

Court File No.: CV-16-559393-00CP

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N :

SHAWN PANACCI

Plaintiff

And

VOLKSWAGEN AKTIENGESELLSCHAFT, VOLKSWAGEN GROUP CANADA INC., AUDI
AKTIENGESELLSCHAFT, VW CREDIT CANADA INC. and AUDI CANADA INC.

Defendants

Court File No.: 500-06-000868-170

SUPERIOR COURT OF QUEBEC

B E T W E E N :

JULIE TREMBLAY

Plaintiffs

- and -

VOLKSWAGEN GROUP CANADA, INC., VOLKSWAGEN GROUP OF AMERICA, INC.,
AUDI CANADA INC. and AUDI OF AMERICA INC.

Defendants

Court File No.: QBG 2749 of 2016

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

B E T W E E N :

BLAINE COVILL

Plaintiffs

- and -

VOLKSWAGEN GROUP CANADA, INC., VOLKSWAGEN GROUP OF AMERICA, INC.,
AUDI CANADA INC. and AUDI OF AMERICA INC.

Defendants

SETTLEMENT AGREEMENT

Dated as of November 1, 2019

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1. INTRODUCTION

This Settlement Agreement settles, on behalf of the Settlement Class in the Actions, all claims asserted by the Settlement Class related to certain Volkswagen- and Audi-brand vehicles for model years 2008 to 2014 with EA888 engines, as identified in Exhibit 1, which were imported and distributed by the defendant Volkswagen Group Canada Inc. for sale or lease in Canada.

2. DEFINITIONS

As used in this Settlement Agreement, including the attached schedules and exhibits, the terms defined herein have the following meanings, unless this Settlement Agreement specifically provides otherwise. Other capitalized terms used in the Settlement Agreement that are not defined in Section 2 shall have the meanings ascribed to them elsewhere in the Settlement Agreement.

Whenever appropriate in this Settlement Agreement, terms in the singular form shall include the plural (and vice versa) and any gender form shall include all others.

2.1 “**Actions**” means, collectively,:

(a) *Shawn Panacci v Volkswagen Group Canada Inc. et al.*, with Court File No. CV-16-559393-00CP (the “Panacci Action”);

(b) *Julie Tremblay v Volkswagen Group Canada Inc. et al.*, with Court File No. 500-06-000868-170; and

(c) *Blaine Covill v Volkswagen Group Canada Inc. et al.*, with Court File No. QBG 2749 of 2016.

- 2.2 **“Approval Courts”** means the Courts to which motions for settlement approval will be brought, being the Ontario Superior Court of Justice and the Superior Court of Quebec. Reference to an Approval Court or Courts means the appropriate Approval Court.
- 2.3 **“Approval Notice”** means the English and French notices of the Approval Orders published and disseminated to Settlement Class Members, in a form to be approved by the Approval Court.
- 2.4 **“Approval Order”** means an Approval Court’s order and / or judgment certifying / authorizing the class proceedings for settlement purposes only and approving the Settlement Agreement.
- 2.5 **“Authorized VW Dealer”** means any authorized Volkswagen- or Audi- brand dealer located in Canada as evidenced by a valid dealer sales and service agreement.
- 2.6 **“Claim” or “Claim for Reimbursement”** means the timely submission of the required form and proof and all other required supporting documentation to the Claims Administrator on or before the Claims Period Deadline.
- 2.7 **“Claim Form”** means the document that enables a Settlement Class Member to submit a Claim or Claim for Reimbursement pursuant to the Settlement Agreement.

- 2.8 **“Claimant”** means a Settlement Class Member, or a Settlement Class Member’s estate or legal representative, who completes and submits a timely Claim Form.
- 2.9 **“Claims Administration Expenses”** means the reasonable costs, as satisfactory to VW, plus applicable taxes, incurred for the Claims Administrator to administer the Claims Program, including but not limited to the Claims Administrator’s fees, the costs to administer the Settlement Website, and related French-English translation costs.
- 2.10 **“Claims Administrator”** means the entity responsible to administer and oversee the Claims Program. The Parties agree that Epiq Class Action Services Canada, Inc. (“Epiq”) shall serve as Claims Administrator, subject to approval by the Approval Courts.
- 2.11 **“Claims Period”** means the time period from when Claimants can begin submitting Claims under the Claims Program through the Claims Period Deadline.
- 2.12 **“Claims Period Deadline”** means the deadline for a Claim Form to be sent via mail by an Eligible Claimant, which shall be eight months after the Effective Date.
- 2.13 **“Claims Program”** means the program through which Settlement Class Members may file Claims and, if eligible, obtain benefits under this Settlement Agreement, as described in Section 6.

- 2.14 **“Class Counsel”** means the law firms listed as solicitors of record in the Actions, namely, Koskie Minsky LLP, Lenczner Slaght Royce Smith Griffin LLP and Merchant Law Group LLP.
- 2.15 **“Counsel Fees”** means the reasonable legal fees and disbursements of Class Counsel, plus applicable taxes, as agreed to between the parties, incurred in connection with this Settlement Agreement and prosecuting the claims in the Actions, as approved by the Approval Courts, or on appeal therefrom, for payment to Class Counsel.
- 2.16 **“Court(s)”** means, with respect to the Panacci Action, the Ontario Superior Court of Justice, with respect to the Tremblay Action, the Superior Court of Québec, and with respect to the Covill Action, the Court of Queen’s Bench for Saskatchewan.
- 2.17 **“Covered Parts”** means all parts necessary to effectuate either (A) a repair or replacement of an Eligible Vehicle’s timing chain tensioner or timing chain, (B) a simultaneous repair or replacement of an Eligible Vehicle’s timing chain tensioner and timing chain or (C) subject to the limitations described in Schedule A or section 4.2.3, a repair or replacement of an Eligible Vehicle’s engine.
- 2.18 **“Covered Parts and Labour”** means all parts and labour necessary to effectuate either (A) a repair or replacement of an Eligible Vehicle’s timing chain tensioner or timing chain, (B) a simultaneous repair or replacement of an Eligible Vehicle’s timing chain tensioner and timing

chain or (C) subject to the limitations described in Schedule A, a repair or replacement of an Eligible Vehicle's engine.

2.19 “**Effective Date**” means thirty (30) days after the Settlement Approval Date, unless any appeals are taken from an Approval Order, in which case it is the date upon which all appeals have been fully disposed of on the merits in a manner that affirms the subject Approval Order, or a date after the Settlement Approval Date that is agreed to in writing by VW and Class Counsel.

2.20 “**Eligible Claimant**” means a Claimant who has been determined by the Claims Administrator to be eligible to receive benefits under the Settlement Agreement and who has submitted a Claim Form by the Claims Period Deadline.

2.21 “**Eligible Vehicle**” means a Volkswagen- or Audi-brand vehicle equipped with an EA888 engine that is listed by VIN on Exhibit 1.

2.22 “**Excluded Persons**” means the following entities and individuals:

2.22.1. Owners of a Totalled Vehicle, including insurance companies;

2.22.2. VW's officers, directors and employees and participants in the Internal Lease Program; VW's affiliates and their officers, directors and employees; and Authorized VW Dealers and their officers and directors;

2.22.3. Presiding judges and counsel of record for the plaintiffs in the Actions;

2.22.4. Any Settlement Class Member seeking reimbursement for repairs relating to the Timing Chain System Matter who, prior to the date of this Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims for those repairs; and

2.22.5. All those otherwise in the Settlement Class that timely and properly opt out of the Settlement Class.

2.23 **“Extended Warranty”** has the definition set forth in section 4.2.1.

