

In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation  
Case No. 3:15-md-02672-CRB

**FIRST REPORT OF INDEPENDENT CLAIMS SUPERVISOR ON  
VOLKSWAGEN’S PROGRESS AND COMPLIANCE RELATED TO  
RESOLUTION AGREEMENTS ENTERED OCTOBER 25, 2016:**

- Amended Consumer Class Action Settlement Agreement and Release
- Federal Trade Commission Consent Order
- Department of Justice, Environmental Protection Agency, and California Air Resources Board Partial Consent Decree

NOVEMBER 25, 2016

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**I. EXECUTIVE SUMMARY**

This is the first report of the independent Claims Supervisor appointed by the Court to oversee compliance in connection with the settlement of hundreds of consolidated lawsuits brought by consumers and government regulators against Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (“Volkswagen”). On October 25, 2016, the Court approved a settlement that was comprised of three related resolution agreements: (i) the Amended Consumer Class Action Settlement Agreement and Release between Volkswagen and the class of affected vehicle owners, lessees, and sellers represented by the Plaintiffs’ Steering Committee (“PSC”) (“Class Action Settlement Agreement”); (ii) the Federal Trade Commission (“FTC”) Partial Stipulated Order for Permanent Injunction and Monetary Judgement (“FTC Consent Order”); and (iii) the U.S. Department of Justice (“DOJ”), the Environmental Protection Agency (“EPA”), and the California Air Resources Board (“CARB”) Partial Consent Decree (“DOJ Consent Decree”) (collectively, “Resolution Agreements”).

The lawsuits followed the EPA’s issuance of a Notice of Violation on September 18, 2015 alleging that Volkswagen had equipped a “defeat device” in certain vehicles it marketed as clean diesel cars. The software device operated during emissions testing to conceal from regulators that the vehicles’ nitrogen oxide (“NO<sub>x</sub>”) emissions exceeded established standards, in some cases by factors of forty. Consumer claims, as well as the regulatory enforcement actions, were consolidated before the U.S. District Court for the Northern District of California. Extensive negotiations between Volkswagen, the PSC, FTC, DOJ, EPA, and CARB collectively, (“Parties”) resulted in the Resolution Agreements that address nearly 500,000 vehicles equipped

with 2.0-liter diesel engines.<sup>1</sup> Widely recognized as one of the largest class action and regulatory enforcement settlements ever, the Resolution Agreements were designed to address harm to consumers by offering a menu of remedial options while also removing polluting vehicles from the road. Among other components, Volkswagen is required to:

- Establish a \$10.033 billion funding pool to buy back eligible vehicles, terminate lease agreements early, and provide restitution to eligible class members;
- Contribute \$2.7 billion to the EPA’s mitigation fund to compensate for the impacts the subject vehicles had on the environment; and
- Invest \$2 billion over a ten-year period to support increased use of technology for Zero Emission Vehicles.

Volkswagen is also pursuing regulatory approval of an emissions modification (“Approved Emissions Modification”)<sup>2</sup> that would bring eligible vehicles into compliance with agreed-upon emissions standards. If approved, current owners and lessees can receive the Approved Emissions Modification in lieu of a Buyback or early lease termination, as well as receive a Restitution Payment. By the end of 2018, Volkswagen is required either to remove from the road, or perform an Approved Emissions Modification on, 85% of the subject vehicles.

While the sheer scope of the settlement puts it in a class of its own, the speed with which the settlement was negotiated and was required to be implemented warrants separate attention.

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<sup>1</sup> Pending allegations concerning 3.0 liter vehicles are not encompassed in the Resolution Agreements.

<sup>2</sup> Unless defined within this document, capitalized terms take on the meaning as defined in the Resolution Agreements. Capitalized terms defined within this document are reflected in the glossary included at the back of this Report.

In light of the harms to consumers and ongoing environmental impacts caused by the subject vehicles, the Court, aided by a Settlement Master, worked with the Parties aggressively and tirelessly over a period of five months to chart out a just, pragmatic, and swift path forward. The Resolution Agreements required that the Volkswagen consumer Claims Program be initiated five business days after the Court granted approval on October 25, 2016. To further expedite the process, the Resolution Agreements contemplate very short timetables within which Volkswagen must communicate eligibility and offer determinations to consumers.

Class Member response to the settlement has been considerable.<sup>3</sup> As of November 20, 2016, of the consumers who were within the settlement class:

- 415,091 have registered through Volkswagen's Claims Portal;<sup>4</sup>
- 241,455 have submitted claims for Volkswagen to review;
- 165,223 have had their claims deemed complete and preliminarily eligible by Volkswagen;
- 67,020 were pending a determination by Volkswagen as to whether the claim is complete and preliminarily eligible; and
- 41,978 have been issued offers, the aggregate value of which is \$765,360,954.79.

Despite significant progress in launching the Claims Program, Volkswagen has experienced some challenges in meeting timing requirements in processing the influx of initial claims.

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<sup>3</sup> Relative to the sizeable population of owners, lessees, and sellers, corresponding to nearly 500,000 vehicles, only 3,566 individuals opted out of participation in the settlement class.

<sup>4</sup> Volkswagen's "Claims Portal" is the online mechanism for consumers to register and submit claims.

To meet the aggressive goals and requirements of the Resolution Agreements, it was necessary for Volkswagen to establish an organizational structure and develop information-technology (“IT”) systems capable of receiving a large volume of claims and rendering accurate and timely eligibility and offer determinations. Over the course of many months in advance of court approval in this matter, the company made significant investments to establish the organization and systems to support the required mass claims processing operation.

The aggressive timetables, however, made Volkswagen’s development of necessary operational processes and IT infrastructure challenging, particularly where, as here, Volkswagen: (i) did not initially have the requisite staffing and infrastructure in place to administer a program of this size and scope; (ii) did not have prior experience processing mass claims on this scale and within such accelerated timetables; (iii) did not have the benefit of any off-the-shelf IT solution to support such a high-volume and intricate claims program; (iv) had to address a significant volume of submitted claims at the outset of the Claims Program; and (v) did not have much time to test certain components of the operations and technology systems and troubleshoot issues before launch.

As a result of the foregoing, the administration of Volkswagen’s Claims Program may be expected to encounter certain challenges in the initial months of program administration, some of which, as discussed below, have already revealed themselves and caused frustration for a number of consumers. Volkswagen has taken action to address these issues as they arise and company leadership has consistently reassured that it will continue to address challenges, as well as enhance and streamline its workflow to optimize effectiveness and reduce the likelihood of material deficiencies.

This first report of the Claims Supervisor will focus primarily on two areas: (i) Volkswagen's efforts in developing and implementing the Claims Program in advance of the Court's approval of the Resolution Agreements; and (ii) Volkswagen's performance from the opening of the initial Claims Program beginning on November 1, 2016. Pursuant to the Resolution Agreements, additional reports will be submitted to the Court and the Parties every three months.<sup>5</sup>

## **II. UNDERLYING ALLEGATIONS**

The September 18, 2015 Notice of Violation letter from the EPA was the culmination of months of focused investigation on the part of the EPA to understand the implications of the emissions defeat device software and its effects on the environment.<sup>6</sup> As part of its regulatory oversight responsibilities under the Clean Air Act, the EPA is generally charged with issuing a certificate of conformity to approve a vehicle's sale in the United States. Here, the diesel vehicles at issue had undisclosed auxiliary emissions control devices installed that were not reflected in Volkswagen's applications for certificates of conformity. The EPA later discovered that the software that was installed in the vehicles could sense "whether the vehicle [wa]s being tested or not based on various inputs including the position of the steering wheel, vehicle speed, the duration of the engine's operation, and barometric pressure" and would allow vehicles to pass emissions tests under those circumstances.<sup>7</sup> However, in ordinary driving conditions, the software would enable the vehicle to "underperform" in controlling emissions output. According

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<sup>5</sup> The Claims Supervisor will also provide separate monthly reports to, and respond to inquiries of, the Parties as directed in the Resolution Agreements.

<sup>6</sup> The defeat device was revealed in a May 2014 study published by West Virginia University. The study outlined irregularities in Volkswagen engine emissions under different driving conditions. This study prompted the EPA to begin an investigation into the diesel cars.

<sup>7</sup> September 18, 2015, Notice of Violation Letter, at 3.

to the allegations, the defeat device resulted in certain vehicles that emitted up to forty times the legal NO<sub>x</sub> limit when driving under normal conditions.

During the six years in which Volkswagen used the defeat device, the company continued to market itself as the world's top "clean" diesel manufacturer in an effort to attract customers who wanted to drive what they believed to be "clean" cars. This included over a year of marketing after Volkswagen issued a voluntary recall following the revelation in the West Virginia University study that certain Volkswagen turbocharged direct-injection ("TDI") cars did not meet emission standards. Once the allegations and attendant misconduct came to light, the PSC and FTC conducted separate investigations primarily focused on the harms caused to consumers, as well as regulatory violations. All of these investigations resulted in hundreds of lawsuits being filed by consumers, as well as enforcement actions filed by the FTC and DOJ, which were consolidated before the Honorable Charles R. Breyer, Senior District Judge of the U.S. District Court for the Northern District of California.

Separate and apart from investigating the underlying allegations and negotiating the Resolution Agreements, the Parties' efforts to assist consumers and address environmental concerns have continued. Among other things, the FTC has undertaken substantive initiatives to educate interested consumer and business stakeholders, as well as respond to consumer questions about the settlement; actively monitor Volkswagen's progress and compliance with the Resolution Agreements; and investigate allegations of fraud and other deceptive practices employed to take advantage of consumers in connection with the pursuit of their settlement claims. Similarly, the PSC has focused considerable resources to respond to consumer needs in navigating through the settlement process and also tracking Volkswagen's progress. For example, PSC attorneys have established a dedicated consumer telephone hotline to address



consumer questions and concerns, and separately communicated with a significant volume of consumers via email on a range of issues. In cases where consumers have expressed frustration with their interactions with Volkswagen or pursuing their claims, the PSC has also engaged Volkswagen to determine if enhancements to facilitate the consumer experience may be feasible. In accord with the parameters of the Recall Program articulated in the DOJ Consent Decree, the DOJ, EPA, and CARB have continued to evaluate whether Volkswagen will be able to implement a satisfactory emissions modification for the subject vehicles to conform with acceptable standards.

### **III. THE RESOLUTION AGREEMENTS**

During the first half of 2016, the Parties worked together to reach settlements that provided remedies to consumers who had been harmed and address the environmental impacts caused by the defeat device. Proposed resolution agreements were filed with the Court on June 28, 2016, and preliminarily approved by Judge Breyer on July 26, 2016. After affording interested stakeholders an opportunity to be heard and considering objections and other arguments, the Court granted Final Approval of the Resolution Agreements on October 25, 2016. As discussed below, Volkswagen agreed to take substantial steps to remedy the impacts of the misconduct, including: (i) compensating Class Members;<sup>8</sup> (ii) removing at least 85% of offending vehicles from the road; and (iii) making \$4.7 billion in investments to address broader environmental considerations. In addition, Volkswagen agreed to oversight by an independent Claims Supervisor appointed by the Court.

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<sup>8</sup> As of October 28, 2016, Volkswagen had deposited an initial \$1.5 billion into the Escrow Account pursuant to the requirements of the Resolution Agreements.

