class certification and final approval of the Settlement.

Claims of intra-class conflict implicate the adequacy prong of Rule 23(a), which requires class representatives and their counsel to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement "serves to uncover conflicts of interests between the named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). But "a party's claim to representative status is defeated only if the conflict between the representative and the class is a ***fundamental*** one, going to the specific issues in controversy." *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000) (emphasis added). Thus, "a conflict will not defeat the adequacy requirement if it is merely speculative or hypothetical." *Ward v. Dixie Nat'l Life Ins. Co.*, 595 F.3d 164, 180 (4th Cir. 2010) (internal quotation marks omitted); *see also Cobell v. Salazar*, 679 F.3d 909, 920 (D.C. Cir. 2012) (holding that an objector's

[5] One objector claims, without explanation, that the Outreach Program's benefits cannot be limited to Class Members. (ECF No. 4153 at 7.) This is incorrect. The Class is defined to include, as of the preliminary approval date, all current owners and lessees of Volkswagen vehicles equipped with Takata inflators that are or will be recalled, the same population that the Outreach Program will target.

"discussion of a hypothetical conflict is an inadequate basis for vacating [a] class settlement agreement").

There are no disabling intra-class conflicts here. The interests of all Class Members align in establishing the defect in Takata inflators installed in Volkswagen's vehicles, proving Volkswagen's knowledge of the defect, and recovering economic damages from Volkswagen. *See Carriuolo v. General Motors Co.*, 823 F.3d 977, 989-90 (11th Cir. 2016) (rejecting intra-class conflict argument because "[e]ach class member is connected by the common predominate inquiry: Did [the defendant] violate FDUTPA by affixing inaccurate Monroney stickers to [the vehicles at issue]"); *James D. Hinson Elec. Contracting Co. v. BellSouth Telecomm., Inc.*, 275 F.R.D. 638, 643 (M.D. Fla. 2011) (finding that no fundamental intra-conflict existed when "[t]he specific issues in this controversy concern whether [defendant's] billing practices were deceptive, fraudulent, or resulted in unjust enrichment" and all class members would benefit if plaintiffs prevailed on their claims); (ECF No. 2318-1, ¶ 8 ("No objector has identified a conflict that would cause a single team of lawyers to harm class members of one type while pressing the claims of class members of another type."); *id.*, ¶ 19 ("There are no conflicts between or among these Plaintiffs that would render joint representation problematic. All of their claims are compatible.")).

Some objectors nonetheless claim that a conflict exists between current and former owners, and between those who are aware of the defect and those who are not, in that current owners and those who are unaware of the defect will enjoy more benefits from the Settlement than former owners and those who already are aware of the defect. But "almost every settlement will involve different awards for various class members." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1146 (8th Cir. 1999). "Such differences in settlement value do not, without more, demonstrate conflicting or antagonistic interests within the class." *In re Pet Food Prod. Liab. Litig.*, 629 F.3d 333, 346 (3d Cir. 2010).

In addition, the Eleventh Circuit rejected this very argument concerning a conflict between former and current owners in *Carriuolo*, concluding that "the fact of resale is immaterial because the injury occurred when class members paid a price premium at the time of lease or purchase." 823 F.3d at 990; (*see also* ECF No. 2318-1 at 36, ¶ 20 ("The liability and damages theories of current and former owners can also be advanced concurrently by a single team of attorneys because there is no obvious way in which argument or evidence helpful to one subgroup would work to the detriment of the other.")). In addition, former owners and current owners are treated the same with

respect to compensation from the Settlement: both are eligible for the out-of-pocket claims process and residual distribution. (*E.g.*, ECF No. 4105-1, § III.F.) So, objectors are simply wrong in claiming that former owners receive no benefits under the Settlement.

