

EXHIBIT A

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**

**DECLARATION OF PETER PRIETO
IN SUPPORT OF PLAINTIFFS' OMNIBUS MOTION FOR
FINAL APPROVAL OF CLASS SETTLEMENT AND CERTIFICATION OF
SETTLEMENT CLASS, AND APPLICATION FOR
CLASS COUNSEL'S ATTORNEYS' FEES**

PETER PRIETO declares as follows:

1. I am Chair Lead Counsel for Plaintiffs and the proposed Settlement Class in these coordinated proceedings against Volkswagen Group of America, Inc. and Audi of America, LLC (“VW”).¹ I respectfully submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Settlement and Certification of Settlement Class, and Application for Class Counsel’s Attorneys’ Fees. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. After almost four years of hard-fought litigation and extensive discovery, and adversarial arm’s-length negotiations that spanned several months, Plaintiffs and VW executed a

¹ Capitalized terms not defined herein shall have the same definitions and meanings ascribed to them in the Settlement.

Settlement Agreement on or around August 31, 2021. The Settlement requires VW to pay \$42,000,000 in cash, less applicable credits for providing a Rental Car and Loaner Program, into a non-reversionary Settlement Fund. This Settlement, according to Plaintiffs' valuation expert, has a total value of approximately \$55,500,000, when including the estimated value of the Settlement's Customer Support Program.

3. Plaintiffs maintain that the claims asserted in the Action are meritorious, that any motion for class certification would prove successful, and that Plaintiffs would prevail if this matter proceeded to trial. The Action involved sharply opposed positions on several fundamental legal and factual issues. The ultimate success of the litigation required Plaintiffs to prevail, in whole or in part, on all of these issues. Continued litigation, therefore, presents significant risks to attaining a successful judgment, as well as the time and expenses associated with proceeding to trial, the time and expenses associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex multi-district litigation.

4. In light of the risks presented by continued litigation and taking into account the substantial benefits extended to the Class Members under the terms of the Settlement Agreement, the Settlement not only provides fair and adequate compensation to Class Members, it also represents a significant achievement benefitting the Settlement Class.

A. Background of the Litigation.

5. This action centers on Plaintiffs' allegation that numerous automotive companies, including VW, General Motors, FCA, and Mercedes-Benz (the "Automotive Defendants"), manufactured and sold to the unsuspecting public a staggering number of vehicles equipped with defective airbags supplied by Takata. Instead of functioning as safety devices, Plaintiffs allege,

Takata's defective airbags have an unreasonably dangerous propensity to deploy aggressively or rupture, spraying metal shrapnel toward vehicle occupants. The common defect in Takata's airbags is tied to the inherent instability of the phase-stabilized ammonium-nitrate propellant used in Takata's airbag inflators, which are metal canisters that are supposed to release gas to inflate airbag cushions in the milliseconds following a crash.

6. This common defect, which affected at least 50 million airbags nationwide, has given rise to the single largest automotive recall in United States history and a terrible public safety crisis. Even though nationwide recalls have been underway for more than four years, millions of airbags have yet to be removed from vehicles and replaced with safe airbags, according to the most recent data published by the National Highway Safety Transportation Administration ("NHTSA").

7. Following numerous field ruptures of Takata's inflators that seriously injured or killed vehicle occupants, automakers began to recall vehicles equipped with such inflators. Honda initiated several narrow recalls from 2008 through 2012, claiming that the field ruptures resulted from limited manufacturing defects. As field ruptures continued to occur, however, the recalls expanded significantly. From April 11, 2013, through May 15, 2015, automakers initiated and expanded recalls ultimately covering millions of vehicles. On May 18, 2015, Takata entered into a Consent Order with NHTSA that required it to file Defect Information Reports, triggering recalls of almost 34 million inflators. Given the unprecedented size of the recalls and a shortage of replacement inflators, NHTSA also entered a Coordinated Remedy Order to prioritize which vehicles should be repaired first. Takata's Consent Order has been amended several times, expanding the recall to all inflators with non-desiccated phase-stabilized ammonium-nitrate propellant, which includes at least 50 million inflators.