### **A. Parameters of the Claims Program.**

To facilitate the consumer remedies, Volkswagen was required to establish a consumer Claims Program, the key provisions of which are set forth below, including eligibility requirements and the available remedies.<sup>9</sup>

#### **1. Eligibility Criteria**

The Resolution Agreements contemplate three categories of Class Members: Eligible Owners, Eligible Lessees, and Eligible Sellers. Eligible Owners are defined in the Class Action Settlement Agreement as:

[T]he registered owner or owners of an Eligible Vehicle on June 28, 2016, or the registered owner or owners who acquire an Eligible Vehicle after June 28, 2016, but before the end of the Claim Period, except that the owner of an Eligible Vehicle who had an active lease issued by VW Credit, Inc. as of September 18, 2015, and purchased an Eligible Vehicle previously leased by that owner after June 28, 2016 shall be an Eligible Lessee. A Non-Volkswagen Dealer who, on or after June 28, 2016, holds title to or holds by bill of sale an Eligible Vehicle in the United States or its territories shall qualify as an Eligible Owner regardless of whether that Non-Volkswagen Dealer is registered as the owner of the Eligible Vehicle, provided that the Non-Volkswagen Dealer otherwise meets the definition of Eligible Owner.

Eligible Lessees<sup>10</sup> are defined in the Class Action Settlement Agreement as:

(1) [T]he current lessee or lessees of an Eligible Vehicle with a lease issued by VW Credit, Inc.; (2) the former lessee or lessees of an Eligible Vehicle who had an active lease issued by VW Credit, Inc. as of September 18, 2015 and who surrendered or surrenders the leased Eligible Vehicle to Volkswagen; or (3) the owner of an Eligible Vehicle who had an active lease issued by VW Credit, Inc. as of September 18, 2015, and who acquired ownership of the previously leased Eligible Vehicle at the conclusion of the lease after June 28, 2016.

Eligible Sellers are defined in the Class Action Settlement Agreement as:

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<sup>9</sup> While this section summarizes key provisions of the Resolution Agreements to provide the reader with context, ultimately it is the language in the Resolution Agreements themselves that controls.

<sup>10</sup> Notably, consumers whose leases were issued by a company other than VW Credit, Inc. (“VCI”) are not eligible to participate in the Settlement Program.

[A] person who purchased or otherwise acquired an Eligible Vehicle on or before September 18, 2015, and sold or otherwise transferred ownership of such vehicle after September 18, 2015, but before June 28, 2016.

*In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation*, Case No. 3:15-MD-02672, Dkt. No. 1685, ¶ 2.29-31 (June 28, 2016).

Pursuant to the Resolution Agreements, the 2.0 liter TDI vehicles included in the settlement are reflected in Chart 3-1, below:

**Chart 3-1**

Volkswagen	
Model	Model Years
Beetle, Beetle Convertible	2013-2015
Golf 2-Door	2010-2013
Golf 4-Door	2010-2015
Golf SportWagen	2015
Jetta	2009-2015
Jetta SportWagen	2009-2014
Passat	2012-2015
Audi	
Model	Model Years
A3	2010-2013, 2015

2. Remedies

Class Member compensation is largely driven by the value of the subject vehicle, which is calculated using objective metrics illustrated in Chart 3-2, below:

**Chart 3-2**



To determine Base Value for Eligible Vehicles, the Parties agreed to use the September 2015 Clean Trade values as published by the National Automobile Dealers Association (“NADA”). For certain vehicles where NADA had not published a value as of September 2015, an agreed-upon calculation of 71.7% of the vehicle’s Manufactured Suggested Retail Price (“MSRP”) was used. Option adjustments to Base Values are determined by using Volkswagen-installed options, as valued by the September 2015 NADA Used Car Guide. The agreed-upon values are set forth in Exhibit 1.C to the FTC Consent Order. Mileage adjustments occur at the time of the Buyback using the mileage adjustment table in the September 2015 NADA Used Car Guide with an allowance for standard NADA mileage of 12,500 miles per year.

According to the Resolution Agreements, Eligible Owners electing a Buyback will receive the Vehicle Value along with additional compensation defined in the Resolution Agreements as Owner Restitution. For an Eligible Owner who acquired the Eligible Vehicle on or before September 18, 2015, Owner Restitution is calculated as 20% of the Vehicle Value, plus a fixed amount of \$2,986.73, plus whatever additional amount is necessary, if any, to make the Restitution Payment no less than \$5,100. Owners who acquired vehicles after that date receive half of the Restitution Payment amount, plus a proportionate share of any unused funds set aside to pay Seller Restitution. Finally, for Eligible Owners with an outstanding Loan Obligation in an amount greater than the sum of the Vehicle Value and Owner Restitution, Volkswagen must provide a loan payoff of up to 130% of the Vehicle Value and Owner Restitution. Once the loan is paid off, any additional money will be sent to the consumer. If 130% of the Vehicle Value and Owner Restitution does not cover the entire loan, then the consumer will be responsible to pay

the remaining Loan Obligation.<sup>11</sup>

Lessees are eligible for Lessee Restitution which includes a fixed and variable component. The fixed component is \$1,529.00 for each lessee. The variable component provides for an additional amount equal to ten percent of the NADA Clean Base Trade-in Value. Lessees also have the option to terminate their leases early without paying an early termination fee.

Owners and Current Lessees also have the option of selecting an Approved Emissions Modification, and waiting to see if one becomes available. The Approved Emissions Modification will allow the owner or lessee to receive a Restitution Payment and have their car modified to conform to agreed-upon emissions standards at no charge. If the modification will take more than three hours, consumers will have the option to use a loaner vehicle at no charge while the modification is being performed. The Resolution Agreements also require Volkswagen to provide extended warranties on the Approved Emissions Modification and provide for Lemon Law remedies if necessary. If an Approved Emissions Modification is approved, Volkswagen will also be required to maintain a public database for individuals to determine if a particular car has received the Approved Emissions Modification.

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<sup>11</sup> As of November 20, 2016, of Owners with loans who have been issued offer letters, the average loan payoff amount was approximately \$12,500, which was less than the average offer amount of \$15,100. While the population of Owners with loans who have received an offer is relatively small, the offer amount calculated for the consumer has often been more than sufficient to cover the entire outstanding loan balance. Thus far, there have been only thirty-nine instances where the offer amount was less than the loan payoff amount, and in all but one case the loan payoff amount was still within 130% of the offer amount and subject to the Loan Forgiveness provision. In the one instance where the loan payoff amount exceeded 130% of the offer letter, the balance due to the lender was less than \$300.

Eligible Sellers will receive a Restitution Payment if they registered or otherwise identified themselves to Volkswagen by September 16, 2016. This early-registration requirement was necessary to allow Volkswagen to calculate the portion of unclaimed funds from those who did not identify as Eligible Seller within the designated time period.<sup>12</sup> Eligible Sellers are entitled to Restitution Payment equal to 10% of the Eligible Vehicle value, plus a fixed component of \$1,493.37, as well as whatever additional amount is necessary, if any, to make the Restitution Payment no less than \$2,550.

### 3. Claims Process

The first step in the claims process involves registering in Volkswagen's Claims Portal by providing basic information including consumer's name, address, Vehicle Identification Number ("VIN") and preferred dealership.<sup>13</sup> Once registered, the consumer must next select a preliminary remedy and submit prescribed documents needed to substantiate a claim. Volkswagen has ten business days beginning the first business day after the consumer submits documents to determine whether the claim is complete, that is, contains all the required documentation to substantiate the claim, as well as verifies the validity of the submitted documentation (the "first ten-business-day review period"). Where Volkswagen determines a claim is complete, it also makes a preliminary decision on eligibility.

On the first business day after Volkswagen determines a claim is complete, a separate ten-business-day review period begins (the "second ten-business-day review period"). Within that second ten-business-day review period, Volkswagen's eligibility (or ineligibility)

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<sup>12</sup> The remaining portion of the unclaimed funds will be distributed to Eligible Owners who purchased their eligible vehicles after September 18, 2016, as is set forth by the Resolution Agreements.

<sup>13</sup> Volkswagen also has a process for accepting paper claims by fax and mail.

determination must be verified by the Claims Supervisor. For eligible consumers, Volkswagen must calculate the consumer's offer -- a calculation that must also be verified by the Claims Supervisor -- and transmit the offer letter to the consumer.<sup>14</sup>

If Volkswagen determines that the supporting information or documents are incomplete, it provides notification to the consumer of the deficiency who then has the opportunity to submit additional information or documents to cure. Once received, a new first ten-business-day review period begins. Similarly, if the Claims Supervisor determines during the second ten-business-day review period that Volkswagen should have determined a claim to be incomplete, and if Volkswagen agrees with that assessment, Volkswagen notifies the consumer of the deficiency ending the second ten-business-day review period. Again, the consumer can resubmit additional information or documents to cure the deficiency, which would start a new first ten-business-day review period for that claim.

Once a consumer accepts Volkswagen's offer, an appointment may be scheduled at a dealership of the consumer's choice to conduct the closing of the Buyback, early lease termination, or Approved Emissions Modification and Restitution payment.<sup>15</sup> After Volkswagen communicates an offer to the consumer, the next step in the process is for the consumer to schedule a Buyback appointment or a lease termination appointment at the dealership of their choice. Prior to the appointment, Volkswagen sends the consumer instructions on necessary

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<sup>14</sup> As discussed below in Section V, it has not been necessary for the Claims Supervisor to individually review the majority of claims deemed ineligible to date. "Logic" incorporated into Volkswagen's system, and separately evaluated by the Claims Supervisor, is designed to appropriately restrict most ineligible consumers from reaching the point of submitting a claim where the information the consumer enters makes them ineligible under the Class definitions in the Class Action Settlement Agreement. Only in limited circumstances can a consumer reach the point of submitting a claim and still be deemed ineligible, and it is only in these instances that Volkswagen's ineligibility decisions are provided to the Claims Supervisor for independent verification

<sup>15</sup> Eligible Sellers and former lessees may receive Restitution Payments via electronic funds transfer or by check sent via mail.

items to bring to the appointment. At the appointment, Volkswagen Settlement Specialists meet with the consumer to finalize the transaction and ensure they receive the correct payment. The first appointments were scheduled for November 23, 2016 and 9,208 appointments are scheduled to occur over the next few months.

While the claims process should be substantially similar for the vast majority of Class Members, Volkswagen and the Parties have anticipated that there will be a variety of consumers that have special circumstances, termed “non-standard claimants.” Pursuant to the Consumer Class Action Settlement, these are individuals who have a mechanic’s or attorney lien on their title, consumers filing on behalf of decedent’s estates, and military personnel or government contractors located overseas. Individuals in these categories will have to provide Volkswagen with additional documentation supporting their non-standard status, but will then have their claims processed in a more personalized manner to address their unique circumstances.

### **B. The Environmental Remedies**

While the Class Action Settlement Agreement and FTC Consent Order primarily focus on remedies for consumers, the DOJ Consent Decree, on the other hand, primarily focuses on addressing the harm to the environment caused by the Eligible Vehicles. In addition to incorporating the consumer remedies set forth in the Class Action Settlement Agreement and FTC Consent Order, the DOJ Consent Decree also mandates that Volkswagen will pay \$2 billion over ten years to promote the use of Zero Emission Vehicles and \$2.7 billion over three years to reduce the excess NO<sub>x</sub> emissions attributed to the use of the defeat device.

### **C. Independent Claims Supervisor**

Ankura Consulting Group, LLC serves as the independent Claims Supervisor appointed by the Court. While the role of the Claims Supervisor is articulated differently among the three



Resolution Agreements, collectively they contemplate three core functions that will endure throughout the course of Volkswagen’s administration of the Claims Program – claims verification, compliance oversight, and reporting.