To be sure, the Outreach Program and Enhanced Rental Car Program will benefit certain current owners—i.e., those who have not had their defective airbags replaced yet. But as the authorities discussed above establish, the allocation of different benefits among Class Members does not, by itself, "demonstrate conflicting or antagonistic interests within the class." *In re Pet Food*, 629 F.3d at 346. None of the authorities the objectors rely upon suggests that every component of relief in a settlement must be provided to every single class member, regardless of each class member's circumstances. Instead, the cases hold that discrete groups of class members cannot be required to release their claims without receiving some form of settlement relief. That has not occurred here, and the objectors do not contend otherwise. Far from implicating the adequacy requirement of Rule 23, the only pertinent question is whether the allocation of benefits among Class Members is reasonable. (ECF No. 2318-1 at 4, ¶ 9; *id.* at 36, ¶ 25.) As discussed in the preceding section concerning the Outreach Program, the public safety rationale underlying the allocation of Settlement benefits establishes that the structure of the Settlement is eminently reasonable.

Nor are subclasses required under such circumstances. *See, e.g.*, *Shaffer v. Cont'l Cas. Co.*, 362 F. App'x 627, 630–31 (9th Cir. 2010) (explaining that "the fact that it is possible to draw a line between categories of class members" does not necessarily mean that subclasses are required); *UAW*, 497 F.3d at 629 ("[I]f every distinction drawn (or not drawn) by a settlement required a new subclass, class counsel would need to confine settlement terms to the simplest imaginable or risk fragmenting the class beyond repair."); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 202 (3d Cir. 2005) ("[I]f subclassing is required for each material legal or economic difference that distinguishes class members, the Balkanization of the class action is threatened."); *Petrovic*, 200 F.3d at 1146-48 (rejecting need for creation of subclasses despite large differences in recovery among class).

Objections claiming that intra-class conflicts exist should, therefore, be overruled.

C. The Settlement Amount is Fair and Reasonable.

One objector, Foster Malone, voices dissatisfaction that the Settlement does not compensate his claim for emotional distress. (ECF No. 4149.) Respectfully, this objection misunderstands the pragmatic lens through which class settlements must be evaluated. Settlements,

by their nature, rarely confer complete relief; they are assessed, instead, for fairness, adequacy, and reasonableness, not whether the settlement reflects "the best possible deal" or a result equivalent to a "victory at trial." *In re Checking Account Overdraft Litig.*, No. 09-MD-02036, 2015 WL 12641970, at *8, *10 (S.D. Fla. May 22, 2015) (quotation marks and citation omitted). Thus, the complaint that the Settlement does not provide full compensation misses the point.

As demonstrated in Plaintiffs' motion for final approval, the Settlement is fair and reasonable according to the standards established by the Eleventh Circuit. (ECF No. 4143 at 20-28.) No objector takes issue with this analysis. And any Class Member who believed that the compensation provided by the Settlement is insufficient had the opportunity to opt out. There are no valid objections to the fairness and reasonableness of the Settlement.

III. THE OBJECTIONS TO THE APPLICATION FOR ATTORNEYS' FEES SHOULD BE OVERRULED.

Class Counsel's fee and expense request of $12,600,000, equivalent to 30% of the Settlement Amount, is in line with this Court's fee awards in the prior seven settlements and well within the range of awards found to be reasonable under Eleventh Circuit precedent. This fee and expense request also comports with awards regularly approved in comparable multi-defendant class actions and will appropriately award Class Counsel for the outstanding result they have obtained for the Class, a result that was achieved only after four years of hard-fought litigation undertaken entirely on a contingency fee basis with Class Counsel advancing substantial costs.

Considering this Settlement together with the seven prior agreements, as the Court indicated it would (ECF No. 2386 at 2), a fee award of $12,600,000 here would bring the total fees awarded from all seven settlements to $393,981,020, approximately 24.66% of the collective Settlement Amounts of $1,597,346,448, a percentage that falls ***below*** the benchmark for reasonableness established by the Eleventh Circuit. If the value of non-monetary benefits, such as the Customer Support Program, is factored in, the percentage drops further still, solidifying the conclusion that Class Counsel's fee request is reasonable.

The boilerplate objections lodged against Class Counsel's fee request are misguided and no different than those the Court properly overruled in its fee awards for the prior seven settlements. Not a single objection points to any Eleventh Circuit precedent that comes close to calling into question the reasonableness of Class Counsel's fee request. There is no doubt that Class Counsel's fee request is reasonable and appropriate.