8. Plaintiffs have alleged that, prior to the recalls, neither Takata nor the Automotive Defendants disclosed the common defect in Takata's inflators to Class Members. Instead, they represented that their products were safe. Plaintiffs alleged that they suffered several forms of economic damages as a result of purchasing defective airbags and vehicles that were inaccurately represented to be safe. Plaintiffs, for example, alleged that they overpaid for their vehicles with defective airbags and did not receive the benefit of their bargain, because the vehicles and airbags were of a lesser standard and quality than represented. In addition, Plaintiffs alleged that they suffered damages in the form of out-of-pocket expenses, including lost wages from taking time off work to bring their vehicles to dealerships for the Recall Remedy, paying for rental cars and alternative transportation, and hiring child care while the Recall Remedy was being performed.

B. Course of Proceedings.

9. On October 27, 2014, eighteen plaintiffs filed a class action complaint in *Craig Dunn, et al. v. Takata Corp., et al.*, No. 1:14-cv-24009 (S.D. Fla.) (the "Economic Loss Class Action Complaint"), asserting economic loss claims against several automakers and Takata. Close to one-hundred similar lawsuits eventually were filed around the country. The Judicial Panel on Multidistrict Litigation subsequently consolidated the *Dunn* action for pretrial proceedings with additional class and individual actions alleging similar or identical claims before this Court as *In re Takata Airbag Products Liability Litigation*, No. 1:15-md-02599-FAM (S.D. Fla.) (MDL 2599).

10. On March 17, 2015, the Court entered an Order Appointing Plaintiffs' Counsel and Setting Schedule, which designated me as Chair Lead Counsel, David Boies of Boies Schiller and Flexner, LLP, and Todd A. Smith of Power Rogers & Smith, PC, as Co-Lead

Counsel in the Economic Loss track; Curtis Miner of Colson Hicks Eidson as Lead Counsel for the Personal Injury track; and Roland Tellis of Baron & Budd P.C., James Cecchi of Carella Byrne Cecchi Olstein P.C., and Elizabeth Cabraser of Lieff, Cabraser, Heimann & Bernstein, LLP as Plaintiffs' Steering Committee members.

11. On January 13, 2017, Defendant Takata Corporation signed a criminal plea agreement in which it admitted, among other things, that it "knowingly devised and participated in a scheme to obtain money and enrich Takata by, among other things, inducing the victim OEMs [Original Equipment Manufacturers] to purchase airbag systems from Takata that contained faulty, inferior, nonperforming, non-conforming, or dangerous PSAN inflators by deceiving the OEMs through the submission of false and fraudulent reports and other information that concealed the true and accurate test results for the inflators which the OEMs would not have otherwise purchased as they were." *United States v. Takata Corp.*, No. 2:16-cr-20810 GCS EAS, ECF No. 23 at B-6, B-7 (E.D. Mich. Feb. 27, 2017). Takata entered a guilty plea to one count of wire fraud as part of a settlement with the U.S. Department of Justice. *See id.* at 2-3.

12. On June 25, 2017, TK Holdings Inc. and certain of its subsidiaries and affiliates filed for bankruptcy, each commencing a voluntary case under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. (See ECF No. 1857.) On June 26, 2017, TK Holdings Inc. filed its Notice of Bankruptcy Filing and Imposition of Automatic Stay Pursuant to Section 262(a) of the Bankruptcy Code. (*Id.*)

13. On August 8, 2017, Plaintiffs Brett Alters and April Rockstead Barker, et al., filed a complaint in the District of New Jersey against Volkswagen Group of America, Inc., Volkswagen AG, Takata Corporation, and TK Holdings, Inc., *Alters v. Volkswagen Group of*

America, Inc., No. 17-cv-05863 (D.N.J.) (“*Alters* Complaint”), asserting economic loss claims relating to Takata PSAN inflators in Volkswagen vehicles. The JPML transferred the *Alters* action to the *Takata* MDL on September 18, 2017. (ECF No. 2044.)