The Claims Supervisor’s claims verification role is comprised of two key components: it must verify eligibility once Volkswagen has determined that a consumer’s application is complete and also verify compensation calculations consistent with the express terms of the Resolution Agreements before an offer can be made. If Volkswagen is able to secure government approval of an Approved Emissions Modification, the administration of this remedy will also be subject to oversight by the Claims Supervisor consistent with the DOJ Consent Decree.

As an independent agent of the Court, the Claims Supervisor’s compliance oversight obligations and reporting role are inextricably intertwined. Pursuant to Section XIV of the FTC Consent Order, the Claims Supervisor has a responsibility “to monitor [Volkswagen’s] compliance with the Settlement Program.”<sup>16</sup> More broadly, the Claims Supervisor has the responsibility to oversee the administration and integrity of the Settlement Program and Volkswagen’s adherence to the Resolution Agreements<sup>17</sup> and to evaluate Volkswagen’s ability

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<sup>16</sup> The Class Action Settlement Agreement contains similar language, providing that the “Claims Supervisor will oversee the implementation and administration of the Claims Process” (§ 5.2) and envisions that the Claims Supervisor will “prepare periodic reports on the progress and status of the Claims Program,” containing “information sufficient to allow the Court and the Parties to assess the Claims Program’s progress.” (§ 5.4).

<sup>17</sup> The FTC Consent Order, for example, contains language that the Claims Supervisor should:

- Review the claims administration process to ensure that it is conducted in accord with this Order §XIV.A;
- Ensure that claims are processed in an efficient and consistent manner §XIV.A.2;
- Ensure that compensation is calculated and paid in compliance with the Order §XIV.A.1;
- Ensure that eligibility determinations are proper §XIV.A.4; and
- Report on Volkswagen’s performance and the progress of the Settlement Program §XIV.B.1.

to “administer the claims administration process efficiently, expeditiously, and transparently.”<sup>18</sup> With these and other specified mandates in mind, the Claims Supervisor is required to make periodic reports to the Court and to the Parties.

#### **IV. VOLKSWAGEN’S EFFORTS TO DATE**

Developing the operations and technology necessary to process nearly 500,000 individual claims under compressed timeframes has been a significant undertaking for Volkswagen.<sup>19</sup> The company was required to build out a claims operation, develop detailed processes and workflows, and staff an organization with hundreds of individuals. In addition, Volkswagen had to develop complex and integrated technology systems to provide information to consumers, allow for application intake, and facilitate back-office claims processing. This section summarizes the efforts Volkswagen undertook to set up the claims processing organization and technology systems, and addresses some of the related challenges.

##### **A. Establishing A Mass Claims Processing Operation**

For the better part of this year, Volkswagen has been working on building out an organizational structure to develop and manage the Claims Program. The endeavor is overseen by Volkswagen’s Chief Operating Officer along with a steering committee composed of senior management. The organization includes numerous business units to address the various facets of the settlement. Chart 4-2 below is a high-level chart reflecting the overall organizational structure.

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<sup>18</sup> FTC Consent Order § XIII.C.

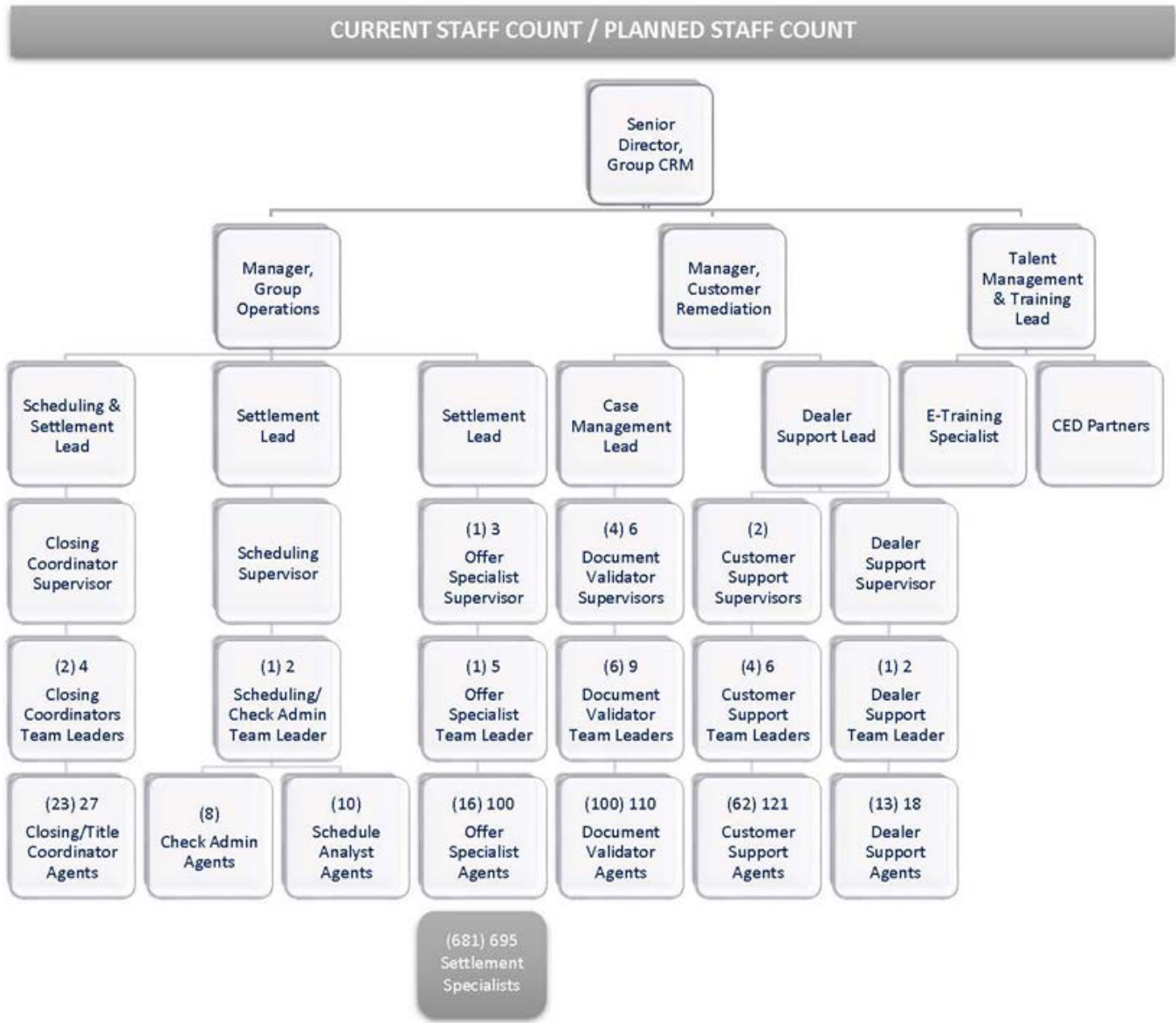
<sup>19</sup> Volkswagen does have experience with Lemon Law buyback and recalls; however, the complexity and scope of this settlement is significantly greater. In the case of a recall, consumers are identified, notified, and offered a remedy, specifically repair, replacement or refund. Processing of a claim in accord with the Resolution Agreements in this case involves a much more detailed workflow to handle the nuances of consumer status, determine eligibility and completeness, calculate the offer, and handle Buybacks or Approved Emissions Modifications, if applicable.

**Chart 4-1**

This organization has been responsible for developing the processes and systems to handle, among other things: (i) claim intake; (ii) eligibility review and offer determination; (iii) consumer communications; (iv) staff and dealership training; (v) scheduling of appointments; (vi) logistics related to Buybacks and early lease terminations; and (vii) payment of settlement benefits.

The Consumer Experience Unit, identified above, is handling the majority of consumer facing aspects of the Claims Program. Its personnel are responsible for training, responding to consumer calls, validating documents and eligibility, generating offers, scheduling Buybacks, and preparing closing documents, among other things. Additionally, 680 settlement specialists have been hired to conduct the settlement closing at dealerships nationwide. An organizational chart for the Consumer Experience Unit, with current staff (in parentheses) and planned staff, is show in Chart 4-2, below.

**Chart 4-2**



In an effort to ensure effective execution of the entire claims review process, as well as transactions at dealerships and final claim settlement actions, Volkswagen created a comprehensive and detailed training program for individuals hired to carry out the aforementioned roles. Training commenced in August of 2016, with two full weeks of orientation to provide new hires with the background and guidance necessary to carry out the requisite roles.

While Volkswagen expended significant time and resources to build out the staff to handle the Claims Program operation, concern remained that the number of Claims Hotline<sup>20</sup> operators would not be sufficient to address the demand from consumers leading into the Claims Program and that Volkswagen's claims processing staff was not large enough to timely process the expected spike in completed claims at the start of the Claims Program. On October 18, 2016, the date of the Fairness Hearing, there were 341,472 submitted claims in Volkswagen's system for which the first ten-business-day review period would begin upon the first day of the Claims Program. By November 1st, the first day of the Claims Program, that figure had increased to 375,165. Among the foremost recent complaints from consumers are that Volkswagen should have been better prepared to handle the sharp influx of claims at the outset of the Claims Program, that some claims are not being timely processed, that it has been difficult to reach Claims Hotline staff at times, and that in some instances Claims Hotline staff have struggled to provide clear answers or have provided inaccurate information about processing timetables.<sup>21</sup>

Recognizing the need to increase staffing, Volkswagen eventually increased its claim review staff to 133, with thirty-five more personnel in training and the possibility to add fifty more additional staff, at least part time. Volkswagen has also relied on existing staff when necessary to handle surges in call or claim volume, and has outsourced some of these functions to third parties to increase capacity. While Volkswagen recognized the need for additional claims review staff and rapidly responding to that need, considering the number of completed

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<sup>20</sup> Volkswagen's "Claims Hotline" is a toll-free telephone number which consumers can call to ask questions relating to the Claims Program.

<sup>21</sup> Volkswagen is aware of consumer concerns and has a number of protocols in place in an effort to be responsive. If a Claims Hotline agent cannot answer a consumer's question, for example, agents are directed to escalate the call to a supervisor, and ultimately the consumer should receive a call back with the requested information. Volkswagen also continues to revise the Claims Program process in response to customer feedback and update the Claims Website and Claims Portal with additional guidance based on consumer interactions.

claims already in Volkswagen's system as of October 18, 2016, surging personnel sooner may have avoided processing delays and reduced limitations such as truncated training timelines which can reduce quality control.

### **B. Development of IT Systems to Process Claims**

In conjunction with building out a mass claims processing operation, Volkswagen had to develop technology systems capable of: (i) allowing consumers to upload documents and submit applications; (ii) reviewing claims for eligibility; (iii) calculating compensation offers; (iv) integrating with the Claims Supervisor's independent technology systems; and (v) issuing offer letters. Volkswagen did not have access to an off-the-shelf technology solution to manage these functions. Instead, it modified a number of legacy systems that the company had previously utilized for tasks related to things like customer relations management, recalls, and Lemon Law buybacks.

The technology systems that Volkswagen customized for claims processing are comprised of: (i) a Claims Website,<sup>22</sup> which includes information about the Resolution Agreements and the claims process; (ii) a Claims Portal, which is integrated with the Claims Website and allows consumers to electronically submit claims for benefits and upload supporting documents; (iii) a back-office system where Volkswagen can process applications, determine eligibility, and issue offers; and (iv) a data warehouse, which serves as a central repository of data related to claims and facilitates data analysis and reporting. Volkswagen also developed systems for scheduling consumer appointments and tracking final offer determinations.

