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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL” MDL No. 2672 CRB (JSC)
MARKETING, SALES PRACTICE, AND
PRODUCTS LIABILITY LITIGATION **CLASS ACTION**

This Document Relates To: Securities
Actions *City of St. Clair Shores*, 15-1228
(E.D. Va.) *Travalio*, 15-7157 (D.N.J.) *George
Leon Family Trust*, 15-7283(D.N.J.) *Charter
Twp. Of Clinton*, (15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

**DECLARATION OF ALEXANDER
VILLANOVA IN SUPPORT OF
PLAINTIFFS’ UNOPPOSED MOTION
FOR APPROVAL OF DISTRIBUTION
PLAN**

1 I, ALEXANDER VILLANOVA, hereby declare and state as follows:

2 1. I am a Senior Project Manager for Epiq Class Action & Claims Solutions, Inc.
3 (“Epiq”). I am over 21 years of age and am not a party to this action. I have personal knowledge
4 of the facts set forth in this declaration and, if called as a witness, could and would testify
5 competently thereto.

6 2. Epiq was retained by Lead Counsel to serve as the Claims Administrator in
7 connection with the Settlement of the above-captioned action (the “Action”).¹ In its Order
8 Granting Motion for Preliminary Approval of Settlement (ECF No. 5593) (the “Preliminary
9 Approval Order”), the Court approved the retention of Epiq as the Claims Administrator.² As
10 Claims Administrator, Epiq has, among other things: (i) mailed the Notice of (I) Pendency of
11 Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award
12 of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of
13 Claim and Release Form (the “Proof of Claim Form” or “Claim Form” and, together with the
14 Notice, the “Notice Packet”) to potential Settlement Class Members and brokers and other
15 nominees; (ii) created and continues to maintain a toll-free helpline for inquiries during the
16 course of the administration; (iii) created and continues to maintain a Settlement website and
17 posted case-specific documents on it; (iv) caused the Summary Notice to be published; (v)
18 provided, upon request, additional copies of the Notice Packet to potential Settlement Class
19 Members, brokers, and other nominees; and (vi) received and processed Claims.

20 3. On May 10, 2019, the Court approved the Plan of Allocation in its Order Granting
21 (I) Motion for Final Approval of Settlement and (II) Motion for Attorneys’ Fees and Expenses
22 (ECF No. 6285) and entered its Judgment Approving Class Action Settlement (ECF No. 6287).
23 Epiq has completed processing all Claims received through April 3, 2020, in accordance with
24

25 _____
26 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed
27 to them in the Stipulation and Agreement of Settlement dated August 27, 2018 (ECF No. 5267-1)
28 (the “Stipulation”). The Settlement is contained in the Stipulation.

² See also Order Granting (I) Motion for Final Approval of Settlement and (II) Motion for
Attorneys’ Fees and Expenses ¶ 4 (ECF No. 6285) where the Court confirms its appointment of
Epiq as the Claims Administrator.

1 the terms of the Stipulation and the Court-approved Plan of Allocation set forth in the Notice,
2 and hereby submits its administrative determinations accepting and rejecting the Claims in
3 preparation for a distribution of the Net Settlement Fund to Authorized Claimants. Epiq also
4 presents this declaration in support of Plaintiffs' Motion for Approval of Distribution Plan.

5 **DISSEMINATION OF NOTICE**

6 4. As more fully described in the Declaration of Alexander Villanova Regarding (A)
7 Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report
8 on Requests for Exclusion Received to Date (ECF No. 6112-3) (the "Mailing Decl."), and the
9 Supplemental Declaration of Alexander Villanova Regarding (A) Mailing of the Notice and
10 Claim Form and (B) Report on Requests for Exclusion and Claims Received (ECF No. 6256)
11 (the "Suppl. Mailing Decl."), as of May 1, 2019, Epiq had mailed 217,589 Notice Packets to
12 potential Settlement Class Members and their nominees. Suppl. Mailing Decl. ¶ 5. Since that
13 date, 3 additional Notice Packets have been disseminated. In total, Epiq has disseminated
14 217,592 Notice Packets to potential Settlement Class Members, brokers, and other nominees.

15 5. Epiq established and continues to maintain a website
16 (www.VolkswagenADRLitigation.com) and a toll-free telephone helpline (1-888-738-3759) to
17 assist potential Settlement Class Members. The Settlement website (which provides access to
18 important documents relevant to the Settlement) and the telephone helpline enable Settlement
19 Class Members to obtain information about the Settlement.