2.24 **“Internal Lease Program”** means the program through which employees and retirees of VW may lease vehicles from Volkswagen Group Canada Inc. for themselves and certain members of their families. For purposes of this Settlement Agreement, participants in the Internal Lease Program shall include anyone in whose name a vehicle is leased under the program.

2.25 **“National Settlement Class”** means all Settlement Class Members who are not in the Québec Settlement Class.

2.26 **“Non-Disclosure Agreements”** means (a) the Non-Disclosure Agreement dated July 5, 2018 in the Panacci Action, (b) the Non-Disclosure Agreement dated July 11, 2018 in the Covill Action and (c) the Non-Disclosure Agreement dated July 11, 2018 in the Tremblay Action,

which are binding on VW, as well as all Class Counsel either because they are counsel in the Panacci Action, Covill Action or Tremblay Action or because they executed the acknowledgement to any of the Non-Disclosure Agreements.

2.27 “**Non-VW Dealer**” means any automobile dealer or seller in business as of the Pre-Approval Notice Date that is located in Canada other than an Authorized VW Dealer.

2.28 “**Notice Administrator**” means the third-party agent or administrator agreed to by the Parties and appointed by the Courts in the Actions to implement the Notice Program. The Parties agree that Epiq shall serve as Notice Administrator, subject to approval by the Courts in the Actions.

2.29 “**Notice Expenses**” includes the reasonable costs and expenses, as satisfactory to VW, plus applicable taxes, incurred to implement the Notice Program.

2.30 “**Notice Program**” means a reasonable notice program for preparing and distributing the Settlement Class Notices as approved by the Approval Courts.

2.31 “**Objection Deadline**” means the deadline by which a Settlement Class Member’s objection to the Settlement Agreement must be received by the Opt-Out / Objection Administrator in order to be timely and valid. The Objection Deadline shall be the same date as the Opt-Out Deadline.

- 2.32 “**Opt-Out Deadline**” means the last day that a Settlement Class Member may opt out of the Settlement Class, which is **forty-five (45) days after the latest date when a Pre-Approval Order becomes effective**. The Opt-Out Deadline shall be the same date as the Objection Deadline.
- 2.33 “**Opt-Out / Objection Administrator**” means a third-party agreed to by the Parties and appointed by the Courts to receive and report on opt-outs and objections as set forth in Section 9. The Parties agree that Epiq shall serve as the Opt-Out / Objection Administrator, subject to approval by the Approval Courts in the Actions.
- 2.34 “**Original In-Service Date**” means the earliest date that an Eligible Vehicle was originally leased or sold to a retail customer; or, if the Eligible Vehicle was first placed into service as a “demonstrator” or “company” car, on the date such Eligible Vehicle was first placed into service..
- 2.35 “**Parties**” means VW and Settlement Class Representatives, collectively.
- 2.36 “**Pre-Approval Notice**” means the English and French versions of the summary and long-form notices described in Section 8.2 and substantially in the forms attached hereto as Exhibit 2 and Exhibit 3, respectively.
- 2.37 “**Pre-Approval Notice Date**” means the date on which the Pre-Approval Notice in summary form is first disseminated in accordance with Section 8.2.

2.38 **“Pre-Approval Orders”** means a Court’s order certifying / authorizing the Settlement Class for settlement purposes only and approving the Pre-Approval Notice and Notice Program.

2.39 **“Proof of Adherence to the Vehicle’s Maintenance Schedule”** shall mean submission of documents evidencing the Settlement Class Member’s adherence to the relevant aspects of their Eligible Vehicle’s maintenance schedule, set forth in the Warranty and Maintenance Booklet for the vehicle, during the time he/she owned and/or leased the vehicle, up to the date/mileage of repair or replacement, within a variance of ten percent (10%) of the scheduled time/mileage requirements. In the event maintenance records cannot be obtained despite a good faith effort to obtain them, the Settlement Class Member may submit a sworn Declaration detailing what efforts were made to obtain the records, including why the records are not available, and attesting to adherence to the Eligible Vehicle’s maintenance schedule as set forth above. In the event the Claims Administrator makes a preliminary determination that the proof submitted is insufficient, the Claims Administrator will send the Class Member a letter advising of the deficiencies. The Class Member will have thirty (30) days after receipt of the letter to cure the deficiencies or the claim will be rejected, unless the Class Member requests to dispute the decision within thirty (30) days after receiving the rejection letter. Upon such request, Class Counsel and VW will meet and confer to resolve the disputed claims.

2.40 **“Proof Of Ownership”** means, except as otherwise provided by the Claims Administrator, (a) in the case of an owner or previous owner of an Eligible Vehicle, a copy of the vehicle’s registration certificate, registration history or bill(s) of sale, and (b) in the case of an Eligible Vehicle leased from VCCI, a copy of the lease agreement with VCCI relating to the vehicle.

2.41 **“Proof of Repair Expense”** shall take the form of an original or legible copy of a receipt, invoice or other record, or some combination thereof, identifying the date of repair, the make, model and VIN of the Eligible Vehicle, the mileage of the vehicle at the time of repair, the dealer or other facility that performed the repair, a description of the work performed, including a breakdown of parts and labour costs, and proof of the sum of money paid by (or on behalf of) the Settlement Class Member, for a repair or replacement for which reimbursement is available under the terms of this Settlement, or such other satisfactory proof on the recommendation of the Claims Administrator. If reimbursement is sought for a damaged or failed engine due to a timing chain tensioner and/or timing chain failure under the terms of this Settlement, the Proof of Repair Expense should show that the engine damage or failure that required repair/replacement was due to a failure of the timing chain tensioner and/or timing chain. In the event the Claims Administrator makes a preliminary determination that the documentary proof submitted is insufficient, the Claims Administrator will send the Class Member a letter advising of the deficiencies. The

Class Member will have thirty (30) days to cure the deficiencies or the claim will be rejected, unless the Class Member requests to dispute the decision within thirty (30) days after the Claims Administrator's mailing of the rejection letter. Upon such request, Class Counsel and VW will meet and confer to resolve the disputed claims.

2.42 **“Québec Settlement Class”** means all Settlement Class Members whose Eligible Vehicles are identified based on reasonably available information as having been registered in Québec as of the date their claim for benefits is submitted to the Claims Administrator.

2.43 **“Related Actions”** means

(a) Julie Tremblay v Volkswagen Group Canada Inc. et al., with Court File No. 500-06-000868-170; and

(b) Blaine Covill v Volkswagen Group Canada Inc. et al., with Court File No. QBG 2749 of 2016.

2.44 **“Related Action Plaintiffs”** means the representative plaintiffs in the Actions, being Shawn Panacci, Julie Tremblay and Blaine Covill.

2.45 **“Released Claims”** has the definition set forth in Section 5.3.

2.46 **“Released Parties”** has the definition set forth in Section 5.2.

2.47 **“Releasing Parties”** has the definition set forth in Section 5.3.

- 2.48 **“Settlement Agreement”** means this settlement agreement, including its schedules, exhibits and any supplemental agreements, as amended and approved.
- 2.49 **“Settlement Approval Date”** means the date on which the last Approval Order is issued.
- 2.50 **“Settlement Approval Hearing”** means the hearing before an Approval Court for the purpose of determining whether to issue an Approval Order.
- 2.51 **“Settlement Class”** means, for purposes of this Settlement Agreement only, a class of all persons (including individuals and entities), except for Excluded Persons, who (a) are registered owners or lessees of, or, in the case of Non-VW Dealers, hold title to or hold by bill of sale, an Eligible Vehicle; or (b) were registered owners or lessees of, or, in the case of Non-VW Dealers, held title to or held by bill of sale, an Eligible Vehicle.
- 2.52 **“Settlement Class Member”** means a member of the Settlement Class.
- 2.53 **“Settlement Class Notices”** means the English and French versions of the Pre-Approval Notice, Approval Notice, and any other notice provided for in the Notice Program.
- 2.54 **“Settlement Class Release”** means the release and waiver by Settlement Class Members described in Section 5 that will take effect upon entry of the Approval Orders in the Actions.