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<sup>22</sup> Volkswagen's "Claims Website" was designed by Volkswagen to provide information to consumers and allow Class Members to register for the Claims Program through the Claims Portal.

Volkswagen also had to integrate its systems with the Claims Supervisor's Claims Verification System ("CVS") in order to allow independent verification of Volkswagen's eligibility and offer determinations within the timetables prescribed by the Resolution Agreements. While time consuming and challenging, by the start of the Claims Program, the integration between Volkswagen and the Claims Supervisor was substantially complete, though additional functionality and optimizations are still being incorporated. For example, while Volkswagen does provide nightly downloads of a broad universe of *data* from Volkswagen's back-office system, a significant integration issue remained at the launch of the Claims Program. In particular, Volkswagen's system had been unable to permit downloads of *documents* submitted by consumers to support applications. Volkswagen is aware of the Claims Supervisor's request for underlying document downloads to ensure processing accountability, and continues to work towards enabling the necessary functionality to allow for this capability in the near term.

In addition, during the period leading up to and at the start of the Claims Program, the Claims Supervisor observed significant slowdowns and, in some cases, lack of accessibility to Volkswagen's back-office system. A likely cause of this issue is related to the volume of users accessing the system at a given time. As Volkswagen was apprised of these issues, its staff has worked to remedy them, including by adding servers and moving toward allowing the Claims Supervisor's reviewers to view documents through the CVS rather than having to connect to Volkswagen's system through a virtual private network to access documents. There have been no instances of system slowdowns or shutdowns of late.

As noted above, the Resolution Agreements' compressed timetable also placed substantial stress and limitations on how Volkswagen developed its technology systems. Some

specific challenges presented by the development schedule relate to constraints on technical system optimization, the use of legacy systems and offline processes, and quality control troubleshooting period.

Under ideal circumstances, material mass claims program eligibility and operational decisions should be resolved before a claims processing IT system is constructed to ensure that system development is properly integrated and optimized. Here, because of the accelerated claims processing timetable, it was necessary for system development to begin long before all material eligibility and operations issues were identified, let alone resolved. As a result, ongoing efforts to optimize the system will be required.

Volkswagen's decision to modify legacy systems likely resulted in a shorter development timeline; however, building on top of legacy systems not specifically designed for claims processing may present functionality or optimization limitations. Moreover, Volkswagen did not have time in advance of the Claims Program to finish building certain preferred automated functionality into its system resulting in the need for some offline processes (i.e., processes that take place outside of the automated claims processing system).<sup>23</sup> At the outset of the Claims Program, for example, the list of offline processes up through the offer phase included, among others: uploading additional documents needed to validate non-standard claims; reviewing third-party data sources; reviewing VCI data; and processing fleet vehicles and fleet claims. While offline processes can work, they necessarily increase "hands on" human engagement and correspondingly increase the risk of human error. Offline processes also tend to be slower and less efficient than automated functions. Volkswagen has indicated that it will continue to move

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<sup>23</sup> By contrast, offering consumers the option to submit paper claims necessarily requires having a representative at Volkswagen load information and documents into its system to be reviewed and cannot be automated.



towards additional automation, where feasible, and as development timetables permit. Based on the time needed to complete its operational build-out and system development, Volkswagen had less than two weeks prior to the Claims Program launch to troubleshoot different types of issues and make operational decisions and technology enhancements to address those issues. The abbreviated quality control review may, therefore, increase the number of unique corrective measures required during program implementation.

It is expected that Volkswagen's Claims Program functionality should continue to improve over time as operations are streamlined and systems are optimized.

## **V. VOLKSWAGEN'S CLAIMS PROGRAM PERFORMANCE METRICS**

The following analysis generally sets forth data as of November 20, 2016 related to the status of the Claims Program and Volkswagen's compliance with certain requirements in the Resolution Agreements. While Volkswagen has made significant progress in developing, launching, and administering its Claims Program, the data also reflects that having to review roughly 48.8% of all potential claims within the initial weeks of operation following Court approval has strained Volkswagen's resources and caused certain processing delays which, in turn, has led to frustration among some consumers.<sup>24</sup>

### **A. Consumer Registrations**

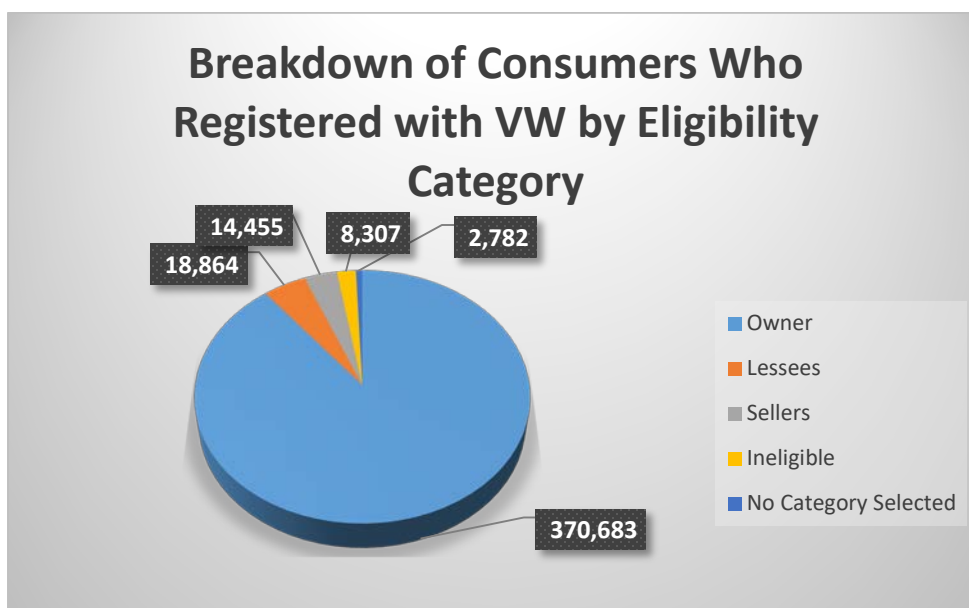
By the opening of the Claims Program on November 1, 2016, a total of 375,165 consumers already had registered in Volkswagen's system, meaning they had provided such basic claim information as their name, address, VIN and preferred dealership. By November 20,

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<sup>24</sup> The data underlying the metrics set forth in this section are derived from information in Volkswagen's back-office system. Each evening, information from Volkswagen's system is provided electronically to the Claims Supervisor. Steps have been undertaken to audit the data for accuracy. Volkswagen has engaged with the Claims Supervisor as necessary to account for identified discrepancies.

2016, that figure had increased to 415,091, of whom 402,086 were individual consumers and 13,005 were business organizations. Chart 5-1 below reflects the breakdown of these consumers by eligibility categories specified in the Class Action Settlement Agreement.

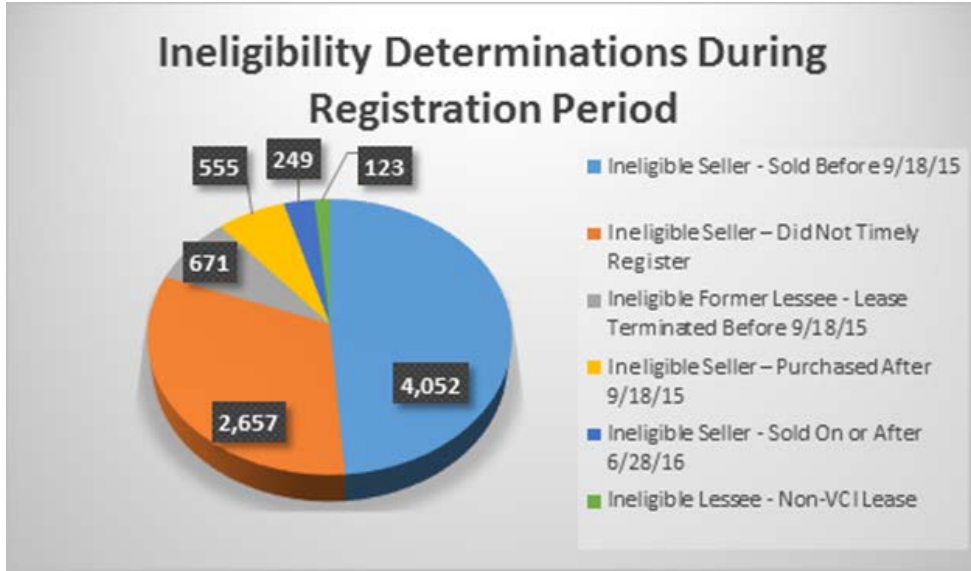
**Chart 5-1**



With respect to the ineligible population identified in Chart 5-1 above, Volkswagen's system is configured to automatically identify ineligible claims based on information entered into the Claims Portal that would make the consumer ineligible under the Class definition set forth in the Class Action Settlement Agreement.<sup>25</sup> For example, a consumer who seeks to submit a Seller claim and indicates the vehicle was sold after June 28, 2016 is ineligible under the "Eligible Seller" definition. The 8,703 ineligible consumers shown above all were systemically deemed ineligible based on the information they input in the Claims Portal. Chart 5-2 below aggregates the reasons determined for ineligibility relative to these consumers.

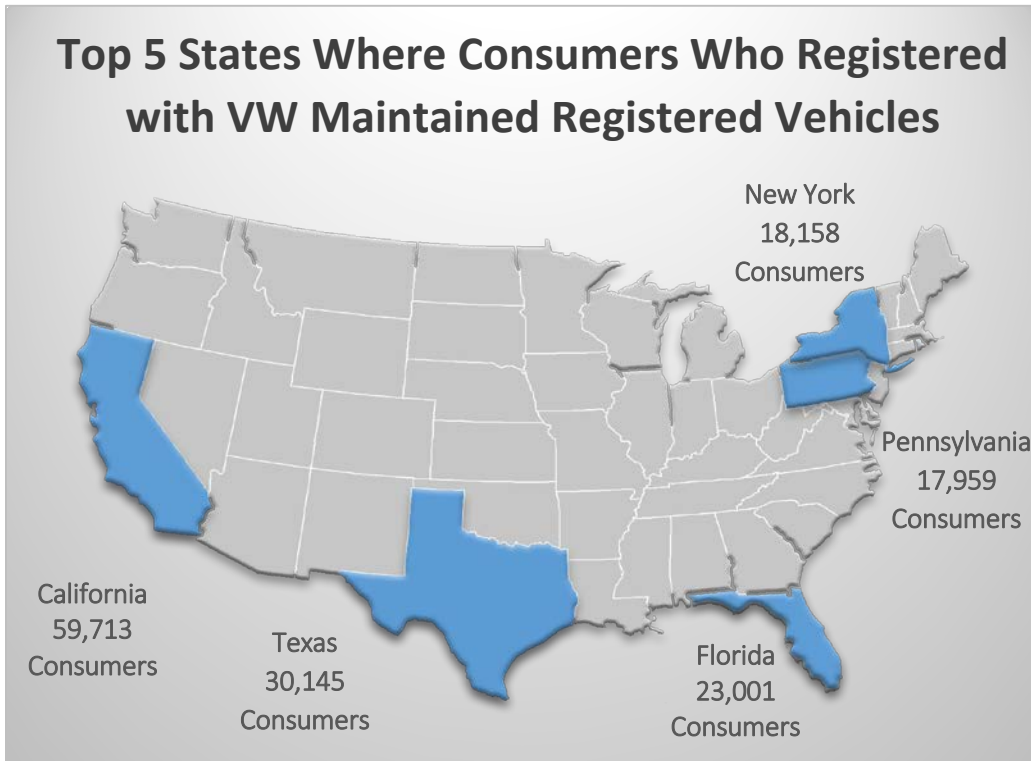
<sup>25</sup> In advance of the Claims Program, the Claims Supervisor reviewed the rules governing the logic used by Volkswagen to systemically determine eligibility based on the information input in the Claims Portal.