A. Class Counsel's Fee Request Is Reasonable And Adheres To Prevailing Law In This Circuit And District.

The Eleventh Circuit has repeatedly affirmed the reasonableness of a fee award "between 20% to 30% of the [common] fund." *Camden I Condo. Assoc. v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991); *accord In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1281 (11th Cir. 2021), *cert. denied sub nom. Huang v. Spector*, 142 S. Ct. 431 (2021) ("Attorney fees awarded under the percentage method are often between 25% and 30% of the fund.") (quoting Manual for Complex Litigation § 14.121); *id.* at 1281 ("[C]ourts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements.") (quoting *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011)).

Class Counsel's fee request, even viewed with the most conservative lens—i.e., completely disregarding the value attributed to the Customer Support Program—aligns precisely within the range the Eleventh Circuit has approved. If anything, as explained in Class Counsel's initial motion (ECF No. 4143 at 32-43), the twelve factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which can justify an upward deviation from the typical range, support an above-range percentage, confirming the reasonableness of the request. There can be no serious dispute that awarding Class Counsel fees totaling 30% of the Settlement Amount is reasonable under Eleventh Circuit law.

Such an award also comports with awards granted in comparable, multi-defendant class actions in which successive settlements have been approved. For example, a New York district court recently awarded fees equating to 26% of the aggregate common fund created through fifteen settlements in an MDL. *Alaska Electrical Pension Fund v. Bank of America*, No. 14-CV-7126 (JMF), 2018 WL 6250657, at *1 (S.D.N.Y. Nov. 29, 2018) (awarding approximately $126 million in fees of $504.5 million aggregate common fund from 15 settlements). Likewise, another court in Michigan awarded fees equating to 25% of the aggregate common fund created through the third-round of settlements in an MDL. *In re Automotive Parts Antitrust Litig.*, No. 12-cv-00103 (E.D. Mich. Nov. 7, 2018) (ECF No. 626) (awarding approximately $108 million in fees of $432.8 million aggregate common fund from third-round of settlements). Numerous other examples of fee awards from a series of settlements in multi-defendant MDLs are cited in Class Counsel's application, all of which approve percentages of the aggregate common funds that exceed the percentage requested here. (ECF No. 4143 at 35-36.)

Additional instructive examples are found in the prior declaration of Professor Charles

Silver. (ECF No. 2318-1, ¶¶ 21-28.) In each case, sophisticated plaintiffs retained counsel on a contingency basis and supported fee awards exceeding 25% of the aggregate common funds created through a series of settlements worth more than $1 billion. (*Id.*) For example, in a series of settlements that recovered in excess of $2 billion for sophisticated drug wholesalers, the fees awarded ranged from 27.5% to 33.33% plus expenses. (*Id.*, ¶¶ 25-26.) Likewise, in litigation concerning faulty residential mortgage-backed securities, the National Credit Union Administration entered into 25% contingency fee agreements with law firms pursuing the litigation and paid them more than $1.2 billion from settlements worth approximately $5.1 billion. These examples demonstrate that Class Counsel's fee request is consistent with, if not well below, the market price for contingency representation, which should guide the Court's determination. *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("[C]ourts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.").

Class Counsel's fee request also aligns with fees awarded from large settlements in this District, including:

- *In re Checking Account Overdraft Litig.*, 09-MD-02036 (S.D. Fla.) (awarding at least $265 million in fees (30%) of approximately $884.6 million in multiple settlements from the same MDL);[6]
- *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding fees of $325,380,997 (31 ⅓%) of $1.06 billion settlement);
- *Love v. Blue Cross & Blue Shield Assoc.*, No. 03-cv-21296 (S.D. Fla. Apr. 20, 2008) (awarding fees of $49,776,407 (38%) of $130 million settlement)
- *In re: Terazosin Hydrochloride Antitrust Litig.*, 99-md-1317 (S.D. Fla. April 19, 2005) (awarding fees of $24,166,667 (33 ⅓%) of $72.5 million settlement);
- *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (affirming fee award of 33 1/3 % of settlement of $40 million).