- 2.55 “**Settlement Class Representative**” means the following representative plaintiffs named in the Actions: Shawn Panacci, Blaine Covill, and Julie Tremblay.
- 2.56 “**Settlement Website**” means, collectively, the public Internet websites described in Section 8.5, to which the Pre-Approval Notice and / or Approval Notice may be posted.
- 2.57 “**Timing Chain System Matter**” means the allegations in the Actions, including any and all claims that were or could have been brought in the Actions relating to the Timing Chain System in Eligible Vehicles, which are denied by VW.
- 2.58 “**Timing Chain System**” means the system materially comprised of the timing chain tensioner, timing chain, chain sprockets, guide rails and tensioning rail.
- 2.59 “**Totalled Vehicle**” means an Eligible Vehicle whose title was transferred to an insurance company because the Eligible Vehicle was totalled or appraised as a total loss.
- 2.60 “**VCCI**” means the corporation incorporated under the laws of Canada as VW Credit Canada, Inc. / Crédit VW Canada, Inc., including VW Credit Canada, Inc. / Crédit VW Canada, Inc. doing business as Volkswagen Finance and Audi Finance.
- 2.61 “**VIN**” means a vehicle identification number.

2.62 “**VW**” means, individually and collectively, Volkswagen Group Canada Inc., VW Credit Canada, Inc., Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Volkswagen de México S.A. de C.V., Audi of America Inc. (not a legal entity), Audi of America LLC, Audi Canada Inc. and Audi Aktiengesellschaft.

3. APPROVAL OF THE SETTLEMENT AGREEMENT AND CERTIFICATION / AUTHORIZATION FOR SETTLEMENT PURPOSES

3.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit the Settlement Agreement to the Approval Courts pursuant to a motion for a Pre-Approval Order.

3.2 It is expressly agreed that any future motion for certification / authorization of the Settlement Class, and any motion for a Pre-Approval Order seeking same, shall be for settlement purposes only.

3.3 The motion for a Pre-Approval Order submitted to each Approval Court shall seek a Pre-Approval Order that is conditional upon a complementary Pre-Approval Order being made by the other Approval Court.

3.4 The Parties and their successors, assigns and counsel agree to take all actions and steps reasonably necessary to obtain Approval Orders in the Actions by December 31, 2019. The motion for an Approval Order submitted to each of the Approval Courts shall seek an Approval Order that is conditional upon an Approval Order being made by the other Approval Courts. Without limiting the generality of the foregoing,

Counsel for the Parties shall bring motions for the Approval Orders by December 31, 2019.

3.5 This Settlement Agreement shall be null and void and of no force and effect unless Approval Orders are granted by the Approval Courts and the Effective Date occurs.

4. CLAIMS TO BE COMPENSATED BY THE SETTLEMENT

4.1 Volkswagen Group Canada Inc. ("**VGCA**") will provide consideration to Eligible Claimants for Claims or Claims for Reimbursement made pursuant to and in accordance with the terms of this Settlement Agreement as outlined below.

4.2 Extended Warranty

4.2.1. Effective on the Effective Date, VGCA will extend its New Vehicle Limited Warranties applicable to the Eligible Vehicles to cover Eligible Vehicle timing chain and timing chain tensioner repairs or replacement, by an Authorized VW Dealer, during a period of ten (10) years or one hundred sixty thousand (160,000) kilometres from the Original In-Service Date of the Eligible Vehicle (whichever occurs first), provided that the Settlement Class Member submits, to the dealer, Proof of Adherence to the Vehicle's Maintenance Schedule (hereinafter, the "**Extended Warranty**"). The Extended Warranty will include (a) the timing chain and timing chain tensioner and all Covered Parts and

Labour, and (b) subject to the time/mileage parameters and percentage of reimbursement limits in Schedule A and exclusions in section 4.2.3, repairs to the engine (including parts and labour) performed by an Authorized VW Dealer to an Eligible Vehicle due to the failure of the Timing Chain and/or Timing Chain Tensioner within the above Extended Warranty period.

4.2.2. The Extended Warranty is subject to the same terms and conditions and limitations set forth in the Eligible Vehicle's New Vehicle Limited Warranty and Warranty Information Booklet, except that repairs under this subsection of the Settlement Agreement are permissible pursuant to the terms and time and mileage limitations herein.

4.2.3. Failure to adhere to the conditions and limitations set forth in the Eligible Vehicle's New Vehicle Limited Warranty and Warranty Information Booklet, such as damage resulting from abuse, alteration or modification, a collision or crash, vandalism and/or other impact, shall result in the Eligible Vehicle being excluded and not covered by the Extended Warranty.

4.2.4. The Extended Warranty will apply to all Eligible Vehicles irrespective of whether the vehicle has been repaired on or before the Effective Date of the Settlement but is subject to the Settlement Agreement being finally approved by the Approval Courts.

4.2.5. The Extended Warranty is fully transferable to subsequent owners.

4.2.6. If the timing chain or timing chain tensioner fails more than twenty (20) days after the Approval Notice and within 10 years or 160,000 kilometres from the Original In-Service Date of the Eligible Vehicle (whichever occurs first), the Settlement Class Member must take the vehicle to an Authorized VW Dealer for repair pursuant to the terms of the Extended Warranty.

4.3 Reimbursement for Out-of-Pocket Expenses, Prior to the Effective Date, for Repair and/or Replacement of a Failed Timing Chain or Timing Chain Tensioner

4.3.1. Timing Chain Tensioner Repair/Replacement

4.3.1.1. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever occurs first), the timing-chain tensioner was repaired or replaced at an Authorized VW Dealer as a result of a failure, the Settlement Class Member will receive a one-hundred percent (100%) refund of the paid dealer invoice amount, including applicable taxes, for Covered Parts and Labour, subject to the exclusions set forth in section 4.2.3.

4.3.1.2. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever

occurs first), the timing chain tensioner was repaired or replaced at a Non-VW Dealer as a result of a failure, the Settlement Class Member will receive a refund of the paid invoice amount for Covered Parts and Labour, including applicable taxes, but no more than \$1,430, subject to the exclusions set forth in section 4.2.3.

4.3.2. Timing Chain Repair/Replacement

4.3.2.1. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever occurs first), the timing chain was repaired or replaced at an Authorized VW Dealer as a result of a failure, the Settlement Class Member will receive a one-hundred percent (100%) refund of the paid dealer invoice amount for Covered Parts and Labour, including applicable taxes, subject to the exclusions set forth in section 4.2.3.

4.3.2.2. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever occurs first), the timing chain was repaired or replaced at a Non-VW Dealer as a result of a failure, the Settlement Class Member will receive a refund of the invoice for Covered Parts and Labour, including

applicable taxes, but no more than \$1,950, subject to the exclusions set forth in section 4.2.3.

4.3.2.3. Where the timing chain is replaced, the reimbursement coverage includes oil change, oil filter, and cleaning of oil pan, which includes reimbursement to Settlement Class Members for payments previously made for these items in connection with a timing chain repair or replacement.

4.3.3. Simultaneous Timing Chain and Timing Chain Tensioner Repair/Replacement

4.3.3.1. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever occurs first) the timing chain and timing chain tensioner were both simultaneously repaired or replaced at an Authorized VW Dealer as a result of a failure, the Settlement Class Member will receive a one-hundred percent (100%) refund of the paid dealer invoice amount for Covered Parts and Labour, including applicable taxes, subject to the exclusions set forth in section 4.2.3.