14. On March 14, 2018, Plaintiff Michael McBride, et al., filed a complaint in the Eastern District of Virginia against Audi of America, LLC, Audi AG, and Volkswagen AG, *McBride v. Audi of America, LLC*, No. 18-cv-00284 (E.D. Va.) (“*McBride* Complaint”), asserting economic loss claims relating to Takata PSAN inflators in Audi vehicles. The JPML transferred the *McBride* action to the *Takata* MDL on March 26, 2018. (ECF No. 2467.)

15. On March 14, 2018, Plaintiffs filed a consolidated class action complaint in the *Takata* MDL, *Puhalla v. Volkswagen AG*, No. 15-MD-2599 (S.D. Fla.) (ECF No. 2430) (“Consolidated Class Action Complaint”), bringing together the claims of Plaintiffs who filed actions that were transferred into the MDL, as well as Plaintiffs who direct filed their claims in the MDL.

16. Per the Court’s subsequent Order (ECF No. 2651), Plaintiffs filed, on May 18, 2018, an amended *Puhalla* complaint that removed the claims of automotive recyclers, which were placed in a separate complaint in the MDL. (ECF No. 2762 (“Amended Consolidated Class Action Complaint”); *see* ECF No. 2781).

17. Volkswagen moved to dismiss the amended *Puhalla* complaint (ECF No. 2988), Plaintiffs filed a response (ECF No. 3034), and Volkswagen filed a reply (ECF No. 3101). The Court heard oral argument on the motion to dismiss on December 11, 2018. (*See* ECF No. 3139.)

18. On May 3, 2019 (ECF No. 3394), June 20, 2019 (ECF No. 3406), and May 27, 2020 (ECF No. 3834), the Court issued Orders ruling on Volkswagen’s motion to dismiss. In these Orders, the Court dismissed Volkswagen AG and Audi AG for lack of personal

jurisdiction, and as to Volkswagen Group of America, Inc. and Audi of America, LLC, dismissed certain claims and allowed others to proceed. (ECF No. 3406 at 95; ECF No. 3834 at 49-51.)

19. Plaintiffs filed the second amended *Puhalla* complaint, which reinstated claims asserted on behalf of Florida and direct-filed Plaintiffs against Volkswagen Group of America, Inc. and Audi of America, LLC, on April 23, 2021. (ECF No. 4026) (“Second Amended Consolidated Class Action Complaint”).

20. Written discovery and extensive document productions have taken place over the past three years (millions of pages of documents have been produced); Volkswagen has taken 17 depositions of class representatives and related individuals; and Plaintiffs have deposed at least 18 Takata witnesses and 5 Volkswagen witnesses. VW has also conducted inspections of the vehicles of the Class Representatives.

C. Settlement Negotiations.

21. Parallel to the hard-fought litigation track, preliminary settlement discussions began on December 11, 2020, when counsel for Plaintiffs and counsel for VW conducted an initial mediation with court-appointed mediator, Paul Huck, Jr. During this mediation, and in subsequent conferences between counsel, the Parties discussed their relative views of the law and facts and potential relief for the proposed Class and exchanged a series of counter-proposals. After numerous phone conferences and exchanges of information, the parties ultimately reached an agreement in principle in July of 2021. Only after agreeing on the substantive terms of the Settlement did the parties begin to negotiate attorneys’ fees. The parties then negotiated the precise terms of the Settlement Agreement for several weeks and signed the Settlement Agreement on August 31, 2021.

22. Throughout the eight-month negotiation process, both in-person and by phone, the parties discussed and considered their relative views of the law, facts, and potential relief for the proposed Class, and exchanged numerus counter-proposals for key issues and concepts in a potential settlement. Based on the success and fairness of the prior seven settlements reached in the MDL, Plaintiffs' counsel insisted on structuring this Settlement in a similar manner. At all times, the lengthy settlement negotiations were adversarial, non-collusive, and at arm's length.