[6] *E.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1366; 2013 WL 11319244, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11320088, at *16 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319242, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319243, at *18 (S.D. Fla. Aug. 2, 2013); 2013 WL 11319392, at *17 (S.D. Fla. Aug. 5, 2013); 2013 WL 11319391, at *19 (S.D. Fla. Aug. 5, 2013); 2014 WL 11370115, at *18 (S.D. Fla. Jan. 6, 2014); 2014 WL 12557836, at *15 (S.D. Fla. Apr. 1, 2014); 2014 WL 12557837, at *17 (S.D. Fla. June 10, 2014); 2015 WL 12642178, at *15 (S.D. Fla. Apr. 2, 2015); 2015 WL 12641970, at *18 (S.D. Fla. May 5, 2015); ECF No. 3134 (S.D. Fla. Dec. 19, 2012); ECF No. 3331 (S.D. Fla. Mar. 12, 2013).

As these decisions demonstrate, whether calculated as 30% of the $42 million Settlement Amount, or 22% of the $55.5 million full value of the Settlement, which is inclusive of Kirk Kleckner's valuation of the Customer Support Program,[7] Class Counsel's fee request is consistent with the Eleventh Circuit's approved percentage of 20% to 30% and similar awards approved in this District.

None of the objections seriously addresses the Eleventh Circuit's binding precedent on fee awards. Nor do they evaluate the pertinent *Johnson* factors. Plaintiffs' analysis of these factors, together with Professor Bryan Fitzpatrick's opinion (ECF No. 4143-4), remains largely unchallenged.

One objector complains that Class Counsel have not disclosed their lodestar figures. (ECF No. 4153 at 15.) But this argument fails because the Eleventh Circuit has expressly rejected the lodestar method for awarding fees in common fund cases. *Camden I*, 946 F.2d at 774.

The objectors also ignore the disruptive incentives a reduced fee would foster. Awarding contingent fees in line with established benchmarks and prevailing market rates, even if they "far exceed the market value of the services if rendered on a non-contingent basis[,] are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299–300 (9th Cir. 1994). As the Court observed in *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990), "[i]f this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing," *id.*

Objections claiming that Class Counsel's fee request is excessive do not adequately account for this substantial risk of non-payment. When a large class action succeeds in generating a valuable common fund for class members, hindsight bias—the inclination, after an event has occurred, to

[7] Eleventh Circuit precedent supports consideration of such non-monetary relief when awarding fees. *See Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243-44 (11th Cir. 2011) (affirming fee award "designed to compensate the class counsel for the non-monetary benefits they achieved for the class"); *Carter v. Forjas Taurus, S.A.*, 701 F. App'x 759, 767 (11th Cir. 2017) (concluding that "fee award is a reasonable percentage of the settlement value" when considering the "enhanced warranty, which is itself a significant tangible benefit"); *Poertner v. Gillette Co.*, 618 F. App'x 624, 628-29 (11th Cir. 2015) (affirming district court's valuation of nonmonetary relief).

see it as having been predictable or inevitable—makes it easy to overlook such risk. The countless class actions and other contingency cases that are dismissed at various stages serve as a useful reminder of the risk involved. In the past several years, Class Counsel has brought—***and lost, without recovering any fees***—numerous significant cases that required the investment of considerable resources. The following are but only a few examples:

- *Parker v. American Traffic Solutions, Inc.*, No. 14-cv-24010 (S.D. Fla.): Class action challenging certain red-light cameras. After three years of litigation, an adverse ruling from the Florida Supreme Court led to dismissal of plaintiffs' claims without any recovery.
- *In re Natureguard Cement Roofing Shingles Cases*, JCCP No. 4215 (Stanislaus County, California): Product defect case litigated for more than five years in which class certification was granted and millions of dollars in hard costs were spent on experts and discovery, as well as many millions more in attorney time. After eight weeks of trial, the court reversed its prior decisions, nonsuited several claims, and decertified the class as to all claims. The jury returned a defense verdict for remaining claims. Zero recovery for plaintiffs and class members, and zero fees or expense reimbursement for counsel.
- *Philips v. Ford Motor Co.*, No. 5:14-cv-02989 (N.D. Cal.): Consumer fraud claim seeking millions in damages for a defective Electronic Power Assist Steering system in hundreds of thousands of Ford vehicles. After 2 years of hard-fought litigation and significant discovery, the district court denied class certification and granted summary judgment.
- *Ellis v. J.P. Morgan Chase*, No. 4:12-cv-03897 (N.D. Cal.): RICO class action seeking millions in damages for Chase's imposition of unlawful fees for property inspections. After 3 years of hard-fought litigation and significant discovery, the district court denied class certification and granted summary judgment.
- *GH et al. v. Eli Lilly & Company et al.*, No. 13-SC-93732 (Mo. Sup. Ct., *en banc*, 2013): Case litigated for more than two years on a contingency basis against pharmaceutical companies, on behalf of approximately 60 plaintiffs who received defective chemotherapy that had been diluted. The case was dismissed by the trial court. After two appeals, the trial court's dismissal was affirmed by the Missouri Supreme Court.
- *Balschmiter v. TD Auto Finance, LLC*, Case No. 2:13-cv-01186 (E.D. Wis.): A proposed class action under the Telephone Consumer Protection Act that was litigated until the eve of trial and ended without any recovery for the proposed class or fees for counsel.
- *Ray v. Spirit Airlines, Inc.*, No. 12-cv-61528 (S.D. Fla.): RICO class action seeking millions in damages for deceptive and unlawful fees dismissed after four years of litigation, including significant discovery and two appeals to the Eleventh Circuit.
- *Chultem v. Ticor Title Ins. Co.*, 2015 IL App (1st) 140808 (1st Dist., 2015): Class action brought on behalf of purchasers of title insurance against title insurers, challenging payment of kickbacks to real estate attorneys who served as attorney agents for the insurers. After almost 11 years of litigation involving several appeals, orders granting and vacating class certification, and a bench trial, the court found for the defendants and the decision was affirmed on appeal. No recovery for the class and no compensation for almost 11 years of

attorney time and substantial expenses.

- *Price v. Philip Morris, Inc.*, 2015 IL 117687, 43 N.E.3d 53 (Ill. 2015): Class action that was litigated for about 15 years on behalf of consumers against cigarette manufacturer, alleging fraud in manufacture, distribution, marketing, and sale of cigarettes. After numerous appeals, a reversal of the judgment for the plaintiffs was left to stand.

This ever-present, all-or-nothing risk of non-payment cannot fairly be ignored, as objectors try to do here in attacking Class Counsel's fee as if success were a foregone conclusion. As one court cautioned, "[i]f the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is successful, then effective representation for plaintiffs in these cases will disappear." *Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370, 1375-76 (D. Minn. 1985).

Ignoring these important considerations, the objectors' arguments for awarding Class Counsel less than the requested, reasonable fee rest on inaccurate assumptions and ultimately would undermine the efficacy of class action litigation. For example, some objectors argue that the fee awarded from the Volkswagen Settlement should be reduced because it is similar to the first seven settlements. (ECF Nos. 4153 at 13-14; 4154 at 1-2.) The prior seven settlements, however, did not reduce, or provide compensation for, the amount of work that Class Counsel had to do to pursue Plaintiffs' claims against Volkswagen for the past four years. The mere similarity in the structure of the settlements yielded *de minimis* efficiencies, because it only saved the time needed to draft the actual Settlement Agreement and related motions, all of which were then reviewed, revised, and customized for this Settlement. Class Counsel's immense amount of work on the Volkswagen claims was non-duplicative of the work that generated the previous seven settlements.

Moreover, as Professor Fitzpatrick, a class action scholar who has written extensively on class action fees, has explained in declarations submitted to this Court, reducing Class Counsel's fee simply because there have been earlier settlements against different Defendants, as the objectors urge, would incentivize conduct contrary to the interests of class members *and* the courts. (ECF Nos. 4143-4, ¶ 30; 2318-2, ¶ 4; 2256-5, ¶ 23.) The following example illustrates this important point:

> [L]et's say that class counsel thought a court would award it 30% of the first settlement in a litigation but only 20% of the second settlement. Class counsel would then have the incentive to delay settlement with the first defendant until it could reach settlement with the second defendant so it could present settlement with both defendants as one transaction and seek 30% of the entire sum in fees. But unnecessarily delaying settlements is obviously not in the best interest of class members (or even defendants). Moreover, even if class counsel would not delay a first settlement, this line of thinking still creates bad

> incentives: why would class counsel invest as much time in a case where all they can get is 20% when they can work on an entirely different litigation where they might be able to get 30%? In my opinion, class counsel should have a single-minded focus: to recover the most they can for the class as quickly as they can. For this reason, courts should not use fee rules that arbitrarily distort class counsel's incentives away from doing that. But lowering class counsel's fee percentage as they secure more and more settlements is just such a distortion.