4.3.3.2. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever

occurs first) the timing chain and timing chain tensioner were both simultaneously repaired or replaced at a Non-VW Dealer as a result of a failure, the Settlement Class Member will receive a refund of the invoice for Covered Parts and Labour, including applicable taxes, but no more than \$2,600, subject to the exclusions set forth in section 4.2.3.

4.3.4. Limitations to Reimbursement of Out-of-Pocket Expenses for Repair and/or Replacement of a Failed Timing Chain or Timing Chain Tensioners.

4.3.4.1. Any reimbursement will be reduced by goodwill or other concession paid by VW or any other entity (including insurers and providers of extended warranties). There shall be no reimbursement if the Settlement Class Member received replacement or repair without charge.

4.3.4.2. VW will not be responsible for, and will not warrant, repair/replacement work performed at a Non-VW Dealer. If the replacement Covered Parts, purchased by the customer or the Non-VW Dealer from an Authorized VW Dealer fails within one (1) year or 20,000 kilometres of installation (whichever occurs first), VGCA will provide a free replacement of the Covered Parts only.

4.3.4.3. Reimbursement is subject to time/mileage limits of 10 years or 160,000 kilometres from the Original In-Service Date of an Eligible Vehicle (whichever occurs first).

4.3.5. Required Proof for Reimbursement

4.3.5.1. In order to obtain the benefits provided for in this section, the Settlement Class Member must provide both (A) Proof of Repair Expense and (B) Proof of Adherence to the Vehicle's Maintenance Schedule.

4.4 Reimbursement for Out-of-Pocket Expenses to Repair or Replace Damaged or Failed Engine Caused by Timing Chain Tensioner and/or Timing Chain Failure.

4.4.1. If, within 10 years or 160,000 kilometres from the Eligible Vehicle's Original In-Service Date (whichever occurs first), the engine was repaired or replaced at an Authorized VW Dealer and the damage to the engine that required repair or replacement was caused by a timing chain and/or timing chain tensioner failure, the Settlement Class Member will receive a refund of the invoice amount, including applicable taxes, subject to the time/mileage parameters and percentage of reimbursement limits in Schedule A and the exclusions set forth in section 4.2.3.

4.4.2. If the engine was repaired or replaced at a Non-VW Dealer, the maximum reimbursement amount is \$8,450, including applicable taxes, subject to the time/mileage parameters and percentage of reimbursement limits in Schedule A and the exclusions set forth in section 4.2.3.

4.4.3. **Limitations to Reimbursement for Out-of-Pocket Expenses for Damaged or Failed Engines**

4.4.3.1. Any reimbursement will be reduced by goodwill or other concession paid by an Authorized VW Dealer or any other entity (including insurers and providers of extended warranties). There shall be no reimbursement if customer received replacement or repair without charge.

4.4.3.2. VW will not be responsible for, and will not warrant, repair or replacement work performed at a Non-VW Dealer. If the replacement Covered Parts, purchased by the customer or the Non-VW Dealer from an Authorized VW Dealer fails within one (1) year or 20,000 kilometres of installation (whichever occurs first), VGCA will provide a free replacement of the Covered Parts only.

4.4.3.3. Any replacement engine will be subject to the warranty terms and conditions accompanying that replacement

engine. Nothing in the Settlement Agreement modifies that warranty.

4.4.4. **Required Proof for Reimbursement**

4.4.4.1. In order to obtain the benefits provided for in this section, the Settlement Class Member must provide both (A) Proof of Repair Expense and (B) Proof of Adherence to the Vehicle's Warranty and Maintenance Schedule.

4.5 **Other Provisions.**

4.5.1. **Canadian Dollars.** All dollar amounts referred to in this Settlement Agreement are in Canadian dollars, unless expressly provided otherwise. All payments made to Eligible Claimants will be paid in Canadian dollars.

4.5.2. **Deceased, Dissolved, Incapacitated or Bankrupt Eligible Claimants.** In the event of an Eligible Claimant's death, dissolution, incapacity or bankruptcy (whether discharged or ongoing), and upon satisfactory proof thereof, the Claims Administrator shall grant, where possible and in accordance with applicable law, the Eligible Claimant's benefits to that Eligible Claimant's estate or legal representative.

5. RELEASE AND WAIVER

5.1 The Parties agree to the following Settlement Class Release that shall take effect upon entry of the Approval Orders in the Actions.

5.2 **Released Parties.** “**Released Parties**” means any person who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for the Timing Chain System Matter. The Released Parties include, without limitation, (a) Volkswagen Aktiengesellschaft, Audi Aktiengesellschaft, Volkswagen Group Canada Inc., Audi Canada Inc., Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.), Volkswagen Group of America Chattanooga Operations, LLC, Volkswagen de México S.A. de C.V., Audi of America, LLC, VW Credit Canada, Inc., VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC, and any former, present and future owners, shareholders, directors, officers, employees, affiliates, parent companies, subsidiaries, predecessors, lawyers, agents, insurers, representatives, successors, heirs and assigns (individually and collectively, “**VW Released Entities**”); (b) any and all contractors, subcontractors and suppliers of / to the VW Released Entities; (c) any and all persons and entities indemnified by any VW Released Entity with respect to the Timing Chain System Matter; (d) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion or distribution of any Eligible Vehicle or Timing Chain System, even if such

persons are not specifically named in this Section, including without limitation all Authorized VW Dealers and non-authorized dealers and sellers; (e) Claims Administrator; (f) Notice Administrator; (g) Opt-Out / Objection Administrator; (h) lenders, creditors, financial institutions or any other parties that financed any purchase or lease of an Eligible Vehicle; and (i) for each of the foregoing, their respective former, present and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, lawyers, assigns, principals, officers, directors, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers and suppliers.

5.3 Settlement Class Release. In consideration of the Settlement Agreement, Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, lawyers, representatives, shareholders, owners associations and any other legal or natural persons who may claim by, through, or under them (individually and collectively, the “**Releasing Parties**”), fully, finally, irrevocably and forever release, waive, discharge, relinquish, settle and acquit any and all claims, demands, actions or causes of action, whether known or unknown, that they may have, purport to have, or may have hereafter against any Released Party, arising out of or in any way related to the Timing Chain System Matter and/or to the

Timing Chain System. This Settlement Class Release applies to any and all claims, demands, actions or causes of action of any kind or nature whatsoever, whether in law or in equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or noncontingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to the Timing Chain System Matter and/or the Timing Chain System, including without limitation any claims that were or could have been asserted in the Actions (individually and collectively, the “**Released Claims**”). This Settlement Class Release applies without limitation to any and all such claims, demands, actions or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and / or equitable theories under any federal, provincial, territorial, municipal, local, tribal, administrative or international law, statute, ordinance, code, regulation, contract, common law, equity or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud or any other legal or equitable theory, whether existing now or arising in the future, that arise from or in any way relate to the Released Claims. Notwithstanding the foregoing, this Settlement Agreement does not release any claims for wrongful death or personal injury.

5.4 No Settlement Class Member shall recover, directly or indirectly, any sums for Released Claims from the Released Parties, other than sums received under the Settlement Agreement, and the Released Parties shall have no obligation to make any payments to any non-parties for liability arising out of Released Claims by operation of this Settlement Agreement.

5.5 **Possible Future Claims.** For the avoidance of doubt, Settlement Class Members expressly understand and acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, related to the Released Claims, the Actions and / or the Settlement Class Release. Nevertheless, it is the intention of Class Counsel and the Settlement Class Representatives in executing this Settlement Agreement to fully, finally, irrevocably and forever release, waive, discharge, relinquish, settle and acquit all such matters, and all claims relating thereto which exist, hereafter may exist or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims.