**Chart 5-2**



Across the population of consumers who have registered with Volkswagen, Chart 5-3 reflects states with the highest volume of registered vehicles.

**Chart 5-3**

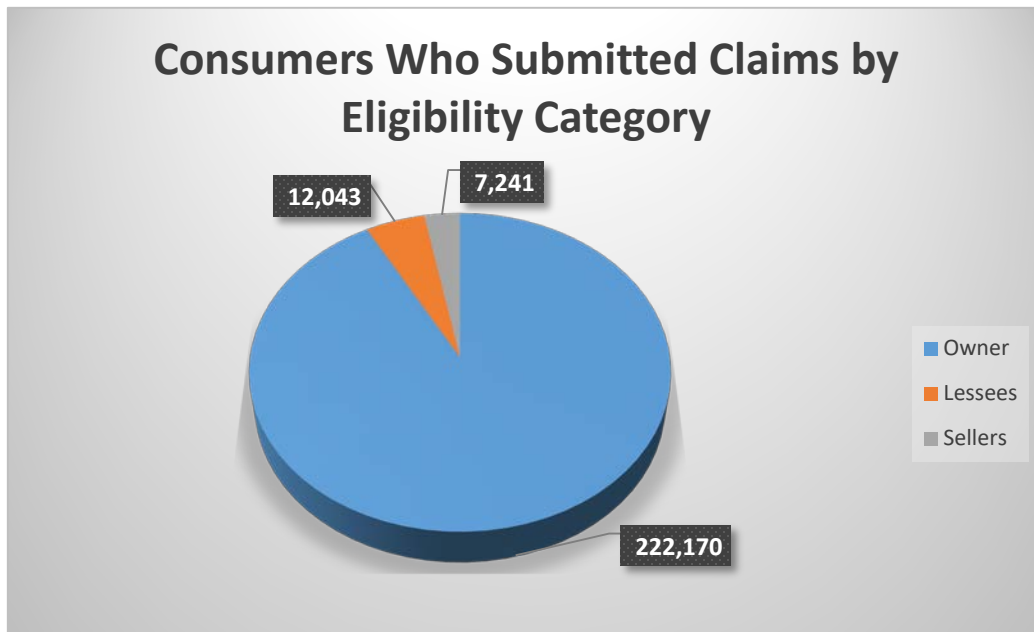


### B. Claim Submission and the First Ten-Business-Day Review Period

After a consumer registers, the next step in the process is to select a preliminary remedy, provide prescribed documents needed to substantiate the claim, and submit the claim to Volkswagen for review.<sup>26</sup> Beginning the first business day after a consumer submits a claim, Volkswagen has ten business days (excluding holidays) to review the submission and determine whether the claim is complete or deficient.

Of the 415,091 consumers who had registered with Volkswagen by November 20, 2016, a total of 241,455 had submitted claims for Volkswagen to review. Of these, 236,399 were individual consumers and 5,056 were business organizations. Chart 5-4 below reflects a breakdown of the eligibility categories of the total population of consumers who submitted claims as of November 20, 2016.

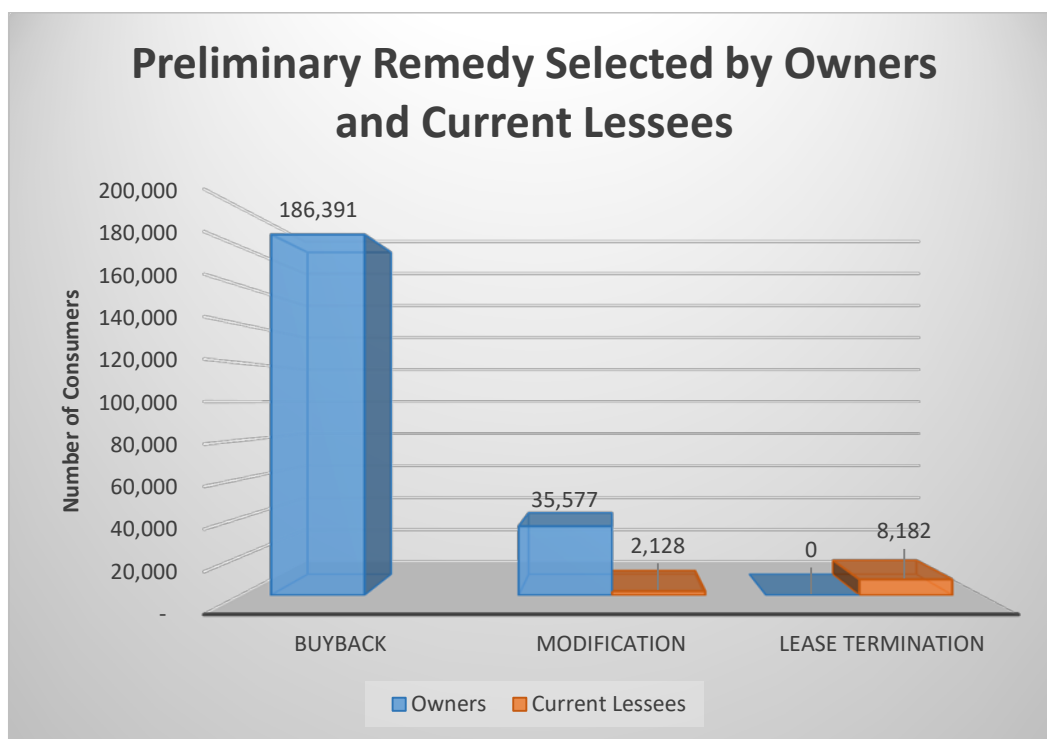
**Chart 5-4**



<sup>26</sup> The only remedy available for Sellers and former Lessees is Restitution, so no remedy selection is made by these consumers.

Chart 5-5 below shows the specified preliminary remedy selections for these Owners and Current Lessees who submitted claims through November 20, 2016. The chart does not include selections for 1,722 former Lessees or 7,241 Sellers because the only remedy available to those consumers is a Restitution Payment.<sup>27</sup>

**Chart 5-5**

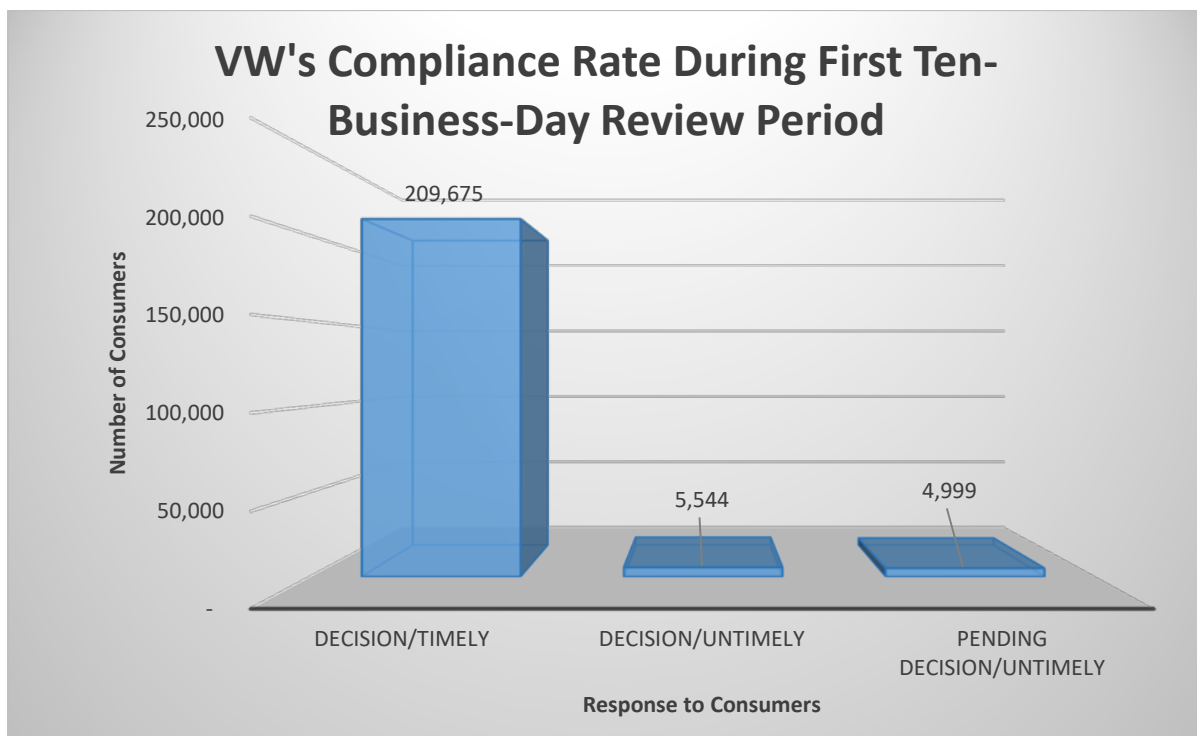


As illustrated in Charts 5-6 and Chart 5-7 below, through November 20, 2016, Volkswagen has substantially satisfied the requirement to timely issue completeness

<sup>27</sup> There is a small variance between the number of Owners and Current Lessees depicted in Chart 5-3 and Chart 5-4, which appears to be the result of consumers who have identified an eligibility category but have not made a preliminary remedy selection. The Claims Supervisor has sought additional information from Volkswagen on this variance, as no consumer should reach the first ten-business-day review period without having preliminarily selected an offer type.

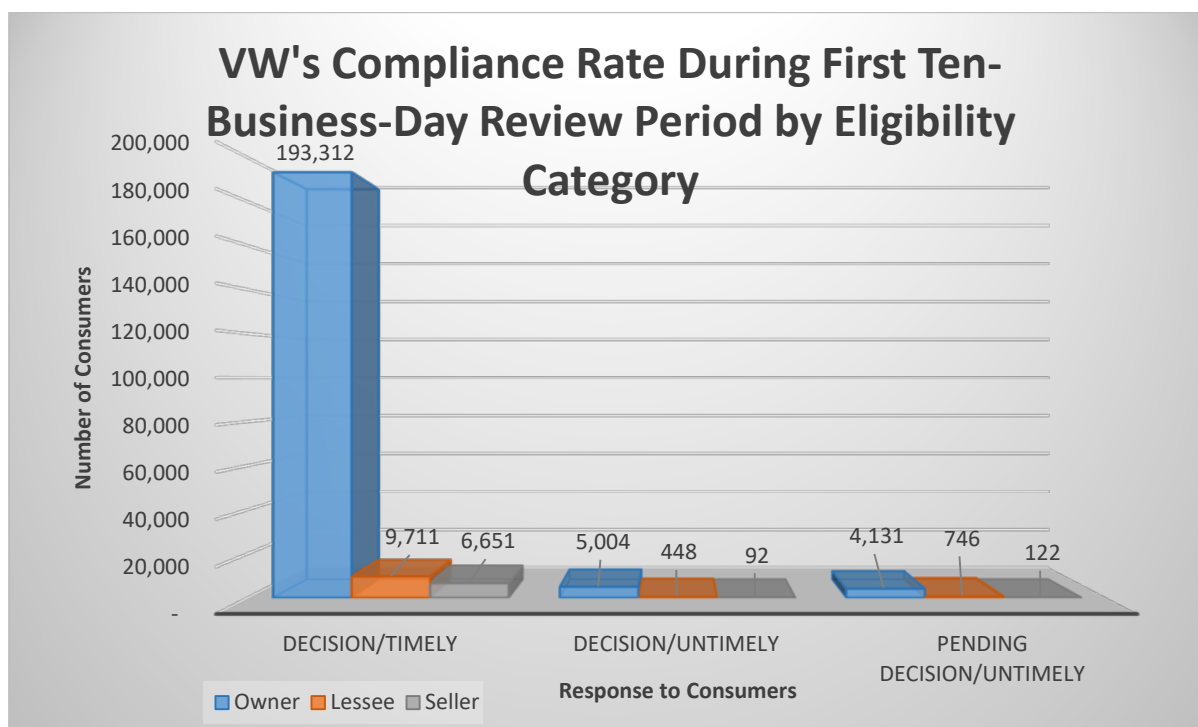
determinations.<sup>28</sup> Excluding the 36,539 instances where a decision from Volkswagen was pending and the first ten-business-day review period had not yet elapsed, Volkswagen had issued timely determinations in more than 95% of cases. In the two weeks leading up to the Claims Program launch, Volkswagen was able to get a head start on its completeness determinations review by “pre-processing” some of the claims that already had been submitted.<sup>29</sup>

**Chart 5-6**



<sup>28</sup> Through November 20, 2016, a total of 256,757 claims have entered the processing phase of the first ten-business-day review period. This figure is greater than the total number of unique consumers who have reached the first ten-business-day review period (241,255) because it accounts for instances where consumers initially deemed deficient sought to cure the deficiency by resubmitting their claim with additional information or supporting documents, starting a new first ten-business-day review period.