D. Settlement Recovery.

23. The Settlement requires VW to deposit a total of \$42,000,000, less applicable credits for the Rental Car/Loaner Program, into a non-reversionary Qualified Settlement Fund.

24. In accordance with the Agreement, VW deposited approximately 12% of the full Settlement Amount within 30 days of this Court's Preliminary Approval of the Settlement, to immediately fund the first year of the Outreach Program. If the Settlement is approved, the rest of the Settlement Fund payments will be made over a prescribed four-year schedule set forth in the Settlement.

25. The Settlement Fund will be used to pay for: (a) the Outreach Program; (b) an Out-of-Pocket Claims Process to compensate Class Members for out-of-pocket expenses relating to the Takata Airbag Inflator Recall; (c) residual cash payments to Class Members who have not incurred reimbursable out-of-pocket expenses and who register for residual payments, to the extent that there are residual amounts remaining; (d) the Rental Car/Loaner Program; (e) notice and related costs; (f) claims administration, including expenses associated with the Settlement Special Administrator; and (g) Court-awarded Class Counsel's fees and expenses.

E. Considerations Supporting the Settlement.

i. There was No Fraud or Collusion.

26. This Court is well aware of how hard and zealously the Parties and their counsel litigated prior to reaching the Settlement. Plaintiffs continue to litigate this matter against other Defendants, and the sharply contested nature of the proceedings in this case readily shows the lack of fraud or collusion behind the Settlement.

27. Class Counsel also negotiated the Settlement vigorously. Plaintiffs were represented by experienced counsel at these arms-length negotiations. And the settlement negotiations were informed, on both sides, by counsel experienced in the litigation, certification, trial, and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience and a familiarity with the facts of this case as well as with other cases involving similar claims.

28. As I described above, Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in extensive formal discovery with VW. Class Counsel's thorough review of that extensive discovery, including millions of pages of documents and numerous depositions, enabled us to gain an understanding of the evidence related to key questions in the case, and prepared us for well-informed settlement negotiations. Thus, Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them.

29. The settlement negotiations were, at all times, adversarial and conducted at arm's length.

ii. The Settlement Will Avert Years of Highly Complex and Expensive Litigation.

30. This case involves more than one million Class Members, with potential damages exceeding hundreds of millions of dollars. The claims and defenses are complex; litigating them is and has been difficult and time consuming. Although the Action has been pending for roughly four years, recovery by any means other than settlement would require additional years of litigation in this Court and appellate courts. In contrast, the Settlement will provide immediate and substantial benefits to more than one million consumers.

iii. The Factual Record is Sufficiently Developed to Enable Plaintiffs and Class Counsel to Make a Reasoned Judgment Concerning the Settlement.

31. There is no doubt that significant discovery occurred in this case prior to the Settlement. It afforded Class Counsel insight into the strengths and weaknesses of Plaintiffs' claims against VW. Before settling, Class Counsel had developed ample information and performed extensive analyses from which to assess the probability of success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.

iv. Plaintiffs Would Have Faced Significant Obstacles to Obtaining Relief.

32. Class Counsel are quite confident in the strengths of their case, but we are also pragmatic, as well as aware of the various defenses available to VW and the risks inherent in any litigation. While Plaintiffs overcame the risk of dismissal on various theories advanced at the motion to dismiss stage, including legal challenges to personal jurisdiction and the common law and state statutory claims, the ultimate success of Plaintiffs' claims turned on these and other questions that were certain to arise in the context of motions for summary judgment and class certification, and at trial.

33. While Class Counsel believe we have a compelling case against VW, we also are mindful that it advanced significant defenses that we would be required to overcome at summary judgment, at class certification, at trial, and eventually on appeal. This litigation involved

several key risks, including: (1) overcoming Takata’s guilty plea to wire fraud; and (2) establishing that VW had sufficient knowledge of the risks inherent in Takata’s defective airbag inflators. Class Counsel also appreciate that, absent a settlement, it would have taken years of additional litigation – and overcoming vigorous legal and factual defenses – to bring the Action to finality. Even then, the outcome would still be uncertain. Given the myriad risks attending these claims, the Settlement cannot be seen as anything other than a fair and reasonable compromise.