(ECF No. 4143-4, ¶ 30.) As Professor Fitzpatrick demonstrates, reducing Class Counsel's fee award simply because of earlier Settlements in the MDL would only encourage attorneys in the future "either 1) to delay settlements with early defendants until they can secure settlements with later defendants or 2) to invest less time in settlements with later defendants in favor of new litigation where they will not be compensated with lesser fee percentages." (ECF No. 2318-2, ¶ 4.) Obviously, neither practice would benefit class members or the courts. Nor have the objectors cited any authority indicating that courts do or should reduce fee awards in such circumstances. Because it would establish counter-productive incentives that would undermine the efficacy of class action litigation, the objectors' argument for reducing Class Counsel's fee lacks merit.

B. Class Counsel's Fee Should Not Be Reduced Because The Settlement Is A "Mega-Fund."

Relying on cases from courts outside the Eleventh Circuit, several objectors claim that Class Counsel's fee percentage should be reduced because the Settlement, considered together with the prior seven, represents a "mega-fund." (ECF Nos. 4153 at 13-14; 4156 at 1-2.) But the Eleventh Circuit has unequivocally rejected this argument, holding that "our Circuit does not limit attorney's fees in megafund cases as a matter of law." *In re Equifax*, 999 F.3d at 1281 n. 27. Reducing fee percentages for mega-fund settlements, the Eleventh Circuit reasoned, could "create 'perverse incentives,' as it may encourage class counsel to pursue 'quick settlements at sub-optimal levels.'" *Id.* (quoting 5 Newberg on Class Actions § 15:80 (5th ed.)).

The Eleventh Circuit's reasoning is consistent with Judge Gold's analysis in *Allapattah*:

> While some reported cases have advocated decreasing the percentage awarded as the gross class recovery increases, ***that approach is antithetical to the percentage of the recovery method adopted by the Eleventh Circuit*** in *Camden*, the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little.

454 F. Supp. 2d at 1213 (emphasis added and internal citations omitted); *accord In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1367 (quoting *Allapattah*). Likewise, in awarding Class Counsel fees from prior settlements, this Court acknowledged the "mega-fund" line of authority but ultimately declined to embrace it and adhered to *Camden I* to approve Class Counsel's fee award. (ECF No. 2386 at 2.)

Several objectors also cite empirical studies of fee awards to argue that the percentage of the fund awarded should be lower in "mega-fund" cases. (ECF Nos. 4153 at 13-14; 4154 at 1-2.) The authors of the same empirical studies upon which the objectors rely, however, have submitted declarations in this MDL in support of Class Counsel's fee requests, concluding that it would ***not*** be appropriate to reduce the fee percentage here based on the size of the Volkswagen Settlement. (ECF Nos. 2318-2, ¶¶ 5-6; 2318-3, ¶¶ 38-47; 2256-5, ¶¶ 20-21.) Although their studies did show that a few courts *outside* the Eleventh Circuit reduce fee percentages as settlement sizes increase, they did not find any statistically significant evidence that courts within the Eleventh Circuit engage in this practice. (ECF Nos. 2318-2, ¶ 5; 2318-3, ¶¶ 37-39; 2033-3, ¶ 20.) To the contrary, Professor Fitzpatrick's study shows that, in the Eleventh Circuit, the average fee awarded was 28.1 percent, and the median fee awarded was 30 percent (ECF No. 4143-4, ¶ 23); meanwhile, Professor Geoffrey Miller's most recent study, which incorporates data from 2009-2013, shows that, in the Eleventh Circuit, the mean percentage fee ***increased*** to 30 percent and the median percentage fee ***increased*** to 33 percent (ECF No. 2318-3, ¶¶ 36-37). Indeed, as Professor Fitzpatrick explains, there are a number of examples from across the country of fee awards at or above 30 percent, and there are sound policy reasons for not reducing fee percentages as settlement sizes increase. (ECF No. 4143-4, ¶¶ 19-24.) Professor Silver, likewise, lists ***35*** settlements of $100 million or more in which fee awards equaled or exceeded 30 percent. (ECF No. 2318-1 at 23-24.)