<sup>29</sup> By the start of the Claims Program on November 1, 2016, an aggregate of 151,079 consumers already had submitted claims for Volkswagen to review. For some of these claims, Volkswagen had made a completeness determination prior to the Claims Program. For these claims, the *second* ten-business-day review period as described herein began on November 1, 2016. For all other claims submitted prior to the start of the Claims Program, the first ten-business-day review period began on November 1, 2016.

**Chart 5-7**

It warrants mention that these compliance figures will likely need to be adjusted somewhat to account for the status of certain paper claims.<sup>30</sup> While paper claims should be considered submitted on the date they are received by Volkswagen, the company's system currently identifies the submission date as the date a paper claim is uploaded into Volkswagen's system, which Volkswagen has indicated may occur in some instances after the date the paper claim was received.<sup>31</sup> Volkswagen is aware of the need to address this distinction and is

<sup>30</sup> While in most cases, consumers submitted information and documents electronically through the Claims Portal, consumers also have the option of mailing or faxing substantiating documents to Volkswagen. Moreover, at this time non-standard claimants are required to mail or fax copies of required documentation unique to their situation (e.g., a death certificate for a decedent estate). In addition, any consumer also may elect to forego using the Claims Portal and submit an entire claim in paper.

<sup>31</sup> As of November 21, 2016, Volkswagen had received 19,048 mailings of which 13,008 have been processed. Separately, Volkswagen had received 44,673 faxed documents of which 37,728 having been processed. The number of mailings and faxes received does not necessarily correlate to the number of unique paper claims submitted. The same consumer may have submitted multiple mailings or faxes for a single claim. Volkswagen has indicated it is working to enhance its tracking system for paper claims.

developing in its system a means of tracking the date paper claims were received by the date stamp reflected on those claims. Accordingly, it will be necessary to re-evaluate Volkswagen's compliance results in connection with the processing of paper claims. The results will be included in subsequent reports submitted to the Court and the Parties.<sup>32</sup>

### **C. Preliminary Eligibility Determinations and Deficiencies**

Through November 20, 2016, of the 241,455 consumers who had submitted claims, 165,223 claims were determined by Volkswagen to be complete and preliminarily eligible. Of these, a total of 163,961 are individuals and 1,262 are business organizations. The following three Charts, Charts 5-8 through 5-10, further analyze the composition of this population.<sup>33</sup>

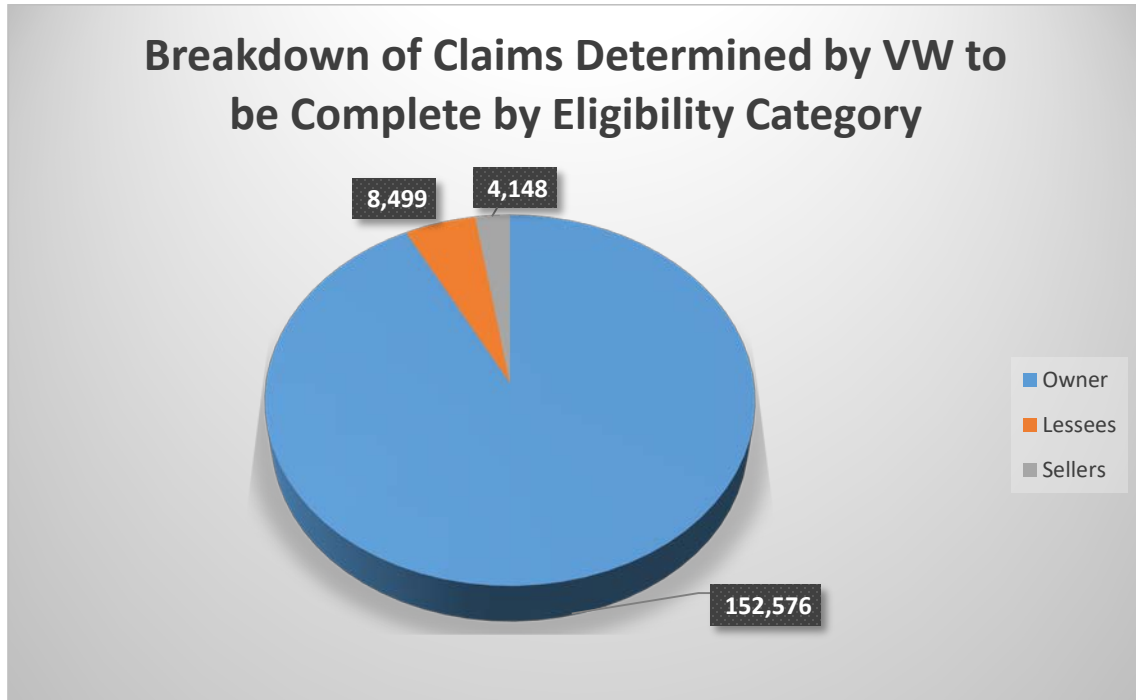
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<sup>32</sup> Another practical limitation reflected in compliance figures for the first (and second) ten-business-day review periods, is that Volkswagen's data provided to the Claims Supervisor does not readily allow for the tracking of individuals who reach the stage where Volkswagen is required to make a determination of completeness (or, as described below, issue an offer letter) and then self-select to move back in the process to change information or submit additional information. Self-selection by the consumer under those circumstances necessarily would terminate a first (or second) ten-business-day review period. Therefore, not accounting for these instances may mean that certain non-compliance figures would be overstated. Volkswagen is aware of this issue, and is continuing to evaluate how this population may be more easily tracked in the ordinary course so that figures may be properly adjusted in future reports of the Claims Supervisor.

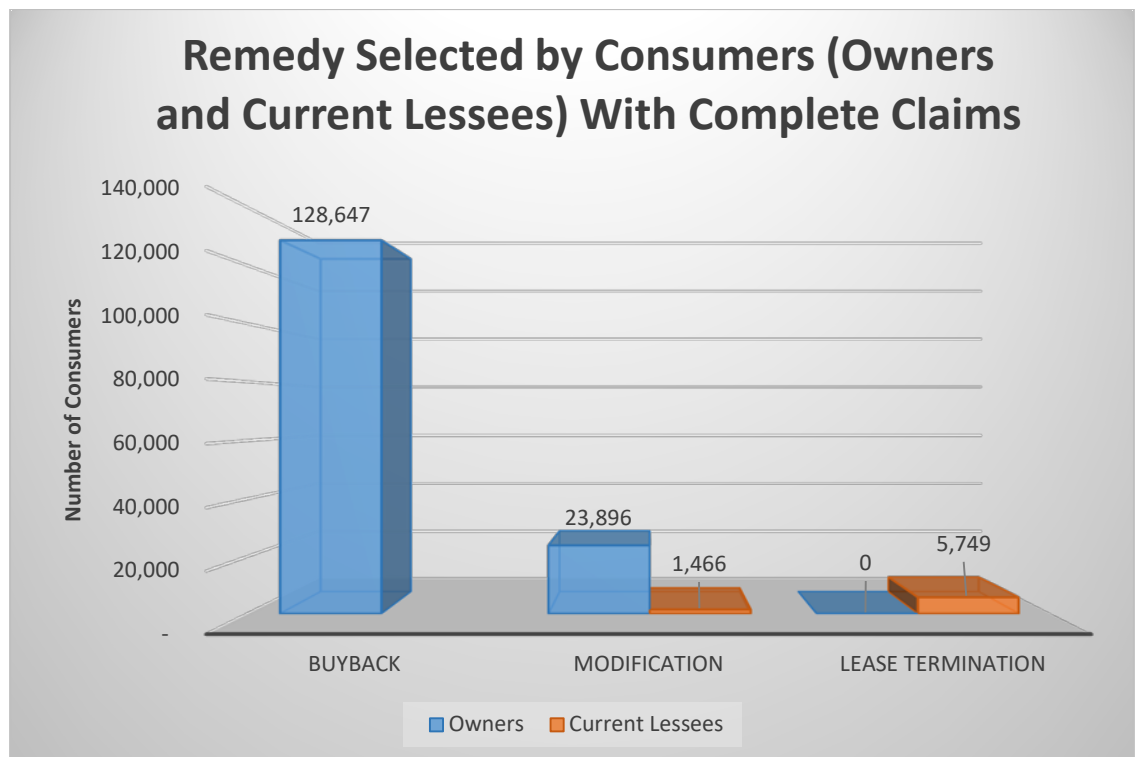
<sup>33</sup> Chart 5-9 does not include the 1,724 former Lessees or 4,148 Seller claims because the only remedy available to these claimants is Restitution.