34. Protracted litigation, as we all know, carries inherent risks and inevitable delay. Under the circumstances, Plaintiffs and Class Counsel determined that the Settlement clearly outweighs the risks of continued litigation.

v. The Settlement Amount Is Reasonable Given the Range of Possible Recovery.

35. The Settlement provides substantial value to the Class, and such value is well within the range of reasonableness. Even before considering the valuation opinion of Kirk Kleckner, a recognized expert in the field, of the Customer Support Program, the Settlement has a value of approximately \$42 million, which represents roughly 20% of Plaintiffs’ and Class Members’ estimated damages recovery under a conservative method of calculating damages based on the prices VW paid for and marked up the defective Takata airbags, according to evidence produced in discovery. The additional value of the Customer Support Program further increases the range of recovery as a percentage of the possible damages that Plaintiffs and Class Members could recover if they were to prevail all the way through trial and on appeal.

36. More importantly, the non-reversionary aspect of the Settlement speaks volumes about its adequacy and reasonableness. The entirety of the Settlement Fund, less the necessary costs of settlement administration, attorneys’ fees, and expenses, will be distributed for the

benefit of Class Members, through the Outreach Programs, Out-of-Pocket Claims Process, and Residual Distribution. In other words, *none* of the Settlement Fund is being returned to VW.

37. The Settlement also provides for, if necessary, a *cy pres* distribution for any funds that eventually cannot be distributed directly to Class Members in a cost-effective manner. With Court approval, the funds will be distributed as *cy pres* relief to worthy charities, especially to charities geared toward combatting harms that injured Class Members.

vi. The Opinions of Class Counsel, Class Representatives, and Absent Class Members Strongly Favor Approval of the Settlement.

38. Class Counsel believe that the Settlement is extraordinary and clearly deserving of Final Approval.

F. Class Counsel's Attorneys' Fees.

39. Pursuant to the Settlement, Class Counsel are permitted to request that the Court award us attorneys' fees up to 30% of the Settlement Amount. VW has agreed not to oppose such a request for attorneys' fees and expenses. The Parties negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of the Settlement Agreement.

40. As indicated in the Court-approved Notice disseminated to the Class, and consistent with standard class action practice and procedure, Class Counsel request a fee amounting to 30 percent of the \$42 million Settlement Amount, which represents the common fund created through our hard work and efforts. That amount would include not only attorneys' fees but expenses as well.

i. The Claims Against VW Required Substantial Time and Labor.

41. Prosecuting and settling the claims against VW in the Action have demanded significant time, dedication, and labor, making this fee request reasonable. Plaintiffs' counsel

have devoted tens of thousands of hours prosecuting the case against VW, and have, among other things:

- Conducted an initial investigation of claims against VW to develop the facts and legal theories that formed the basis of the allegations in the complaint and drafted and filed the complaint, amended complaint, second amended complaint, third amended complaint, and fourth amended complaint.
- Interviewed and reviewed complaints of hundreds of consumers and potential class members to gather information about VW's conduct and its impact upon consumers.
- Prepared state-by-state legal assessments to determine which state common law doctrines and consumer protection statutes provided Plaintiffs with viable claims.
- Sought out witnesses and former employees of VW and Takata across the globe, from the United States to Germany to Japan.
- Defended the complaints from several Rule 12(b) motions to dismiss filed by VW, as well as scores of motions filed by other Defendants that raised issues relevant to Plaintiffs' claims against VW.
- Researched and defended against VW's challenge to personal jurisdiction.
- Successfully moved for leave to file a second amended complaint, over VW's objections.
- Drafted and served three sets of interrogatories and four sets of document requests on VW, including a set of more than 100 written document requests seeking relevant and probative documents and information in its possession—with an eye toward class certification, summary judgment, and trial.
- Participated in countless meet-and-confer discussions with VW's counsel to resolve various discovery disputes pertaining to Plaintiffs' requests, discovery protocols, and the production of witnesses for depositions.
- Established and staffed a large document review team consisting of more than 40 attorneys from 13 different law firms to review, sort, and code more than 10 million pages of documents produced by all Defendants in the MDL; established uniform coding procedures for electronic review of the documents produced; maintained constant contact with team members to ensure that all counsel became aware of significant emerging evidence in real time; funded the hosting of this massive, multi-year document review project on an online platform by a vendor at great expense.
- Retained and worked closely with consultants and experts to analyze, among other things, ammonium nitrate and its explosive properties, the functionality and risk of Takata inflators, VW's validation procedures, VW's relevant documents, and the measurement of Plaintiffs' damages.