5.6 **Covenant Not to Sue.** Notwithstanding Section 5, for any Settlement Class Member resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead irrevocably covenant not to sue the Released Parties, or any of them, including on a joint and

several liability basis, and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Released Parties, or any of them for, in respect of, or in relation to the Released Claims, or any of them.

5.7 Actions or Proceedings Involving Released Claims. Settlement Class Members expressly agree that the Settlement Class Release, and the Approval Orders, are, will be and may be raised as a complete defence to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Settlement Class Release whether in Canada or elsewhere. Settlement Class Members shall not now or hereafter institute, maintain, prosecute, assert and / or cooperate in the institution, commencement, filing or prosecution of any suit, action and / or other proceeding, whether in Canada or elsewhere, against the Released Parties with respect to the claims, causes of action and / or any other matters subject to the Settlement Class Release. To the extent that they have initiated, or caused to be initiated, any suit, action or proceeding not already encompassed by the Actions, whether in Canada or elsewhere, Settlement Class Members shall cause such suit, action or proceeding to come to an end, including with prejudice where available, consistent with Section 12.1. If a Settlement Class Member commences, files, initiates or institutes any new legal action or other proceeding for any Released Claim against any Released Party in any federal, state, provincial or territorial court, arbitral tribunal, or administrative or other forum, whether in Canada or elsewhere, (a) such

legal action or other proceeding shall, at that Settlement Class Member's cost, be brought to an end, including with prejudice where available, consistent with Section 12.1; and (b) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Settlement Class Member arising as a result of that Settlement Class Member's breach of his, her or its obligations under this Settlement Class Release. Notwithstanding the foregoing, this Section does not apply to preclude the continuation of any suit, action or proceeding, whether in Canada or elsewhere, as to any claim that is not a Released Claim.

5.8 Ownership of Released Claims. The Settlement Class Representatives and Related Action Plaintiffs represent and warrant that they are the sole and exclusive owners of any and all claims that they personally are releasing under this Settlement Agreement. The Settlement Class Representatives and Related Action Plaintiffs further acknowledge that, except as provided in Section 4.5.2, they have not assigned, pledged or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Released Claims, including without limitation, any claim for benefits, proceeds or value under the Actions, and that the Settlement Class Representatives and Related Action Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which they may be entitled as a result of the Released Claims. Settlement Class Members

submitting a Claim shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement Agreement and that, except as provided in Section 4.5.2, they have not assigned, pledged or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim in the Actions arising out of or in any way whatsoever pertaining to the Released Claims, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Settlement Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which those Settlement Class Members may be entitled as a result of the Released Claims.

5.9 Total Satisfaction of Released Claims. Any benefits pursuant to the Settlement Agreement are (a) in full, complete and total satisfaction of all of the Released Claims against the Released Parties, and (b) sufficient and adequate consideration for each and every term of the Settlement Class Release. The Settlement Class Release shall be irrevocably binding upon the Settlement Class Representatives and all Settlement Class Members.

5.10 Release Not Conditioned on Claim or Payment. The Settlement Class Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members, regardless of whether those

Settlement Class Members ultimately file a Claim or receive compensation under this Settlement Agreement.

5.11 **Basis for Entering Release.** Class Counsel acknowledge that they have conducted sufficient independent investigation and recommend the approval of this Settlement Agreement to the Approval Courts and that they execute this Settlement Agreement freely, voluntarily and without being pressured or influenced by, or relying on any statements, representations, promises or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement. The Settlement Class Representatives agree and specifically represent and warrant that they have discussed with Class Counsel the terms of this Settlement Agreement and have received legal advice with respect to the advisability of entering into this Settlement Agreement and the Settlement Class Release, and the legal effect of this Settlement Agreement and the Settlement Class Release. The representations and warranties made throughout the Settlement Agreement shall survive the execution of the Settlement Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of the Parties.

5.12 **Material Term.** The Settlement Class Representatives and Class Counsel hereby agree and acknowledge that this Section 5 was separately bargained for and constitutes a key, material term of the Settlement

Agreement that shall be reflected in the Approval Orders. The failure of either of the Approval Courts to approve this Settlement Agreement, the Settlement Class Release, the covenant not to sue in Section 5.6, and the dismissals and other terminations of proceedings involving Released Claims contemplated in Section 12.1, or if either of the Approval Courts approve any of them in a materially modified form from that contemplated herein, shall give rise to a right of termination by VW or the Settlement Class Representatives, through Class Counsel, pursuant to Section 11.3.

5.13 Reservation of Claims. This Settlement Agreement shall resolve the claims of Settlement Class Members only as they relate to the Released Claims. The Parties reserve all rights to litigate liability and equitable relief of any sort for any subset of vehicles, purchasers, or lessees not expressly covered by this Settlement Agreement.

5.14 No Admission of Liability. The Settlement Class Representatives, Class Counsel, the Settlement Class and the Releasing Parties agree, whether or not this Settlement Agreement is approved, terminated or otherwise fails to take effect for any reason, that this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any

wrongdoing or liability by any of the Released Parties, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed against VW by, or on behalf of, the Settlement Class Representatives, Settlement Class or any class that may be certified or authorized in the Actions.

5.15 Settlement Agreement Not Evidence. The Settlement Class Representatives, Class Counsel and the Settlement Class agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve, implement and / or enforce this Settlement Agreement, or as otherwise required by law or as provided in this Settlement Agreement.

6. CLAIMS PROGRAM ADMINISTRATION

6.1 VW's obligation to implement the Claims Program in accordance with this Settlement Agreement is and shall be contingent upon each of the following:

6.1.1. Entry of the Approval Orders;

6.1.2. The occurrence of the Effective Date; and

6.1.3. The satisfaction of any other conditions set forth in this Settlement Agreement.

6.2 **Claims Program.** Subject to Section 6.1, the Claims Program will begin as soon as reasonably practicable after the Effective Date. The Claims Program involves four steps, as further described in Schedule B. At Step 1, Settlement Class Members will obtain information about the options available to them. At Step 2, once a Settlement Class Member is ready to submit a Claim, the Settlement Class Member will, by the Claims Period Deadline, submit a Claim Form to the Claims Administrator, by mail or by courier, email, or through other channels identified at VW's discretion, that contains certain information about the Settlement Class Member's Eligible Vehicle along with required documentation. The Claim Form shall require a Claimant to sign, whether electronically or by hand, and declare that information and material submitted is true and correct based on knowledge and belief. At Step 3, the Settlement Class Member's eligibility or ineligibility to participate in the Claims Program will be determined by the Claims Administrator, and an offer will be made if the Settlement Class Member is deemed an Eligible Claimant. At Step 4, Eligible Claimants will receive their benefits under the Settlement Agreement. The process for submitting a Claim is designed to be as simple and convenient to Settlement Class Members as possible, consistent with the integrity of the Claims Program.

6.3 Claims Administrator. The Claims Administrator will oversee the implementation and administration of the Claims Program, including verification and determination of Claim eligibility and approval of offers and payments to Eligible Claimants. The Claims Administrator's duties include, but are not limited to: (a) administering the Claims Program; (b) management of communications with Settlement Class Members regarding the Claims Program, (c) forwarding written inquiries to Class Counsel for a response, if warranted; (d) managing the meet and confer and appeals process as set out in Sections 2.39 and 2.41; (e) issuing and, where appropriate, reissuing payments on Claims to Eligible Claimants; and (f) monitoring the amounts of uncashed cheques paid to Eligible Claimants. The Claims Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Settlement Agreement, deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Settlement Agreement. This shall include the authority to deny Claims that frustrate the spirit of the Settlement Agreement.

6.4 Payment of Claims. Payments of Claims made to Eligible Claimants may be made by cheque or, if offered by VW at its sole discretion and requested by an Eligible Claimant, electronic funds transfer.