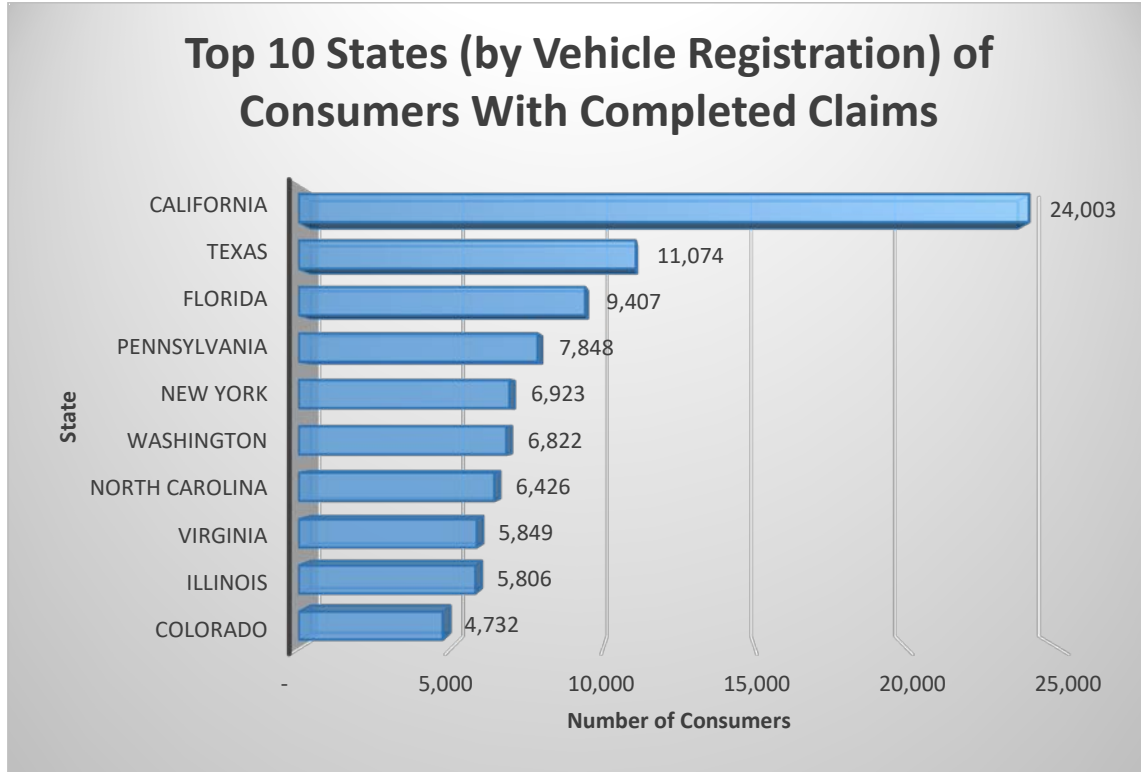


**Chart 5-8**



**Chart 5-9**



**Chart 5-10**

A claim is complete if it includes all of the information and documents needed to determine whether the consumer is eligible, while a claim that does not include required information or documentation is deficient. As of November 20, 2016, Volkswagen had made 48,834 determinations that a claim was deficient.<sup>34</sup> Volkswagen's system identifies thirty distinct reasons a claim may be found deficient (referred to as deficiency codes), and a particular claim may be tagged with multiple deficiency codes. Twenty-one of the deficiency codes have been applicable to less than five hundred claims. The top five reasons claims have been found deficient are: (i) incorrect document is uploaded (8,254 claims); (ii) document is illegible (4,221

<sup>34</sup> Of these, 44,792 were on Owner claims, 1,481 were on Lessee claims and 2,561 were on Seller claims. Unlike eligibility determinations and offer calculations, the Resolution Agreements do not contemplate that the Claims Supervisor will verify Volkswagen's deficiency determination before those determinations are communicated to consumers. As the Claims Process advances, the Claims Supervisor will audit Volkswagen's deficiency determinations and the results will be communicated in subsequent reports to the Court and the Parties.

claims); (iii) document is incomplete, meaning all information needed to substantiate the claim is not provided in the document (1,254 claims); (iv) document is expired (1,253 claims); and (v) the name on the registration does not match the name provided by the consumer in the application (1,745).<sup>35</sup>

Finally, of consumers deemed deficient through November 20, 2016, a total of 15,304 have sought to cure the deficiency and resubmitted a claim. In all of these cases, notably, Volkswagen determined that the resubmitted claims were complete.

#### **D. The Offer Letter Phase**

Volkswagen has ten business days from the date it concludes that a consumer's claim is complete and preliminarily eligible to issue an offer, *provided that* the Claims Supervisor must independently validate Volkswagen's completeness and eligibility determination as well as its offer calculation before an offer letter can issue.

As of November 20, 2016, a total of 166,128 consumers<sup>36</sup> had advanced to the second ten-business-day review period (representing 166,146 unique instances).<sup>37</sup> Excluding 89,507 claims where a decision by Volkswagen is pending but the second ten-business-day review period has not elapsed, Volkswagen has issued timely determinations in 52% of cases. Charts 5-

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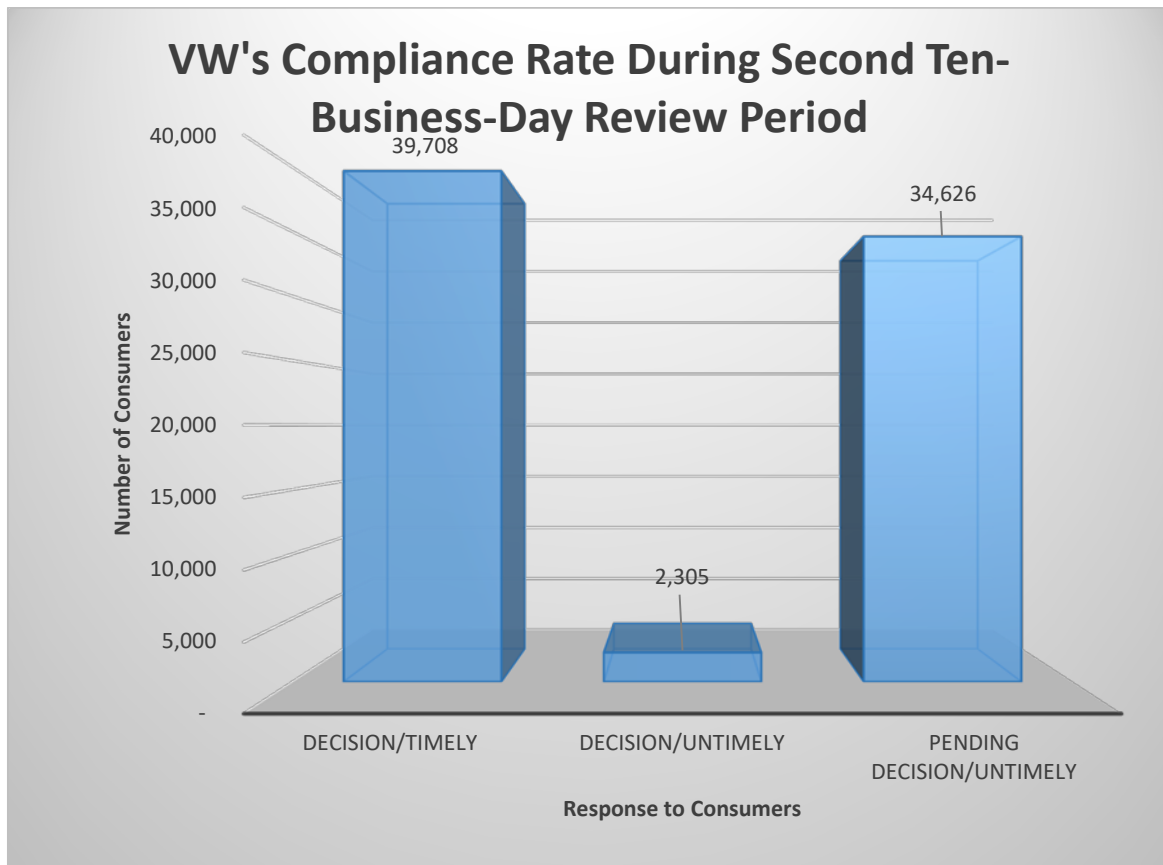
<sup>35</sup> The calculation of the most common deficiencies presently does not account for those deficiencies that had been applied to claims where the consumer cured the deficiency. Volkswagen has indicated its willingness to evaluate ways to transmit data to the Claims Supervisor that better accounts for historical deficiencies on cured deficiencies so that future reporting may be feasible.

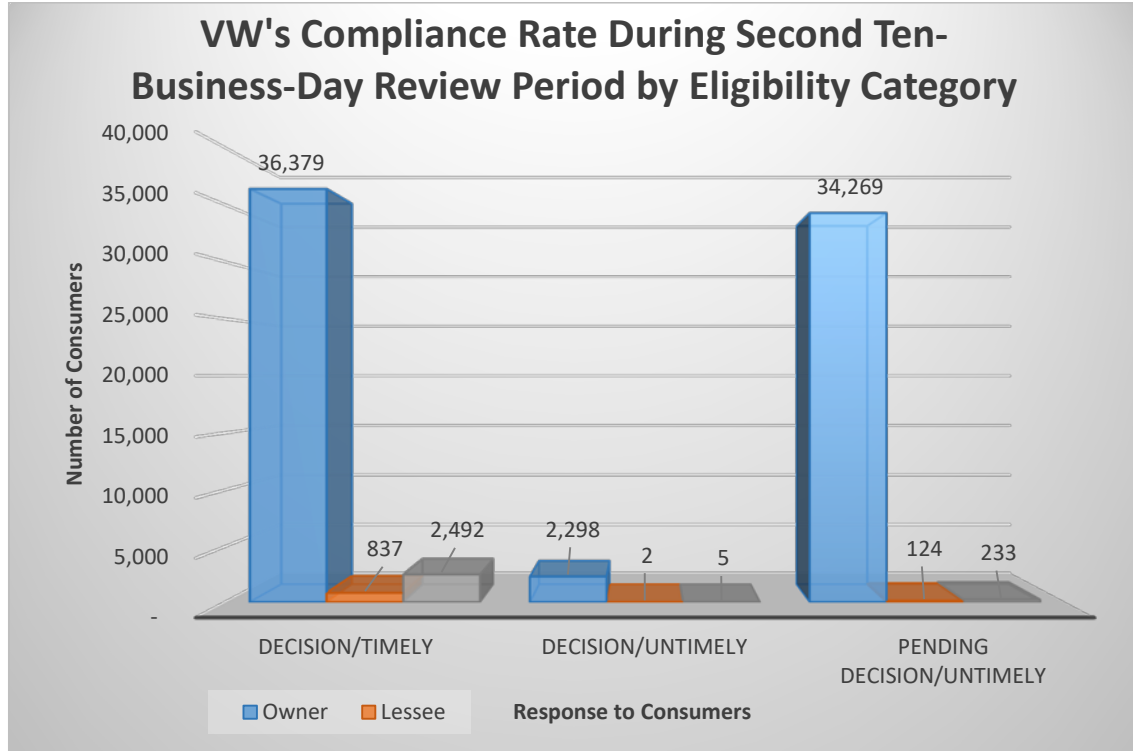
<sup>36</sup> The Claims Supervisor is working with Volkswagen to determine the source of the discrepancy in Volkswagen's data between the total number of consumers preliminarily deemed eligible by Volkswagen and the total number of consumers who have reached the second ten-business-day review period. While the figures should be identical, at this time the latter group is approximately 900 consumers greater than the former.

<sup>37</sup> A consumer whose claim is deemed deficient during the second ten-business-day review period and who moves back in the process, or who self-selects to move back in the process after having reached the second ten-business-day review period, can resubmit a claim thereby reaching the second ten-business-day review period twice. The figures reflect eighteen total instances of the same consumer having reached the second ten-business-day review period on more than one occasion.

11 and 5-12 below further analyze Volkswagen's compliance with the second ten-business-day review period.