- Deposed 23 Takata and VW witnesses, each of which required weeks of preparation, a consequence of the sheer volume of documents produced, as well as the breadth of issues and timespan that had to be covered.
- Prepared responses to Defendants' interrogatories and requests for production of documents directed to 17 VW Class Representatives, and prepared for and defended depositions of the VW Plaintiffs.
- Convened numerous in-person meetings to strategize and carefully review the development of the case against VW.
- Prepared and repeatedly updated timelines, lists of hot documents, and case summaries for the case against VW.
- Held weekly or bi-weekly conference calls to coordinate the vast effort undertaken by at least twenty-six (26) law firms across the country to prosecute claims against VW, oversee various tasks and projects, and maximize efficiency.
- Prepared for and attended numerous days of negotiations at various locations around the country in an attempt to settle the Action, and after reaching an agreement in principle, engaged in lengthy discussions over drafting the terms of the Settlement Agreement.

42. Even though Plaintiffs litigated their economic loss claims against VW alongside the claims asserted against other automakers, the actual litigation against each automaker, and particularly VW, proceeded on distinct and independent tracks. Each Defendant, for example, identified different witnesses with relevant knowledge; produced different documents in response to Plaintiffs' discovery requests; disputed different aspects of Plaintiffs' discovery requests; and raised different arguments and defenses.

43. All told, Class Counsel's steadfast and coordinated work paid great dividends for the Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time, expertise, and resources Class Counsel devoted to prosecuting and settling the Action of nationwide importance justify the fee we are now seeking.

ii. The Issues Involved Were Novel and Difficult and Required the Exceptional Skill of a Highly Talented Group of Attorneys.

44. The Court, we believe, regularly witnessed the high quality of our legal work, which has conferred a significant benefit on the Class in the face of daunting litigation obstacles and highly sophisticated defense counsel. As the Court is aware, it is a considerable challenge to successfully prosecute a case like this. Moreover, the orderly and effective management of this very large MDL, including claims against seven of the world's largest automotive companies, presented challenges that many law firms and lawyers simply would not be able to meet.

45. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. All of the lawyers representing Plaintiffs, and in particular those whom this Court appointed to represent Plaintiffs, possess these attributes, and their participation as Class Counsel added significant value to the representation of this especially large class consisting of more than one million individuals. The record before the Court establishes that the Action involved a wide array of complex and novel challenges, which we met at every juncture based on our extensive experience in complex litigation and class action litigation.

46. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of their opposing counsel. VW was represented by some of the most able, sophisticated, and diligent attorneys in the country. These were worthy, highly competent adversaries who fought at every turn to protect their clients' interests.

iii. The Claims Against VW Entailed Considerable Risk.

47. VW mounted vigorous defenses to these claims, denying any and all liability in the Action. The time, work, and expense demands on us were daunting, and limited our ability

to work on numerous other matters. Our success under these circumstances represents a genuine milestone.

48. Prosecuting the Action was risky from the outset. While several risks existed, I will limit my discussion to three of the most serious risks.

49. First, VW has steadfastly claimed that it was deceived by Takata as to the safety of its inflators, a defense they claim finds support in Takata's guilty plea to a count of wire fraud based on providing allegedly misleading testing results to certain OEMs.

50. Second, VW has challenged Plaintiffs' damages theories. While Plaintiffs allege that they suffered economic losses at the time of purchase, because a vehicle with a defect is, by definition, worth less than a defect-free vehicle, VW contends that Plaintiffs have not suffered compensable damages because most defective inflators eventually will be replaced free of charge through recalls.