6.5 Reporting. The Claims Administrator will prepare periodic reports on the progress and status of the Claims Program that will be provided to VW

and Class Counsel. Unless otherwise reasonably requested by VW or Class Counsel, the Claims Administrator shall provide its first report one month after the commencement of the Claims Program, and every month thereafter for the next five (5) months, and every three (3) months thereafter. These reports will include information sufficient to allow VW and Class Counsel to assess the Claims Program's progress. When the Claims Program is concluded, the Claims Administrator will also provide a report to VW and Class Counsel concerning any cheques for payment of Claims that remain uncashed.

6.6 No materials submitted by any Claimant will be returned to such Claimant.

The Claims Administrator shall be permitted to dispose of any materials submitted by a Claimant once it is determined that no appeal may be filed, the time limit for filing a dispute under Sections 2.39 and 2.41 have expired or any dispute has been resolved.

6.7 Any personal information acquired as the result of this Settlement Agreement shall be used solely for purposes of evaluating and paying Claims under this Settlement Agreement. All information relating to the Claims Program and processing is confidential and proprietary and shall not be disclosed, except as necessary to the Claims Administrator, VW, Class Counsel and the Courts in accordance with the terms of this Settlement Agreement, and as required by legal process. The Claims Administrator shall take measures to prevent unauthorized access to personal information it obtains under this Settlement Agreement, as well

as to prevent the loss, destruction, falsification, and leakage of such personal information. VW and the Claims Administrator shall respond immediately with appropriate measures when issues arise related to the confidentiality of a Settlement Class Member's information.

7. COOPERATION TO ANNOUNCE AND IMPLEMENT THE SETTLEMENT

7.1 The Parties will cooperate in the preparation of a joint press release announcing the Settlement Agreement.

7.2 The Parties agree to make all reasonable efforts to ensure the timely and expeditious administration and implementation of the Settlement Agreement and to ensure that the costs and expenses incurred are reasonable.

7.3 The Parties and their successors, assigns and counsel undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement. Counsel for VW and Class Counsel shall, upon the request of the other, meet and confer by telephone to discuss the implementation of this Settlement Agreement and to attempt to resolve any issues raised by the Parties, Settlement Class Members or Claims Administrator.

7.4 The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

7.5 In the event that the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to implement the terms of this Settlement Agreement, VW and Class Counsel may seek the assistance of the Courts to resolve such matters.

8. NOTICE OF THE SETTLEMENT AGREEMENT

8.1 VW and Class Counsel agree that reasonable notice shall be given to the Settlement Class pursuant to orders of the Approval Courts that so provide. To distribute such notice, VW and Class Counsel have agreed to engage the Notice Administrator to advise them with respect to the Notice Program. Settlement Class Notices shall include, but not be limited to, the dissemination of Pre-Approval Notice as set forth in Section 8.2. The Notice Program and mechanisms for distributing the Settlement Class Notices shall be subject to approval of the Approval Courts. The reasonable costs of this notice, as satisfactory to VW, shall be paid by VGCA.

8.2 **Pre-Approval Notice.** Summary notices in English and French shall be published in accordance with the directions of the Approval Courts in their Pre-Approval Orders. Summary notices, substantially in the form attached as Exhibit 2, shall also be mailed, by prepaid regular mail, to all potential Settlement Class Members (i) for whom VW has a valid mailing address, and (ii) who have contacted Class Counsel and

provided only a mailing address as their contact information. A long-form notice, substantially in the form attached to as Exhibit 3 to this Settlement Agreement, may also be posted to the Settlement Website.

- 8.3 Notice Expenses (including, without limitation, costs of printing, mailing and postage) shall be paid by VGCA. VW shall have the right to monitor, inspect, and audit such costs.
- 8.4 The Notice Administrator shall, seven (7) days before the first scheduled Settlement Approval Hearing, serve on VW and Class Counsel and file with the Courts proof, by affidavit, of the mailings described in Section 8.2.
- 8.5 **Settlement Website.** If Pre-Approval Orders are granted by the Approval Courts, VW and Class Counsel shall promptly thereafter cause public Internet websites in English and French concerning the Settlement Agreement to be established. The websites shall be maintained during the Claims Period. The Internet addresses of the websites shall be included in published and delivered notices. The websites shall provide information in English and French about the Settlement Agreement, including (a) the Opt-Out Deadline, the Objection Deadline, submitting a Claim and the dates of relevant Court proceedings, including the Settlement Approval Hearings; and (b) copies of the Settlement Agreement with signatures redacted, Pre-Approval Notice and other Settlement Class Notices, and Claim Form. The costs associated with establishing and maintaining the websites shall be paid by VGCA.

9. SETTLEMENT CLASS MEMBERS' RIGHT TO OPT OUT AND OBJECT

9.1 The Courts will appoint the Opt-Out / Objection Administrator to receive any written elections to opt out of the Settlement Class and objections to the Settlement Agreement.

9.2 Elections to opt out of the Settlement Class and objections to the Settlement Agreement must be received by the Opt-Out / Objection Administrator by mail, courier or e-mail on or before the Opt-Out Deadline or Objection Deadline, as applicable:

By mail or courier to: Epiq Class Action Services Canada Inc.
Attention: Volkswagen/Audi Timing Chain
Canadian Settlement Claims Administrator
P.O. Box 507 STN B
Ottawa, ON, K1P 5P6

By email to: info@timingchainsettlement.ca

9.3 All written elections to opt out of the Settlement Class and objections to the Settlement Agreement shall be personally signed by the potential Settlement Class Member and shall include the following:

9.3.1. The potential Settlement Class Member's name, mailing address, telephone number and e-mail address (if applicable);

9.3.2. The brand, model, model year and VIN of the proposed Eligible Vehicle;

9.3.3. A statement that the potential Settlement Class Member elects to be excluded from the Settlement Class, or a brief statement of

the nature of and reason for the objection to the Settlement Agreement, as applicable;

9.3.4. If the potential Settlement Class Member elects to be excluded from the Settlement Class, a copy of his, her or its Proof Of Ownership; and

9.3.5. If objecting to the Settlement Agreement, whether the potential Settlement Class Member intends to appear in person or by counsel at the Settlement Approval Hearing in Toronto, Ontario or the Settlement Approval Hearing in Montréal, Québec, and if appearing by counsel, the name, address, telephone number and e-mail address of counsel.

9.4 Notwithstanding Section 9.3, if potential Settlement Class Members are deceased, a minor or otherwise incapable of making their own written objection to the Settlement Agreement, the information required by Section 9.3 must be provided along with the contact information of the person acting on behalf of the potential Settlement Class Member, together with a copy of the power of attorney, court order or other authorization serving as the proposed basis for permitting such person to represent the potential Settlement Class Member. A power of attorney will not be recognized as valid by the Opt-Out / Objection Administrator in the place of a signature of a potential Settlement Class Member, except in the circumstances set out in this Section.

- 9.5 Potential Settlement Class Members who elect to opt out of the Settlement Class may re-elect in writing to become potential Settlement Class Members, if their re-election request is received by the Opt-Out / Objection Administrator on or before the Opt-Out Deadline or, thereafter, only by agreement of the Parties or order of the applicable Approval Court depending on whether they claim to be potential members of the National Settlement Class or the Québec Settlement Class.
- 9.6 Any potential Settlement Class Member who elects to opt out of the Settlement Class may not also object to the Settlement Agreement, subject to Section 9.5. If a potential Settlement Class Member elects to opt out of the Settlement Class and objects to the Settlement Agreement, the opt out election shall supersede the objection and the objection shall be deemed withdrawn.
- 9.7 **Consequences of Failure to Opt Out in a Timely and Proper Manner.** All Settlement Class Members who do not timely and properly opt out of the Settlement Class will, in all respects, be bound as of the Effective Date by all terms of this Settlement Agreement, as approved by the Approval Courts.
- 9.8 The Opt-Out / Objection Administrator will provide copies of all opt-out elections and objections to VW and Class Counsel within three (3) days of the Opt-Out Deadline. Wherever reasonably possible, such copies shall be provided in electronic form and in a manner that minimizes the

Opt-Out / Objection Expenses. In the event that any deficiencies in opt-out elections or objections are identified by the Opt-Out / Objection Administrator, the Opt-Out / Objection Administrator will contact the Parties to address any such issues.

