UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BEATRIZ TIJERINA, DAVID CONCEPCIÓN, GINA APRILE, THERESA GILLESPIE, TALINA HENDERSON, DIANA FERRARA, LAUREN DALY, SHANE MCDONALD, KASEM CUROVIC, CHRISTA CALLAHAN, ERICA UPSHUR, JOHNNIE MOUTRA, JENNIFER TOLBERT, DEREK LOWE, PHILLIP HOOKS, and DELIA MASONE, Individually and on behalf of All Others Similarly Situated, Plaintiffs, vs. VOLKSWAGEN GROUP OF AMERICA, INC. and VOLKSWAGEN AKTIENGESELLSCHAFT, Defendants.	Civil Action No. 2:21-cv-18755-BRM-LDW

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN RESPONSE TO THE REQUESTS FOR EXCLUSIONS

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INTRODUCTION

Class Counsel respectfully submits this supplemental memorandum in further support of Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Plaintiffs' Service Awards ("Fee and Expense Motion") and Motion for Final Approval ("Final Approval Motion"). ECF Nos. 114, 117. For the reasons set forth below, the Court should confirm its preliminary finding that the Settlement is fair, reasonable, and adequate, finally approve the Settlement, and grant Plaintiffs' Fee and Expense Motion.

Out of more than 644,167 Class Members who received direct mail notice, there has not been a single objection[1] in connection with the Class Action Settlement[2] in this matter. Further, the limited number of exclusion requests, 106,[3]

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[1] To date, there have not been any objections to the Fee and Expense Motion. The Court extended the deadline for objections to July 28, 2025. ECF No. 116. Plaintiffs will respond to any objections specifically related to the Fee and Expense Motion on August 5, 2025.

[2] All capitalized terms herein shall have the meanings ascribed to them in the Settlement Agreement. ECF No. 111-3.

[3] The Claims Administrator reported a total of 95 requests for exclusion in the Declaration of Lara Jarjoura, ECF No. 117-3, at ¶14, but additional requests have been received since then, totaling 106 (0.017%). Plaintiffs have met and conferred with Defendant and do not dispute the invalidity of the fourteen requests for exclusion cited in Defendant's Memorandum of Law in Response to Certain Requests for Exclusion and In Support of Final Approval of the Class Action Settlement.

demonstrates strong support for the Settlement and counsels in favor of final approval.

LEGAL STANDARD

Strong judicial policy favors resolution of litigation before trial, "particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("*GM Truck*"). While the reaction of class members to a proposed settlement is a factor to be considered by the Court in evaluating a settlement, "the court must balance the reaction of the class with all the other factors examined in considering the settlement, and can find the settlement terms fair, notwithstanding objections from the class." *Walsh v. Great Atl. & Pac. Tea Co.*, 96 F.R.D. 632, 654 (D.N.J.), *aff'd*, 726 F.2d 956 (3d Cir. 1983); *see also Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 235 (D.N.J. 2005) (Linares, J.) ("[T]he issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement.").

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

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975); *see also In re Am. Family Enters.*, 256 B.R. 377, 418 (D.N.J. 2000) ("These factors are a guide and the absence of one or more does not automatically render the settlement unfair.").

Among other things, a settlement is presumed fair and reasonable where the settlement is vigorously negotiated at arm's length by experienced counsel who are fully familiar with all aspects of class action litigation. *See GM Truck*, 55 F.3d at 796. "The role of a district court is not to determine whether the settlement is the fairest possible resolution—a task particularly ill-advised given that the likelihood of success at trial (on which all settlements are based) can only be estimated imperfectly." *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 173-74 (3d Cir. 2013). Rather, "significant weight should . . . be given 'to the belief of experienced counsel that the settlement is in the best interest of the class.'" *In re Am. Family Enters.*, 256 B.R. at 421 (citation omitted).

ARGUMENT

I. The Reaction of the Class to the Proposed Settlement is Overwhelmingly Positive.

As demonstrated in the Final Approval Motion, the *Girsh* factors weigh in favor of approval of the Settlement. *See* ECF No. 117-1. The Settlement was vigorously negotiated at arm's length, and is fair, reasonable, and adequate. *See id.*; *see also GM Truck*, 55 F.3d at 785; *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1009 (S.D. Ohio 2001) ("[T]hose objecting to the proposed settlement have

a heavy burden of proving the unreasonableness of the settlement."); *Varacallo*, 226 F.R.D. at 240 ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness.").

The only *Girsh* factor that is relevant here—the reaction of the Class to the settlement—"attempts to gauge whether members of the class support the Settlement." *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 148 F.3d 283, 318 (3d Cir. 1998). To evaluate this factor, "the number and vociferousness of the objectors" must be examined. *GM Truck*, 55 F.3d at 812. Generally, "silence constitutes tacit consent to the [settlement] agreement." *Id.* (quotation omitted).

Here, direct mail notice was sent out to 644,147 Settlement Class Members. *See* Declaration of Laura Jarjoura on Settlement Notice and Administration ("Jarjoura Decl."), ECF 117-3, ¶6. As of July 14, 2025, the Settlement Website was viewed 13,827 times by 9,510 unique visitors. *Id*. ¶8.