20 6. In accordance with the Preliminary Approval Order, on December 31, 2018, Epiq
21 caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted
22 over *PR Newswire*. Mailing Decl. ¶ 9.

23 **PROCEDURES FOLLOWED IN PROCESSING CLAIMS**

24 7. Under the terms of the Preliminary Approval Order and as set forth in the Notice,
25 each Settlement Class Member who wished to be eligible to receive a distribution from the Net
26 Settlement Fund was required to complete and submit to Epiq a properly executed Claim Form
27 postmarked no later than April 18, 2019, together with adequate supporting documentation for
28

1 the transactions and holdings reported in the Claim. Through April 3, 2020, Epiq has received
2 and fully processed 70,631 Claims (the “Presented Claims”).

3 8. In preparation for receiving and processing Claims, Epiq: (i) conferred with Lead
4 Counsel to define the guidelines for processing Claims; (ii) created a unique database to store
5 Claim details, images of Claims, and supporting documentation (the “Settlement Database”); (iii)
6 trained staff in the specifics of the Settlement so that Claims would be properly processed; (iv)
7 formulated a system so that telephone and email inquiries would be properly responded to; (v)
8 developed various computer programs and screens for entry of Settlement Class Members’
9 identifying information and their transactional information; and (vi) developed a proprietary
10 “calculation module” that would calculate Recognized Claims pursuant to the Court-approved
11 Plan of Allocation of the Net Settlement Fund stated in the Notice.

12 9. Settlement Class Members seeking to share in the Net Settlement Fund were
13 directed in the Notice to submit their Claims to a post office box address specifically designated
14 for the Settlement. Notice Packets returned by the United States Postal Service as undeliverable
15 were reviewed for updated addresses and, where available, updated addresses were entered into
16 the Settlement Database and Notice Packets were mailed to the updated addresses. Any
17 correspondence received at the post office box was reviewed and, when necessary, appropriate
18 responses were provided to the senders.

19 PROCESSING CLAIMS

20 A. Paper Claims

21 10. Of the 70,631 Presented Claims, 6,111 are paper Claims. Once received, the paper
22 Claims were opened and prepared for scanning. This process included unfolding documents,
23 removing staples, copying nonconforming-sized documents, and sorting documents. This manual
24 task of preparing the paper Claims is very laborious and time-intensive. Once prepared, paper
25 Claims were scanned into the Settlement Database together with all submitted documentation.
26 Subsequently, each Claim was assigned a unique Claim number. Once scanned, the information
27 from each Claim (including the Claimant’s name, address, account number/information from
28 supporting documentation, and the Claimant’s purchase/acquisition transactions, sale transactions,

1 and holdings listed on the Claim) was entered into the Settlement Database. Once entered into the
2 Settlement Database, each Claim was reviewed to verify that all required information had been
3 provided. The documentation provided by the Claimant in support of the Claim was reviewed for
4 authenticity and compared to the information provided in the Claim to verify the Claimant's
5 identity and the purchase/acquisition transactions, sale transactions, and holdings listed on the
6 Claim.

7 11. To process the transactions detailed in the Claims, Epiq utilized internal codes
8 ("message codes") to identify and classify deficiency or ineligibility conditions existing within
9 those Claims. Appropriate message codes were assigned to the Claims as they were processed. For
10 example, where a Claim was submitted by a Claimant who did not have any eligible transactions
11 in Volkswagen American Depositary Receipts ("ADRs") during the Class Period (e.g., the
12 Claimant purchased Volkswagen ADRs only before or after the Class Period), that Claim would
13 receive a message code that denoted ineligibility. Similar defect message codes were used to
14 denote other ineligible conditions, such as duplicate Claims. These message codes would indicate
15 to Epiq that the Claimant was not eligible to receive any payment from the Net Settlement Fund
16 with respect to that Claim unless the deficiency was cured in its entirety. Examples of conditions
17 of ineligibility are as follows:

- 18 • No Documentation Submitted for the Entire Claim
- 19 • Duplicate Claim Submitted
- 20 • No Eligible Purchase During the Class Period
- 21 • No Signature
- 22 • No Recognized Claim