Neither the law, sound policy, nor similar awards support using a lower percentage to calculate Class Counsel's fees because of the size of the Volkswagen Settlement. And in either event, the Volkswagen Settlement itself does not even qualify as a "mega-fund," which is usually defined as settlements exceeding $100 million.

C. Eleventh Circuit Law, Not Florida Law, Governs The Fee Request.

Several objectors claim that this Court should apply Florida law, instead of the federal common-fund doctrine, as established by the United States Supreme Court and the Eleventh Circuit,

to Class Counsel's fee request. (ECF Nos. 4154 at 2; 4156 at 5-14.) They are wrong.[8] Their argument cannot be reconciled with binding Eleventh Circuit precedent or countless decisions from this District.

To be sure, a few courts outside the Eleventh Circuit, relying primarily on inapposite authorities concerning fee-shifting disputes, have applied state law to award attorneys' fees from class settlements in diversity cases. *See, e.g., In re Volkswagen & Audi Warranty Extension Litig.*, 692 F.3d 4, 15 (1st Cir. 2012); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). But these decisions are inconsistent with Eleventh Circuit law.

On numerous occasions, the Eleventh Circuit has applied the federal common-fund doctrine to affirm fee awards from class action settlements in diversity cases. Most recently, in the *Equifax* decision, the court affirmed a $77.5 million fee award in an MDL based on the Eleventh Circuit's common-fund doctrine, 999 F.3d at 1278-82, even though all federal claims had been dismissed and only state law claims were being litigated, *id.* at 1258—precisely the same jurisdictional posture that this case is in. Likewise, in *Faught*, 668 F.3d at 1237, the plaintiffs asserted only state-law claims for breach of contract and bad faith failure to pay an insurance claim and invoked the Court's diversity jurisdiction under 28 U.S.C. § 1332. *See* Nationwide Class Action Complaint, *Faught v. Am. Home Shield Corp.*, No. cv-07-P-1928, 2007 WL 4652588 (N.D. Ala. Oct. 22, 2007). In affirming the district court's fee award from the class settlement that resolved the case, the Eleventh Circuit exclusively applied its own, well-established common-fund precedents, including *Camden I*, 946 F.2d at 768, and *Waters*, 190 F.3d at 1293, not state law. *Faught*, 668 F.3d at 1242-44. Likewise, in *Poertner*, 618 F. App'x at 625, a diversity case involving a single Florida statutory claim, the court exclusively considered its own common-fund precedent, not state law,[9] to affirm a fee award from a class settlement. Objectors make no effort to distinguish these controlling authorities.

One basis for applying the federal common-fund doctrine in diversity cases is that it is rooted in the court's equitable powers. Since its decisions in *Trustees v. Greenough*, 105 U.S. 527

[8] The same objectors' counsel unsuccessfully advanced the identical argument against Class Counsel's fee request from the first seven settlements. (ECF Nos. 2066 at 10-13; 2083 at 2; 2084 at 6, 12; 2262 at 16-20; 2272-2 at 2; 2083 at 2; 2264 at 14-16.)

[9] *See* Third Amended Class Action Complaint and Demand for Jury Trial, *Poertner v. Gillette Co.*, No. 12-cv-00803, 2013 WL 11089015 (M.D. Fla. Nov. 1, 2013).

(1882), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885), more than a century ago, the Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The common-fund doctrine reflects the traditional practice in courts of equity, and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees." *Id.* (citations omitted).