Despite the large number of Settlement Class Members and JND's robust notice efforts, ***there has not been a single objection to the Settlement***. *Id*., ¶16. Moreover, there are only 106 requests for exclusion.[4] The exclusion requests represent only 0.017% of the Settlement Class. These figures are significant, because

[4] Fourteen of the requests for exclusion are invalid either because they are untimely or because the Vehicle Identification Numbers do not belong to Settlement Class Vehicles.

such a miniscule number of exclusions demonstrate overall Class satisfaction with the Settlement. *See In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2021 WL 358611, at *5 (D.N.J. Feb. 1, 2021) ("Given the low number of objections and opt outs, the Court finds that factor two weighs in favor of approving the requested fee award.") (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005), *aff'd in part, appeal dismissed in part on other grounds*, 2021 WL 6881210 (3d Cir. Dec. 20, 2021)); *see also Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993) (a "paucity of protestors . . . militates in favor of the settlement"); *In re Am. Invs. Life Ins. Co. Annuity Mktg. & Sales Pracs. Litig.*, 263 F.R.D. 226, 239 (E.D. Pa. 2009) ("The 840 exclusions amount to only 0.2% of the class, also demonstrating the class's approval of the settlement. The Court of Appeals for the Third Circuit previously affirmed a district court's finding that 0.2% of exclusions weighs in favor of settlement approval.") (citing *In re Prudential*, 148 F.3d at 318); *Varacallo*, 226 F.R.D. at 235, 259 (approving settlement where "only about .003% of the Class submitted objections to the Court" and finding "this is a tiny percentage of the total Class").

Under *Girsh*, the absence of objections supports approval of the Settlement. *See Granillo v. FCA US LLC*, 2019 WL 4052432, at *9 (D.N.J. Aug. 27, 2019) (granting fee request over one objection to attorneys' fees and holding that "[t]he lack of negative feedback after notice . . . weighs in favor of awarding the requested

attorneys' fees); *In re Volkswagen Timing Chain Prod. Liab. Litig.* ("*Volkswagen Timing Chain I*"), 2018 WL 11413299, at *3 (D.N.J. Dec. 14, 2018) (Linares, J.) (granting final approval and overruling a total of 43 objections); *Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *7 n.5 (D.N.J. Aug. 31, 2016) ("There can be little doubt that the initial presumption [of fairness] applies here . . . [in part] because the proposed settlement drew only thirty-four objections."); *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 962 F. Supp. 450, 537 (D.N.J. 1997) (small number of negative responses to settlement favors approval), *aff'd*, 148 F.3d 283 (3d Cir. 1998); *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (100 objections out of 30,000 class members weighs in favor of settlement), *aff'd*, 66 F.3d 314 (3d Cir. 1995).[5]

The deadline to object to the Fee and Expense Motion was extended to July 28, 2025, ECF No. 116, and as of the filing of this Supplement Response, Plaintiffs are not aware of any objections to the Fee and Expense Motion. The lack of any objection to the fee application strongly supports approval of the requested fee. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 305 ("We agree with the District Court such a low level of objection is a "rare phenomenon.' . . . The District Court did not

[5] *See also Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 321 (3d Cir. 2011) ("[M]inimal number of objections and requests for exclusion are consistent with class settlements we have previously approved."); *Bell Atl. Corp.*, 2 F.3d at 1314 (same).

abuse its discretion in finding the absence of substantial objections by class members to the fee requests weighed in favor of approving the fee request."); *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *25 (D.N.J. Oct. 1, 2013) ("Despite the large number of Class Members, only a single objection to the fee application had been received by the August 5, 2013 deadline. Under these circumstances, there can be no doubt that this overwhelmingly positive reaction to the Schering Fee Application strongly supports approval of the requested fee."); *Mulroy v. Nat'l Water Main Cleaning Co. of New Jersey*, 2014 WL 7051778, at *6-7 (D.N.J. Dec. 12, 2014) (receipt of single objection to proposed attorney fee supported reasonableness of fee request); *Lenahan v. Sears, Roebuck & Co.*, 2006 WL 2085282, at *19 (D.N.J. July 24, 2006) ("The lack of significant objections from the Class supports the reasonableness of the fee request."), *aff'd*, 266 F. App'x 114 (3d Cir. 2008).

If there are any timely objections to the Fee and Expense Motion that arrive after this filing, Plaintiffs will respond to those objections on August 5, 2025 as set forth in the Court's Order. ECF No. 116.

CONCLUSION

For the foregoing reasons, and as set forth in the Final Approval Motion, because the Settlement is fair, reasonable, and adequate, and because the Settlement Class meets all requirements of Rule 23(a) and 23(b)(3), Plaintiffs respectfully

submit that certification of the Settlement Class, final approval of the Settlement, and payment of the service awards is warranted. In addition, because the proposed attorneys' fees and reimbursement of expenses are reasonable and justified and satisfy Rule 23(h), the Court should grant Plaintiffs' Fee and Expense Motion.

Dated: July 29, 2025

Respectfully submitted,

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