23 12. Because a Claim may be deficient only in part, but otherwise acceptable, Epiq
24 utilized message codes that were applied only to specific transactions within a Claim. For example,
25 if a Claimant submitted a Claim with supporting documentation for all but one purchase
26 transaction, that one transaction would receive a defect message code. The message code indicated
27 that although the transaction was deficient, the Claim was otherwise eligible for payment if other
28 transactions in the Claim calculated to a Recognized Claim according to the Court-approved Plan

1 of Allocation. Thus, even if the deficiency was never cured, the Claim could still be partially
2 accepted. Examples of transaction-specific message codes are as follows:

- 3 • Claim did not Balance/Trade Discrepancy
- 4 • Inadequate Documentation for transaction
- 5 • Received Shares (i.e., shares transferred into or out of an account)
- 6 • No Proof of Unsold Holdings

7 **B. Electronic Claims**

8 13. Of the 70,631 Presented Claims, 64,520 were filed electronically (“Electronic
9 Claims”). Electronic Claims are typically submitted by institutional investors (“Electronic Claim
10 Filers” or “E-Claim Filers”) who may have hundreds or thousands of transactions during the Class
11 Period. Rather than provide reams of paper requiring data entry, the E-Claim Filers submitting
12 Electronic Claims either mail a computer disc or electronically submit a file to Epiq so that Epiq
13 can upload all transactions to the Settlement Database.

14 14. Epiq maintains an electronic filing operations team (the “Electronic Filing Team”)
15 to coordinate and supervise the receipt and handling of all Electronic Claims. In this case, the
16 Electronic Filing Team reviewed and analyzed each electronic file to ensure that it was formatted
17 in accordance with Epiq’s required format and to identify any potential data issues or
18 inconsistencies within the file. If any issues or inconsistencies arose, Epiq notified the filer. If the
19 electronic file was deemed to be in an acceptable format, it was then loaded to the Settlement
20 Database.

21 15. Once each electronic file was loaded, the Electronic Claims were coded to denote
22 any deficient or ineligible conditions that existed within them. These message codes are similar to
23 those applied to paper Claims. In lieu of manually applying message codes, the Electronic Filing
24 Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible
25 conditions (such as, but not limited to, price out-of-range issues, out-of-balance conditions,
26 transactions outside the Class Period, etc.). The output was thoroughly verified and confirmed as
27 accurate.

1 16. The review process also included message coding any Electronic Claims that were
 2 not accompanied by a signed Claim Form, which serves as a “Master Proof of Claim Form” for
 3 all Claims referenced on the electronic file submitted. This process was reviewed by Epiq’s
 4 Electronic Filing Team and, when appropriate, Epiq contacted the E-Claim Filers whose
 5 submissions were missing information. This ensured that only fully completed Claims, submitted
 6 by properly authorized representatives of the Claimants, were considered eligible for payment
 7 from the Net Settlement Fund.

8 17. Finally, at the end of the process, Epiq performed various targeted reviews of
 9 Electronic Claims. Specifically, Epiq used criteria such as the calculated Recognized Claims and
 10 other identified criteria to message code and reach out to a number of E-Claim Filers and request
 11 that various sample purchases, sales, and holdings selected by Epiq be documented by providing
 12 confirmation slips or other transaction-specific supporting documentation. These targeted reviews
 13 help to ensure that electronic data supplied by Claimants does not contain inaccurate information.

14 **EXCLUDED PERSONS**

15 18. Epiq also reviewed all Claims to ensure that they were not submitted by, or on
 16 behalf of, “Excluded Persons,” to the extent that the identities of such persons or entities were
 17 known to Epiq through the list of Defendants and other excluded persons and entities set forth in
 18 the Stipulation and the Notice and from the Claimants’ certifications on the Claim Forms. Epiq
 19 also reviewed all Claims against the list of persons who were excluded from the Settlement Class
 20 pursuant to request.

21 **THE DEFICIENCY PROCESS**

22 **A. Paper Claims**

23 19. Approximately 68% of the paper Claims, i.e., 4,204 of the 6,111 paper Claims, were
 24 incomplete or had one or more defects or conditions of ineligibility, such as the Claim not being
 25 signed, not being properly documented, or indicating no eligible transactions in Volkswagen
 26 ADRs during the Class Period. The “Deficiency Process,” which primarily involved mailing letters
 27 to Claimants and responding to communications from Claimants by email and/or telephone, was
 28

1 intended to assist Claimants in properly completing their otherwise deficient submissions so that
2 they could be eligible to participate in the Settlement.