- 9.9 The Opt-Out / Objection Administrator shall, seven (7) days before the first scheduled Settlement Approval Hearing, serve on VW and Class Counsel and file with the Courts an affidavit reporting on the number of opt-out elections and re-elections received on or before the Opt-Out Deadline, and compile all of the written objections received on or before the Objection Deadline.

10. CLASS COUNSEL FEES AND PAYMENTS TO CLASS REPRESENTATIVES

- 10.1 **Class Counsel Fees and Expenses.** VW agrees to pay Counsel Fees that will become payable within thirty (30) days following the later of (a) the date when the Courts' orders on Counsel Fees to be paid by VW in the Actions become final and non-appealable; and (b) the date when the Courts' Approval Orders in the Actions become final and non-appealable. To the extent of the amount of Counsel Fees approved by the Courts or on appeal therefrom, VW will not receive credit for such amounts against obligations to Settlement Class Members under this Settlement Agreement and the Approval Courts' Approval Orders. It is further acknowledged as follows:

- 10.1.1. VW will not oppose a payment to Class Counsel of up to \$2,131,884.21, representing a counsel fee of \$1,925,706.78,

disbursements of \$192,844.43 and an honoraria to representative plaintiffs in the Actions of \$13,333 to be split between them. VW agrees to pay the amount approved by the Court up to a maximum of \$2,131,884.21.

- 10.1.2. VW reserves the right to challenge any request by Class Counsel for an award of counsel fees and costs that exceeds any negotiated amount of Counsel Fees that VW has agreed to pay.

11. MODIFICATION OR TERMINATION OF THE SETTLEMENT AGREEMENT

11.1 The terms and provisions of this Settlement Agreement may be amended, modified or expanded by written agreement of the Parties and approval of the Courts provided, however, that after entry of the Approval Orders, the Parties may by written agreement effect such amendments, modifications or expansions of this Settlement Agreement and its implementing documents (including all schedules and exhibits hereto) without further notice to the Settlement Class or approval by the Approval Courts if such changes are consistent with the Approval Orders and do not limit the rights of Settlement Class Members under this Settlement Agreement.

11.2 Any unintended conflicts within the Settlement Agreement shall not be held against any of the Parties, but shall instead be resolved by agreement of the Parties with, if necessary, the aid of the Approval Courts and / or, by agreement of VW and Class Counsel.

11.3 This Settlement Agreement shall terminate at the discretion of either VW or the Settlement Class Representatives, through Class Counsel, if: (a) a Court, or any appellate court therefrom, rejects, modifies or denies approval of any material portion of this Settlement Agreement (with the exception of the timing of the Settlement Class Notices, Opt-Out Deadline or Objection Deadline); or (b) a Court, or any appellate court therefrom, does not enter or completely affirm, or alters, narrows or expands, any material portion of an Approval Order (with the exception of the timing of the Settlement Class Notices, Opt-Out Deadline or Objection Deadline). The terminating party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this Section, in writing served on the other party no later than twenty (20) days after receiving notice of the event prompting the termination. If the Settlement Agreement is terminated pursuant to this Section, the Parties will be returned to their positions *status quo ante* with respect to the Actions as if the Settlement Agreement had not been entered into.

11.4 If an option to withdraw from and terminate this Settlement Agreement arises under Section 11.3 above, neither VW nor Settlement Class Representatives are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

11.5 If, but only if, this Settlement Agreement is terminated pursuant to Section 11.3, then:

11.5.1. This Settlement Agreement, including the Settlement Class Release, shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms of Sections 3.2, 3.5, 5.14, 5.15, 6.7, 11.5, 11.6, 11.7 and 13.7, and the definitions and any exhibits and schedules applicable thereto;

11.5.2. All of the provisions of this Settlement Agreement, and all negotiations, statements and proceedings relating to it, shall be without prejudice to the rights of VW, the Settlement Class Representatives or any Settlement Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Courts set a new scheduling order such that no Party's substantive or procedural rights in the Actions are prejudiced by the settlement negotiations and proceedings;

11.5.3. The Released Parties expressly and affirmatively reserve all defences, arguments and motions as to all claims that have been or might later be asserted in the Actions, including, without limitation, the argument that the Actions may not be litigated as class actions;

11.5.4. The Settlement Class Representatives and all Settlement Class Members, on behalf of themselves and their heirs, assigns,

executors, administrators, predecessors and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of action or remedies that have been or might later be asserted in the Actions including, without limitation, any argument concerning class certification / authorization, liability or damages;

11.5.5. VW expressly and affirmatively reserves and does not waive all motions and positions as to, and arguments in support of, all defences to the causes of action or remedies that have been sought or might be later asserted in the Actions, including without limitation, any argument or position opposing class certification / authorization, liability, damages or injunctive relief; and

11.5.6. Neither this Settlement Agreement, the fact of its having been entered into, nor the negotiations leading to it shall be admissible or entered into evidence for any purpose whatsoever.

11.6 VGCA will pay all reasonable and necessary Claims Administration Expenses, Notice Expenses, Opt-Out / Objection Expenses and translation costs whether or not the Settlement Agreement is approved and / or terminated, except that if terminated, VW shall bear any such costs in connection with the implementation of this Settlement Agreement up until its termination. Under no circumstance shall the Class or Class Counsel be liable for any Claims Administration Expenses, Notice

Expenses, Opt-Out / Objection Expenses or translation costs, or any other costs incurred or charged by the Claims Administrator or VW, and whether or not disputed by VW.

11.7 Notwithstanding Section 11.5, if the Settlement Agreement is terminated before payment of Counsel Fees is made pursuant to Section 10.1, and if some of the Settlement Class Members receive compensation from VGCA under this Settlement Agreement prior to its termination, Class Counsel are entitled to bring motions for a portion of Counsel Fees based upon the compensation received by those Settlement Class Members, which motions will be determined by the Approval Courts. It is further acknowledged as follows:

11.7.1. VW and Class Counsel shall not object to the other's use or introduction of materials and submissions related to the issue of Counsel Fees from any of the Actions, excluding without prejudice communications between counsel. In addition, Class Counsel shall not object to any request by VW for coordination between the Approval Courts on the motions, consistent with the Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions.

11.7.2. Class Counsel will not seek additional counsel fees and costs after the Courts make their respective awards as to the amount of Counsel Fees; however, VW and Class Counsel shall have the

right to appeal from such orders if an award inconsistent with the amount set out in Section 10.1.1 is made.

11.7.3. VW and Class Counsel may confer and reach agreement on an amount to be paid by VW at any point up to the time the Approval Courts issue their respective decisions on the motions.

11.7.4. If VW and Class Counsel reach an agreement as described in 11.7.3, Class Counsel will submit the negotiated amount for approval to the Approval Courts. VW reserves the right to challenge any request by Class Counsel for an award of counsel fees and costs that exceeds any negotiated amount of Counsel Fees that VW has agreed to pay.