Linking the common-fund doctrine to a court's equitable power is, likewise, an enduring tenet of Eleventh Circuit law, as the former Fifth Circuit affirmed forty years ago, when it described "the inherent equitable power of a trial court to allow counsel fees and litigation expenses out of the proceeds of a fund that has been created, increased or protected by successful litigation." *In re Air Crash Disaster at Fla. Everglades on Dec. 29, 1972*, 549 F.2d 1006, 1017 (5th Cir. 1977). The equitable principle upon which the doctrine rests is that "persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense." *Boeing*, 444 U.S. at 478.

As an assertion of the court's inherent equitable power, the common-fund doctrine applies even in diversity cases, because "[n]either the Federal Rules of Civil Procedure nor the *Erie* doctrine deprive Federal courts in diversity cases of the power to enforce State-created substantive rights by well-recognized equitable remedies even though such remedy might not be available in the courts of the State." *Clark Equip. Co. v. Armstrong Equip. Co.*, 431 F.2d 54, 57 (5th Cir. 1970) (citing *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945)). For this reason, several decisions from this District have expressly rejected the objectors' position in diversity cases and have applied the federal common-fund doctrine to award attorneys' fees from class action settlements. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d at 1362 n.32 ("Eleventh Circuit attorneys' fee law governs this request, not the law of Florida."); *Allapattah*, 454 F. Supp. 2d at 1200 ("The district court presiding over a diversity-based class action pursuant to Fed. R. Civ. P. 23 has equitable power to apply federal common law in determining fee awards irrespective of state law.").

Ultimately, then, the objectors urge this Court to ignore binding Eleventh Circuit precedent. The request borders on the frivolous. In accordance with the Eleventh Circuit's directive in *Camden I*, the Court should award attorneys' fees here "based upon a reasonable percentage of the fund

established for the benefit of the class." 946 F.2d at 774.[10]

IV. THE ARGUMENTS OF SERIAL OBJECTORS LACK CREDIBILITY.

Several objectors challenge the requirement that their lawyers list their prior recent objections—designed to deter and ferret out frivolous objections. But the Eleventh Circuit recently affirmed the inclusion of such requirements to "help 'expose objections that are lawyer-driven and filed with ulterior motives.'" *In re Equifax*, 999 F.3d at 1266. While "meritorious objectors can be of immense help to a district court in evaluating the fairness of a settlement," courts have correspondingly cautioned that "it is also important for district courts to screen out improper objections because objectors can, by holding up a settlement for the rest of the class, essentially extort a settlement of even unmeritorious objections." *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 n.3 (1st Cir. 2015) (citing *Newberg on Class Actions* § 13:21 (5th ed. 2011)).

Several of the objectors here are represented by members of a small but active group of lawyers, often acting in concert, who have made a cottage industry out of challenging class action settlements. Several attorneys claim that they have represented so many objectors over the past five years that simply providing the number of such representations would be burdensome (ECF Nos. 4153 at 15.)[11] Beyond the number of settlements challenged over the past five years, strong evidence that objections stem from professional objectors' counsel include baseless rote allegations (such as those before the Court) that have been repeatedly overruled and conflict with prevailing law. Such professional objectors interfere with the system and "often delay and unnecessarily complicate class proceedings." *Newberg on Class Actions* § 15:37. This context is relevant to the Court's evaluation of the credibility of the objections, as well as whether to order the objectors to post an appellate bond. *In re IPO Sec. Litig.,* 728 F. Supp. 2d at 214-16.

V. CONCLUSION

For the foregoing reasons, the objections of Class Members to approval of the Volkswagen Settlement and Class Counsel's fee request should be overruled, and the Settlement approved.

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[10] One objector focuses on the choice-of-law provision within the Settlement. (ECF No. 4156 at 5-8.) But that provision (ECF No. 4105-1, § XI.M) does not purport to displace the Eleventh Circuit's common-fund doctrine, which the more specific attorney-fee provision of the Settlement incorporates (*id.*, § § VIII.A).

[11] One such objector, Mr. Pentz, has been identified as a "professional objector" by other district courts. *See In re IPO Sec. Litig.*, 671 F. Supp. 2d 467, 497 n.219 (S.D.N.Y 2010), *opinion clarified*, No. 21 MC 92 SAS, 2010 WL 5186791 (S.D.N.Y. July 20, 2010) (listing cases).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on February 28, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

By: */s/ Peter Prieto*
Peter Prieto