3 20. If paper Claims were determined to be defective or ineligible, a Notice of Deficient
4 Proof of Claim Submission (“Deficiency Letter”) was sent to the Claimants describing the
5 defect(s) in the Claims and what, if anything, was necessary to cure the defect(s) in these Claims.
6 The Deficiency Letter advised Claimants that submission of appropriate information and/or
7 documentary evidence to complete the Claim had to be sent within twenty (20) days from the date
8 of the Deficiency Letter or the Claim would be recommended for rejection to the extent that the
9 deficiency or condition of ineligibility was not cured. The Deficiency Letter also advised
10 Claimants that to contest these administrative determinations, they were required to submit written
11 statements to Epiq requesting Court review of their Claims and setting forth the basis for such
12 requests. Epiq sent a total of 4,688 Deficiency Letters to Claimants who filed paper Claims that
13 Epiq determined to be defective. Attached hereto as Exhibit A is an example of a Deficiency Letter.

14 21. Claimants’ responses to Deficiency Letters were scanned into the Settlement
15 Database and associated with the corresponding Claims. The responses were then carefully
16 reviewed and evaluated by Epiq’s team of processors. If a Claimant’s response corrected the
17 defect(s), Epiq manually updated the Settlement Database to reflect the changes in the status of
18 the Claim.

19 **B. Electronic Claims**

20 22. For Electronic Claims, Epiq used the following process to contact the banks,
21 brokers, nominees, and other E-Claim Filers who submitted their data electronically to confirm
22 receipt of their submissions and to notify these filers of any Electronic Claims that were deficient
23 or ineligible. These E-Claim Filers were sent an email to the email address included with their
24 Claim Form (“Status Email”) with an attached report containing detailed information associated
25 with the Claims and indicating which of those Claims within the filing were deficient and/or
26 rejected (“Transaction Report”).

27 23. The Status Email sent to the email address of record provided with the Claim Form:
28

- 1 (a) Notified the filer that any Claims with deficiencies not corrected within
- 2 twenty (20) days from the date of the Status Email may be rejected;
- 3 (b) Advised of the filer’s right to contest the rejection of the Claim(s) and
- 4 request this Court’s review of Epiq’s administrative determination within
- 5 twenty (20) days from the date of the Status Email; and
- 6
- 7 (c) Provided instructions for how to submit corrections.

8 24. The Transaction Report attached to the Status Email identified each of the
9 individual Claims that were found to be deficient or ineligible and the basis for that deficiency or
10 condition of ineligibility.

11 25. Epiq has mailed a Status Email and Transaction Report to 89 E-Claim Filers.
12 Samples of a Status Email and Transaction Report are attached hereto as Exhibit B and Exhibit C,
13 respectively.

14 26. The E-Claim Filers’ responses were reviewed by the Electronic Filing Team,
15 scanned and/or loaded into the Settlement Database, and associated with the corresponding
16 Electronic Claims. If a response corrected the defect(s) or affected an Electronic Claim’s status,
17 Epiq manually and/or programmatically updated the Settlement Database to reflect such change
18 in status of the Electronic Claim.

19 **NO DISPUTED CLAIMS**

20 27. As noted above, Claimants were advised they had the right to contest Epiq’s
21 administrative determination of deficiencies or ineligibility within twenty (20) days from the date
22 of the Deficiency Letter or Status Email (together the “Deficiency Notices”) and that they could
23 request that the dispute be submitted to the Court for review. More specifically, Claimants were
24 advised in the Deficiency Notices that, if they disputed Epiq’s determination, they had to provide
25 a statement of reasons indicating the grounds for contesting the determination, along with
26 supporting documentation, and if the dispute concerning the Claim could not otherwise be
27 resolved, Lead Counsel would thereafter present the request for review to the Court for a final
28 determination.

1 28. A total of 24 Claimants contested Epiq’s administrative determinations and
2 requested review by the Court. To resolve the disputes without necessitating the Court’s
3 intervention, Epiq contacted all persons requesting Court review and attempted to answer all
4 questions, fully explain Epiq’s determination of the Claim’s status, and facilitate the submission
5 of missing information or documentation where applicable. As a result of these efforts, all requests
6 for Court review have either been cured or the request for Court review has been retracted. There
7 are, therefore, no disputed Claims requiring Court review.