12. TERMINATION OF CLASS ACTIONS, JURISDICTION OF THE COURTS

12.1 Approval Orders in the Actions will be sought from the Approval Courts.

Class Counsel will take such reasonable steps as are necessary to give effect to the Settlement Agreement and to bring an end to, without costs, without reservation and, where available, with prejudice, all Released Claims by any Settlement Class Member. The Parties agree that the conclusions of litigation set out in this Section shall not alter, negate or otherwise have any impact or effect on the Settlement Class Release.

12.2 Courts' Ongoing and Exclusive Jurisdiction. The Approval Courts shall retain ongoing and exclusive jurisdiction over the Action commenced in

their jurisdiction in order to resolve any dispute or other matters that may arise in the implementation of the Settlement Agreement (including any dispute regarding the validity, performance, interpretation, administration, enforcement, enforceability or termination of the Settlement Agreement or with respect to Counsel Fees) or their Approval Order. No Party shall oppose the reopening and reinstatement of an Action for the purposes of giving effect to this Section. No Party shall ask an Approval Court to make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Approval Court with which it shares jurisdiction over that matter.

12.3 If one Party to this Settlement Agreement considers another Party to be in material breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged material breach and provide a reasonable opportunity to cure such breach before taking any action to enforce any rights under this Settlement Agreement.

12.4 In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if the Parties agree in writing to proceed as if such invalid, illegal or unenforceable provision

had never been included in this Settlement Agreement. Any such agreement shall be reviewed and approved by the Approval Courts before it becomes effective.

12.5 Notwithstanding Section 12.2, any matter specifically related to the Claim of a member of the National Settlement Class shall be determined by the Ontario Superior Court of Justice, and any matter specifically related to the Claim of a member of the Québec Settlement Class shall be determined by the Superior Court of Québec.

13. OTHER TERMS AND CONDITIONS

13.1 This Settlement Agreement shall be binding upon, and enure to the benefit of VW, the Settlement Class Representatives and all Settlement Class Members, and their respective agents, heirs, executors, administrators, successors, transferees and assigns.

13.2 Class Counsel represent that (a) Class Counsel are authorized by the Settlement Class Representatives to enter into this Settlement Agreement; and (b) Class Counsel are seeking to protect the interests of the Settlement Class.

13.3 The Defendants represent and warrant that Exhibit 1 hereto fully, completely and accurately contains the VIN numbers of all Volkswagen and Audi-brand vehicles sold by the Defendants in Canada with an EA888 engine with affected timing chain tensioners with designs other than those bearing part number 06K.109.467.K, and including those bearing part

numbers 06H.109.467.N, 06H.109.467.T, 06H.109.467.AB and, for Model Years 2013-2014 only, those bearing part number 06K.109.467.Q (the "Representation"), which the Defendants intend that the Plaintiff and Class Counsel rely upon in: (1) the Plaintiff entering into this Agreement, (2) Class Counsel advising the Plaintiff to enter into this Agreement, and (3) the Plaintiff and Class Counsel joining with the Defendants and Defendants' Counsel seeking the approval of the Courts to this Agreement.

13.4 The Representation survives the approval of this Agreement by any of the Courts.

13.5 The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

13.6 All time periods in this Settlement Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Settlement Agreement, in computing any period of time in this Settlement Agreement or by order of a Court, the day of the act or event shall not be included, and the last day of the period shall be included, unless it is a Saturday, a Sunday or a Canadian statutory holiday, or, when the act to be done is a court filing, a day on which the court is closed, in which case the period shall run until the end of the next day that is not one of the aforementioned days.

13.7 The Parties agree that confidential information made available to them solely through the settlement process was made available on the condition that it not be disclosed to third-parties (other than as provided by the Non-Disclosure Agreements). Information provided by VW, Class Counsel, any individual Settlement Class Member or counsel for any individual Settlement Class Member pursuant to the negotiation and implementation of this Settlement Agreement, including trade secrets and highly confidential and proprietary business information, shall continue to be treated as confidential "Settlement Materials or Communications" within the meaning of the Non-Disclosure Agreements and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon VW's request, be promptly returned to VW's counsel, and there shall be no implied or express waiver of any privileges, rights and defences.

13.8 This Settlement Agreement sets forth the entire agreement among the Parties with respect to its subject matter. Any agreement purporting to change or modify the terms of this Settlement Agreement must be executed by VW and Class Counsel. The Parties expressly acknowledge that no other agreements, arrangements or understandings not expressed in this Settlement Agreement exist among or between them, and that in deciding to enter into this Settlement Agreement, they have relied solely upon their own judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings

(written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement.

13.9 In Québec, the Settlement Agreement constitutes a transaction within the meaning of Article 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing to any errors of fact, of law and / or of calculation.

13.10 The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. A French translation of this Settlement Agreement will be prepared immediately after its execution, at the reasonable expense of VGCA, and filed with the Approval Courts no later than the date that their Pre-Approval Order is granted. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation of this Settlement Agreement, the English language version shall govern.

13.11 Whenever this Settlement Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and / or next-day (excluding Saturdays, Sundays and Canadian statutory holidays) express delivery service as follows:

If to VW, then to:

Robin Squires
BORDEN LADNER GERVAIS LLP
22 Adelaide Street West
Bay Adelaide Centre, East Tower
Toronto, ON M5H 4E3
E-mail: rsquires@blg.com

AND

Glenn Zakaib
BORDEN LADNER GERVAIS LLP
22 Adelaide Street West
Bay Adelaide Centre, East Tower
Toronto, ON M5H 4E3
E-mail: gzakaib@blg.com

If to the Settlement Class, then to Lead Class Counsel as follows:

Kirk Baert
KOSKIE MINSKY LLP
10 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3
E-mail: kmbaert@kmlaw.ca

AND

Peter Griffin
LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5
E-mail: pgriffin@litigate.com

AND

E.F. Anthony Merchant, Q.C.
MERCHANT LAW GROUP LLP
2401 Saskatchewan Drive
Regina, SK S4P 4H8
E-mail: merchant@merchantlaw.com

13.12 The Settlement Class, Settlement Class Representatives and / or VW shall not be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall they argue that any particular provision

should be construed against its drafter. All Parties agree that this Settlement Agreement was drafted by counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence may be offered to explain, construe, contradict or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

13.13 The division of this Settlement Agreement into sections and the insertion of topic and section headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.

13.14 The Parties agree that the Settlement Agreement was reached voluntarily after consultation with competent legal counsel.

13.15 This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law rule or principle that would mandate or permit application of the substantive law of any other jurisdiction.

13.16 This Settlement Agreement may be signed with an electronic signature and in counterparts, each of which shall constitute a duplicate original.

13.17 The Parties have executed this Settlement Agreement as of the date on the cover page.

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VOLKSWAGEN AKTIENGESELLSCHAFT

By: _____

By: _____

AUDI AKTIENGESELLSCHAFT

By: _____

By: _____

VOLKSWAGEN GROUP OF AMERICA, INC.

By: _____

By: _____

VOLKSWAGEN GROUP CANADA INC.

By: _____

AUDI CANADA INC.

By: _____

VW CREDIT CANADA, INC.

By: _____

Counsel for VOLKSWAGEN AKTIENGESELLSCHAFT,
AUDI AKTIENGESELLSCHAFT, VOLKSWAGEN GROUP OF AMERICA, INC.,
VOLKSWAGEN GROUP CANADA INC., AUDI CANADA INC. and
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SCHEDULE A

**REIMBURSEMENT LIMITS FOR DAMAGED OR FAILED ENGINE DUE TO
TIMING CHAIN TENSIONER/TIMING CHAIN FAILURE**

Time from in-service date	Less than 95,000 kilometres	95,001 to 120,000 kilometres	120,001 to 135,000 kilometres	135,001 to 160,000 kilometres
5 years	100%	70%	60%	45%
5-7 years	70%	60%	50%	35%
7-10 years	60%	50%	40%	25%