51. Third, VW would have vigorously opposed class certification. Though we believe that we could and would prevail in a litigated class certification battle, VW would assert numerous arguments against certification of all or parts of the Class. Moreover, even if Plaintiffs were successful, VW would inevitably seek interlocutory review of class certification rulings under Rule 23(f) in the Eleventh Circuit, delaying the progress towards trial for months, if not years.

52. Each of these risks, standing alone, could have impeded Plaintiffs' successful prosecution of these claims at trial (and in any appeal). Together, they show that Plaintiffs' claims against VW were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

iv. Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis and Were Precluded from Other Employment as a Result.

53. Class Counsel prosecuted the Action entirely on a contingent fee basis. In undertaking to prosecute this complex action on that basis, we assumed a significant risk of nonpayment or underpayment. That risk also warrants the requested fee.

54. Public policy concerns—especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would otherwise defy vindication—further justifies the requested fee award.

55. The progress of the Action to date readily shows the inherent risk that we faced in taking these cases on a contingency fee basis. To sustain the enormous and ongoing effort of litigating before this Court for almost four years, we have invested well tens of thousands of hours of time, as well as millions of dollars in expenses. Uncompensated expenditures of this magnitude can severely damage or even destroy some law firms. It cannot be disputed that the Action entailed a substantial risk of nonpayment and resulting financial hardship for our practices.

56. Furthermore, the time we spent on the Action was time that we could not spend on other matters. And Class Counsel repeatedly turned away work on other matters as a result. This factor militates in favor of our requested fee.

v. Class Counsel Achieved an Excellent Result.

57. The Settlement we achieved is outstanding. Instead of facing additional years of costly and uncertain litigation, more than one million Class Members will receive an immediate benefit from the Settlement with a total value of more than \$42 million. The Settlement achieves the two primary objectives of this litigation: accelerating the removal of dangerous, defective

Takata airbag inflators from Class Members' vehicles, and compensating Class Members for the economic damages they suffered. The Settlement represents an exceptional achievement by any measure.

vi. The Requested Fee Comports with Customary Fees Awarded in Similar Cases.

58. The fee requested here is not out of the ordinary and matches the fee typically awarded in similar cases. As numerous decisions have recognized, a fee award of 30% of a common fund is well within the range of a customary fee in this District and in this Circuit. Our fee request falls at the low end of the average negotiated in the private marketplace, where contingency fee arrangements often approach or equal 40 percent of any recovery.

vii. Other Factors Also Favor Approving Class Counsels' Fee Request.

59. Other factors likewise support granting our fee request. As noted, the burdens of this litigation have precluded our pursuit of other cases. The relatively small size of most of the firms representing Plaintiffs and the major commitment involved in accepting this representation, precluded our firms from working on other matters and accepting other representations. Over the past four years, my firm and I, as well as other Court-appointed firms, repeatedly turned away work or refused to become involved in other cases, because of the significant time and effort that this case and MDL required. In addition, our fee request is firmly rooted in the economics involved in prosecuting a class action. Without adequate compensation and financial reward, cases such as this simply could not be pursued.

60. Moreover, Class Counsel has advanced millions of dollars in out-of-pocket costs and expenses, which will be covered by the approved settlement.

61. Finally, unlike most settlements, Class Counsel's work in connection with this Settlement will not end at Final Approval. This Settlement will last for at least four years and

will require substantial input from Class Counsel to oversee and adjust the Outreach Program and Out-of-Pocket Claims Processes. If the Settlement receives final approval and reaches its Effective Date, Class Counsel also will become significantly involved in the processing and adjudication of Class Member claims. This process, which may involve hundreds of thousands of claims over a four-year period, will demand an extraordinary amount of time, diligence, and effort on the part of Class Counsel. The requested fee award will cover this time-consuming work over the next four years as well.

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami, Florida on January 21, 2022.

/s/ Peter Prieto
Peter Prieto