8 **LATE BUT OTHERWISE ELIGIBLE CLAIMS**

9 29. Of the Presented Claims, 1,511 were received or postmarked after the April 18, 2019
10 Claim submission deadline established by the Court. Epiq processed all late Claims received
11 through April 3, 2020, and 98 have been found to be otherwise eligible in whole or in part (the
12 “Late But Otherwise Eligible Claims”). Epiq has not rejected any Claim received through April 3,
13 2020, solely based on its late submission, and Epiq believes no delay has resulted from the
14 provisional acceptance of these Late But Otherwise Eligible Claims. To the extent they are eligible
15 but for the fact that they were late, they are recommended for payment.

16 30. However, there must be a final cut-off date after which no more Claims will be
17 accepted so that there may be a proportional allocation of the Net Settlement Fund and the
18 distribution may be accomplished. Acceptance of additional Claims or responses to Deficiency
19 Notices received during the finalization of the administration and the preparation of this
20 application would necessarily require a delay in the distribution. Accordingly, Epiq also
21 respectfully requests that this Court order that no received or rejected Claim adjusted after April
22 3, 2020, be eligible for payment for any reason whatsoever subject only to the provision of
23 paragraph 39(f) of the proposed distribution plan discussed below. If the Court adopts the proposed
24 distribution plan, then, after Lead Counsel has determined that further distributions are not cost-
25 effective and before any contribution of the residual funds to charity, if sufficient funds remain to
26 warrant the processing of Claims received after April 3, 2020, these Claims will be processed and,
27 if any would have been eligible if timely received, these Claimants may be paid the distribution
28 amounts on a *pro rata* basis that would bring them into parity, to the extent permitted by the

1 amount of remaining funds, with other Authorized Claimants who have cashed all their prior
 2 distribution checks. *See* ¶ 39(f) below. With respect to previously filed Claims that are cured or
 3 adjusted after April 3, 2020, such Claims will be reevaluated upon receipt of the adjustment and,
 4 to the extent that they are found eligible for a distribution or additional distribution, they will be
 5 treated in the same manner as Claims received after April 3, 2020. However, should an adjustment
 6 be received that results in a lower Recognized Claim amount, that adjustment will be made and
 7 the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

QUALITY ASSURANCE

9 31. An integral part of the claims administration process is the Quality Assurance
 10 review. Throughout the administration process, Epiq's Quality Assurance personnel worked to
 11 verify that Claims were processed properly by ensuring that information was entered correctly into
 12 the Settlement Database, deficiency and/or rejection message codes were assigned accurately, and
 13 Deficiency Notices were sent appropriately. After all Claims were processed, Deficiency Notices
 14 sent, and Claimants' responses to the Deficiency Notices were reviewed and processed, Epiq's
 15 Quality Assurance personnel performed additional Quality Assurance reviews. These final Quality
 16 Assurance reviews further ensured the correctness and completeness of all Claims processed prior
 17 to preparing this declaration and all Epiq's final documents in support of distribution of the Net
 18 Settlement Fund. As part of the Quality Assurance reviews, Epiq:

- 19 (a) Verified that all Claim Forms had signatures of authorized individuals;
- 20 (b) Verified that true duplicate Claims were identified, verified, and rejected;
- 21 (c) Verified that persons and entities excluded from the Settlement Class did
 22 not file Claims or their Claims were rejected upon review;
- 23 (d) Performed a final Quality Assurance audit of Claims and all supporting
 24 documentation to ensure completeness of Claims;
- 25 (e) Determined that all Claimants requiring Deficiency Notices were sent
 such letters or emails;
- 26 (f) Performed reviews of deficient Claims;
- 27 (g) Performed additional review of Claims with high Recognized Claim
 28 amounts;
- (h) Reviewed Claims that were designated invalid;

- 1 (i) Reviewed Claims with a Recognized Claim amount equal to zero;
- 2 (j) Performed other reviews based on Claims completion requirements and
3 the approved calculation specifications based on the Court-approved Plan
4 of Allocation; and
- 5 (k) Re-tested the accuracy of the Recognized Claim amount calculation
6 program.

7 32. As part of its due diligence in processing the Claims, Epiq reviewed and compared
8 the entire Settlement Database against the “watch list” of known questionable filers that Epiq has
9 developed throughout its years of experiences as a claims administrator. Epiq performs searches
10 based on names, aliases, addresses, and city/zip codes. In addition, Epiq’s claim processors are
11 trained to identify any potentially inauthentic documentation when processing claims, including
12 claims submitted by Claimants not previously captured in the “watch list.” Processors are
13 instructed to message code any claim that matches to a record on the “watch list” and escalate
14 them to management for review. One (1) potentially fraudulent Claim was identified as having
15 been submitted by someone on the “watch list.” This Claim was then reviewed by management to
16 consider the documentation submitted with each Claim in conjunction with other factors (including
17 a review of the Claimant’s website registration, address, and registration with the SEC or asset
18 management organizations) and determined to be potentially fraudulent. Epiq sent the Claimant
19 Deficiency Notices and/or Status Emails notifying the Claimant that additional documentation was
20 required to resolve Epiq’s concerns related to the Claim and to allow their Claim for them to be
21 considered as eligible to participate in the Settlement. No additional documentation has been
22 received resolving the potentially fraudulent Claim. Therefore, this one (1) potentially fraudulent
23 Claim is recommended for rejection.

24 **RECOMMENDATIONS FOR APPROVAL AND REJECTION**

25 33. As noted above, the number of Claims on this motion is 70,631.

26 **Timely Submitted and Valid Claims**

27 34. A total of 69,120 Claims were received or postmarked on or before the Court-
28 approved Claim submission deadline of April 18, 2019, of which 15,078 were determined by Epiq

1 to be eligible and are recommended for approval (“Timely Eligible Claims”). The total Recognized
2 Claim amount for these Claims is \$24,793,641.94.

3 **Late But Otherwise Eligible Claims**

4 35. A total of 1,511 Claims were received or postmarked after the Court-approved
5 Claim submission deadline of April 18, 2019, but received on or before April 3, 2020. Of those,
6 98 were determined by Epiq to be otherwise eligible and are recommended for approval (“Late
7 But Otherwise Eligible Claims”). The total Recognized Claim amount for these Claims is
8 \$304,427.28.

9 **Rejected Claims**

10 36. After the responses to Deficiency Notices were processed, a total of 55,455 Claims
11 remain recommended for rejection by the Court (“Rejected Claims”) for the following reasons:

- 12 (a) 4,731 Claims had no purchase(s) of Volkswagen ADRs during the Class
13 Period;
- 14 (b) 41,646 Claims did not result in a Recognized Claim (i.e., they had no loss
15 as determined by the Court-approved Plan of Allocation);
- 16 (c) 44 Claims were duplicates;
- 17 (d) 220 Claims had uncured conditions of ineligibility; and
- 18 (e) 8,814 Claims were Void or Withdrawn.

19 **Lists of All Presented Claims**

20 37. Attached hereto as Exhibits D through F are listings of all the Presented Claims:

- 21 (a) Exhibit D lists the Timely Eligible Claims and shows each Claimant’s
22 Recognized Claim;
- 23 (b) Exhibit E lists the Late But Otherwise Eligible Claims and shows each
24 Claimant’s Recognized Claim; and
- 25 (c) Exhibit F lists the Rejected Claims and the reasons for rejection.

26 **FEES AND DISBURSEMENTS**

27 38. Epiq agreed to be the Claims Administrator in exchange for payment of its fees and
28 out-of-pocket expenses. Lead Counsel received reports on and invoices for the work Epiq

1 performed with respect to the provision of notice and administration of the Settlement. Attached
2 hereto as Exhibit G are copies of Epiq's invoices for its work performed on behalf of the Settlement
3 Class as well as an estimate for the work that will be performed and the costs that will be incurred
4 in connection with the initial distribution of the Net Settlement Fund.³ As set forth in these invoices
5 and in Exhibit G, the cost of administration for this project through the initial distribution is
6 \$705,650.15 in fees and expenses. These costs reflect significant work done by Epiq to mail the
7 217,592 Notice Packets and process the 70,631 Presented Claims filed for this matter. As
8 illustrated in the invoices and invoice summary provided in Exhibit G, this includes 1) costs related
9 to mailing the Notice Packets; 2) all-inclusive fees which cover all hourly time related to the
10 processing of Claims as well as any responses to Deficiency Notices or Status Emails in relation
11 to any deficiencies on these Claims; and 3) costs for the reimbursement of brokers, banks, and
12 nominees for their work and/or postage costs that provided Notice Packets to potential Settlement
13 Class Members. To date, Epiq has not received payment for its fees and expenses. Accordingly,
14 there is a total of \$705,650.15 payable to Epiq.

15 **DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

16 39. Should the Court concur with Epiq's determinations concerning the provisionally
17 accepted and rejected Claims, including the Late But Otherwise Eligible Claims, Epiq
18 recommends the following distribution plan (the "Distribution Plan"):

19 (a) Epiq will conduct an initial distribution (the "Initial Distribution") of the
20 Net Settlement Fund, after deducting all payments approved by the Court, and after
21 payment of any estimated taxes, the costs of preparing appropriate tax returns, and any
22 escrow fees, while maintaining a 5% reserve to address any tax liability and claims
23 administration-related contingencies that may arise, as follows:

24 (1) Epiq will calculate award amounts for all Authorized Claimants as
25
26

27 ³Should the estimate of fees and expenses to conduct the initial distribution of the Net Settlement
28 Fund exceed the actual cost to conduct the distribution, the excess will be returned to the Net
Settlement Fund and will be available for subsequent distribution to Authorized Claimants.

1 if the entire Net Settlement Fund were to be distributed now. In accordance with
2 the Court-approved Plan of Allocation, Epiq will calculate each Authorized
3 Claimant's *pro rata* share of the Net Settlement Fund based on the amount of the
4 Authorized Claimant's Recognized Claim in comparison to the total Recognized
5 Claims of all Authorized Claimants.

6
7 (2) Epiq will, pursuant to the terms of the Plan of Allocation, eliminate
8 from the Initial Distribution any Authorized Claimant whose *pro rata* share
9 calculates to less than \$10.00. These Claimants will not receive any payment from
10 the Net Settlement Fund, and Epiq will send notifications to those Authorized
11 Claimants advising them of that fact.

12
13 (3) After eliminating Claimants who would have received less than
14 \$10.00, Epiq will recalculate the *pro rata* share of the Net Settlement Fund for
15 Authorized Claimants who would have received \$10.00 or more pursuant to the
16 calculations described in subparagraph (a)(1) above. This *pro rata* share is the
17 Authorized Claimant's "Distribution Amount."

18
19 (4) 95% of the remaining balance of the Net Settlement Fund will be
20 distributed to Authorized Claimants whose Distribution Amount calculates to
21 \$10.00 or more pursuant to subparagraph (a)(3) above, on *pro rata* basis based on
22 their Distribution Amounts. The remaining 5% of the Net Settlement Fund will be
23 held in reserve (the "Reserve") to address any tax liability and claims
24 administration-related contingencies that may arise. To the extent the Reserve is
25 not depleted, the remainder will be distributed in the "Second Distribution"
26 described in subparagraph (d) below.

27
28 (b) In order to encourage Authorized Claimants to deposit their payments
promptly, all distribution checks will bear a notation: "CASH PROMPTLY. VOID AND

1 SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER
2 ISSUE DATE].”⁴

3 (c) Authorized Claimants who do not cash their Initial Distribution checks
4 within the time allotted or on the conditions set forth in footnote 4 will irrevocably forfeit
5 all recovery from the Settlement. The funds allocated to all such stale-dated checks will be
6 available to be redistributed to other Authorized Claimants in the second distribution.
7 Similarly, Authorized Claimants who do not cash their second or subsequent distribution
8 checks (should such distributions occur) within the time allotted or on the conditions set
9 forth in footnote 4 will irrevocably forfeit any further recovery from the Net Settlement
10 Fund.
11

12 (d) Consistent with the Court-approved Plan of Allocation, after Epiq has made
13 reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution
14 checks, which efforts shall consist of the follow-up efforts described in footnote 4, but not
15 earlier than nine (9) months after the Initial Distribution, Epiq will, in consultation with
16 Lead Counsel, conduct a second distribution of the Net Settlement Fund (the “Second
17

18 _____
19 ⁴For Authorized Claimants whose checks are returned as undeliverable, Epiq will endeavor to
20 locate new addresses through reasonable methods. Where a new address is located, Epiq will
21 update the Settlement Database accordingly and reissue a distribution check to the Authorized
22 Claimant at the new address. In the event a check is lost or damaged or an Authorized Claimant
23 otherwise requires a new check, Epiq will issue replacements. Distribution reissues will be
24 undertaken only upon written instructions from the Authorized Claimant, provided that the
25 Authorized Claimant returns the previous check where appropriate. For all checks, Epiq will void
26 the initial payment prior to reissuing a payment. In order not to delay further distributions to
27 Authorized Claimants who have timely cashed their checks, Epiq’s outreach program, described
28 in the preceding sentences, shall end 30 days after the initial void date. Authorized Claimants will
be informed that, if they do not cash their Initial Distribution checks within 90 days of the mail
date, or they do not cash check reissues within 30 days of the mailing of such reissued check,
their check will lapse, their entitlement to recovery will be irrevocably forfeited, and the funds
will be reallocated to other Authorized Claimants. Reissue requests for lost or damaged checks
will be granted after the void date on the checks as long as the request for the reissue is received
no later than 45 days prior to the next planned distribution. Requests for reissued checks in
connection with any subsequent distributions (should such distributions occur) will be handled in
the same manner.

1 Distribution”). Any amounts remaining in the Net Settlement Fund after the Initial
2 Distribution (including from the Reserve and the funds allocated for all void stale-dated
3 checks), after deducting Epiq’s fees and expenses incurred in connection with
4 administering the Settlement for which it has not yet been paid (including Epiq’s estimated
5 costs of the Second Distribution), and after deducting the payment of any estimated taxes,
6 the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to
7 all Authorized Claimants in the Initial Distribution who cashed their first distribution check
8 and who would receive at least \$10.00 from such distribution based on their *pro rata* share
9 of the remaining funds. Additional distributions, after deduction of costs and expenses as
10 described above and subject to the same conditions, may occur thereafter in six-month
11 intervals until Lead Counsel, in consultation with Epiq, determines that further distribution
12 is not cost-effective.

13 (e) At such time as Lead Counsel, in consultation with Epiq, determines that
14 further distribution of the funds remaining in the Net Settlement Fund is not cost- effective,
15 if sufficient funds remain to warrant the processing of Claims received after April 3, 2020,
16 such Claims will be processed, and any such Claims that are otherwise valid as well as any
17 earlier received Claims for which an adjustment was received after April 3, 2020, which
18 resulted in an increased Recognized Claim, will be paid in accordance with subparagraph
19 (f) below. If any funds remain in the Net Settlement Fund after payment of such late or
20 late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of
21 any unpaid fees or expenses incurred in connection with administering the Net Settlement
22 Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax
23 returns, and any escrow fees, will be contributed to the Investor Protection Trust. *See*
24 Notice ¶ 71.

25 (f) No new Claims may be accepted after April 3, 2020, and no further
26 adjustments to Claims received on or before April 3, 2020, that would result in an increased
27 Recognized Claim amount may be made for any reason after April 3, 2020, subject to the
28 following exception. If Claims are received or modified after April 3, 2020, that would

1 have been eligible for payment or additional payment under the Plan of Allocation if timely
2 received, then, at the time that Lead Counsel, in consultation with Epiq, determines that a
3 redistribution is not cost-effective as provided in subparagraph (e) above, and after
4 payment of any unpaid fees or expenses incurred in connection with administering the Net
5 Settlement Fund and after deducting the payment of any estimated taxes, the costs of
6 preparing appropriate tax returns, and any escrow fees, such Claimants, at the discretion of
7 Lead Counsel, may be paid the distribution amounts or additional distribution amounts on
8 a *pro rata* basis, to the extent possible, that would bring them into parity with other
9 Authorized Claimants who have cashed all their prior distribution checks.

10 (g) Unless otherwise ordered by the Court, Epiq may destroy the paper copies
11 of the Claims and all supporting documentation one year after the Initial Distribution, and
12 one year after all funds have been distributed may destroy electronic copies of the same.

13 **CONCLUSION**

14 40. Epiq respectfully requests that the Court enter an Order approving its administrative
15 determinations accepting and rejecting the Claims submitted herein and approving the proposed
16 Distribution Plan. Epiq further respectfully submits that its fees and expenses, as reflected on the
17 invoices attached hereto as Exhibit G, should be approved for payment from the Settlement Fund.

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 Executed this 22nd day of April 2020.

21
22
23 

24 _____
Alexander Villanova