**Chart 5-11**



**Chart 5-12**

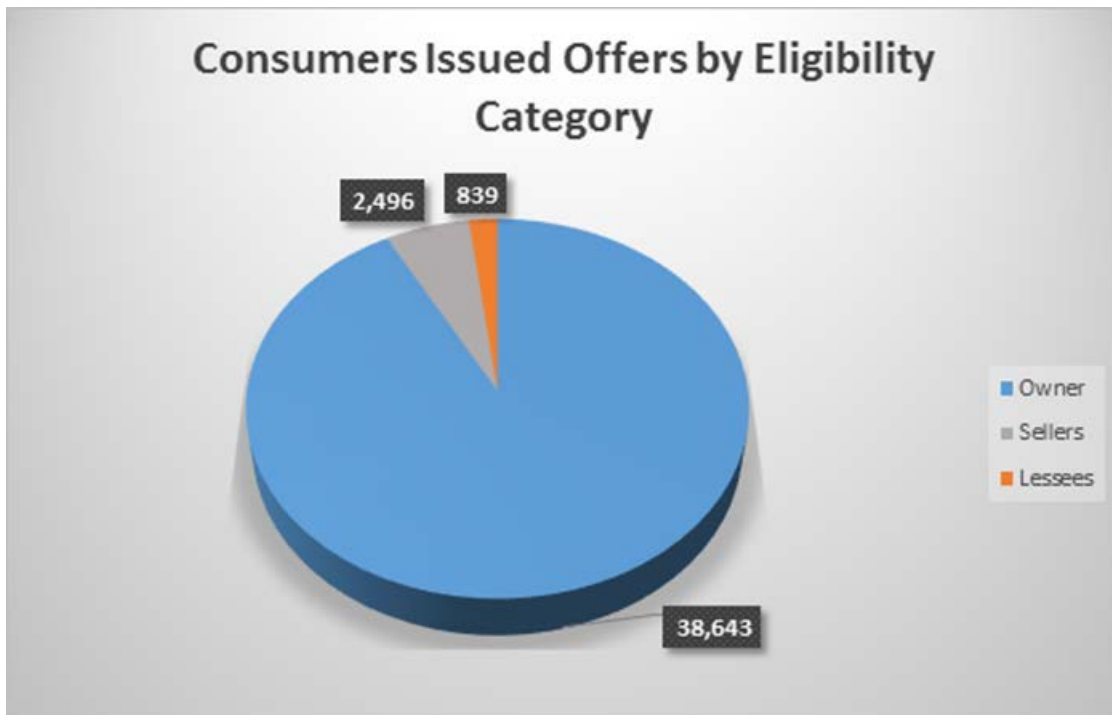
After Volkswagen determines a claim is complete, it is possible that the Claims Supervisor may nevertheless conclude during its review that Volkswagen should have determined the claim was deficient. A daily call between Volkswagen and the Claims Supervisor is scheduled to resolve such discrepancies. In instances where Volkswagen agrees with the Claims Supervisor that the claim should have been deemed deficient, the consumer is notified of the deficiency, ending the second ten-business-day review period on that claim. If the consumer then seeks to cure and resubmits the claim, the resubmission starts a new first ten-business-day review period during which Volkswagen must determine if the claim is complete.

As of November 17, 2016, there were thirty-five instances where disagreements between Volkswagen and the Claims Supervisor have been resolved by deeming the claim deficient and moving the consumer back in the process to cure the deficiency. As of the same date, there were

an additional 3,927 claims where the Claims Supervisor had questioned completeness and was awaiting a response from Volkswagen. Volkswagen has stated that it will dedicate additional resources to work through these types of claims.

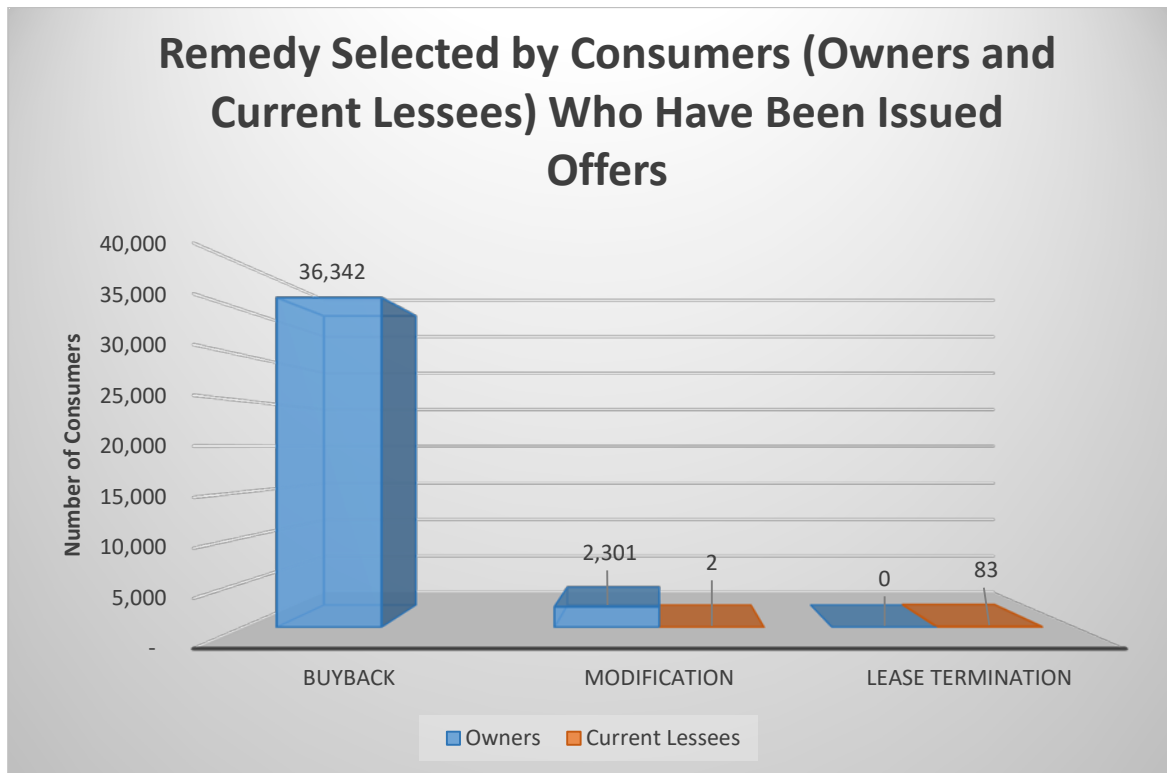
As of November 20, 2016, Volkswagen had issued 41,978 offer letters, reflecting aggregate offer amounts totaling \$765,360,954.79. As of November 20, 2016, 10,000 of these offers have been accepted. Charts 5-13 through 5-15 below reflect data relating to the composition of the population of consumers who have received offer letters.<sup>38</sup>

**Chart 5-13**

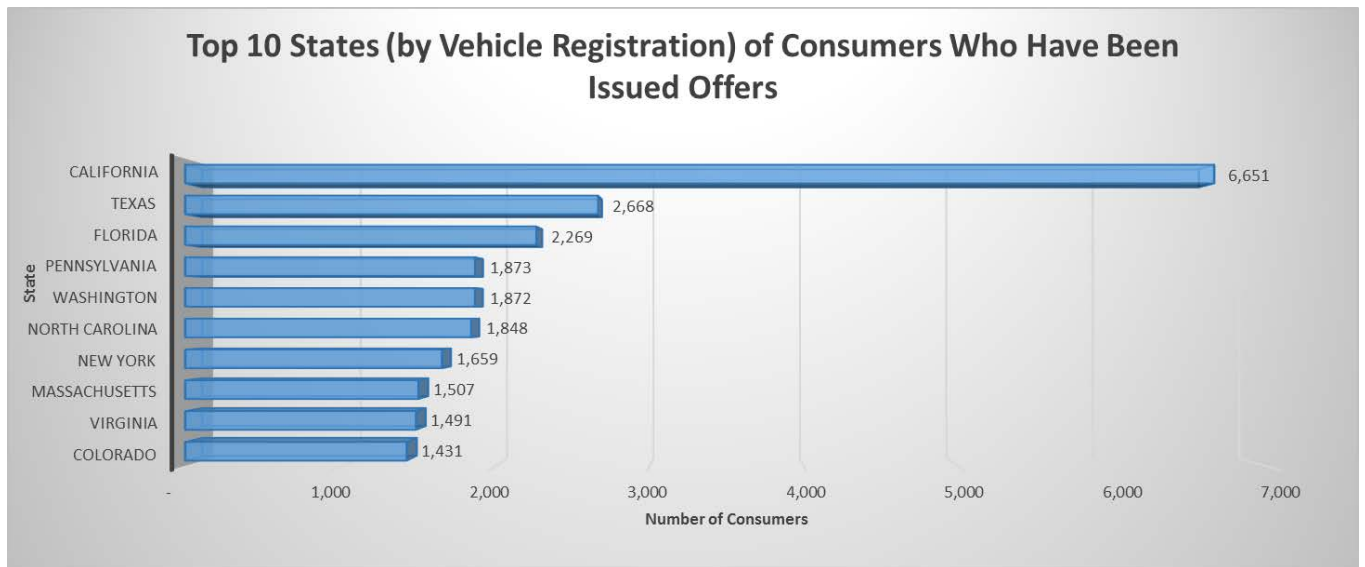


<sup>38</sup> Additionally, Volkswagen has made offers of Restitution to 2,496 Sellers and 754 former Lessees.

**Chart 5-14**



**Chart 5-15**



For Owners selecting Buybacks, the average offer through November 20, 2016, was slightly greater than \$20,000. For Owners selecting the Approved Emissions Modification, the average Restitution offer was just over \$6,000. The average Restitution offer for current Lessees was approximately \$3,700 where the Lessee selects the Approved Emissions Modification. The average Restitution offer for former Lessees for the period through November 20, 2016, is approximately \$3,300, and the average Eligible Seller Restitution offer was approximately \$3,000.

Of Owners who have received offers through November 20, 2016, a total of 36,248 are Owners without loans while 2,390 are Owners with loans.<sup>39</sup> For consumers electing a Buyback of a vehicle encumbered by a loan, the amount owing on the loan must be accounted for when calculating the offer. This requires Volkswagen to contact the lender -- VCI or Audi Financial Services (both arms of Volkswagen) or a third party (over which Volkswagen does not exercise direct control) -- to request a payoff statement. That Owners without loans constitute 94% of offers issued to Owners through November 20, 2016, aligns with a recent uptick of consumer complaints by Owners with loans, including loans through VCI or Audi Financial Services, that their claims are not being timely processed. Volkswagen has recently indicated that it is shifting resources in an effort to accelerate issuance of offers to Owners with loans. The Claims Supervisor will continue to monitor this issue and will update its findings in future reports to the Court and the Parties.

Finally, while the “non-standard” claimant population is comparatively very small, Volkswagen has not issued any offers to these types of claimants. Through November 20, 2016,

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<sup>39</sup> The remaining five are Eligible Owners who were former Lessees that purchased the vehicle between September 18, 2015 and June 28, 2016.



a total of 1,583 military overseas claims and 252 decedent estate claims had been submitted and uploaded into Volkswagen's system, of which 252 and 69, respectively, had been deemed complete. Volkswagen has represented that it will dedicate additional resources to process these claims and the Claims Supervisor will continue to monitor and update the Court and the Parties on the progress accordingly.

## **VI. OTHER AREAS EVALUATED FOR INITIAL REPORT**

As discussed above, the Claims Supervisor has a responsibility to “monitor” and “oversee” Volkswagen's efforts in making claims determinations, as well as more broadly to evaluate its compliance with the Class Action Settlement Agreement, the FTC Consent Order, and the DOJ Consent Decree. This section addresses other key areas relating to Volkswagen's efforts in meeting its obligations under the Resolution Agreements.

### **A. Volkswagen's Interactions with Consumers**

In any class action settlement, it is important to ensure that class members are notified of their rights and legal remedies. Here, notice was achieved through a Claims Website, Claims Hotline and Class Notice Process, which collectively allowed Class Members to be informed and decide if they wanted to opt out of the settlement or object to the Resolution Agreements. Each of these is discussed in turn below.

#### **1. Volkswagen's Claims Website**

On July 26, 2016, the day after the Court granted preliminary approval of the Class Action Settlement Agreement, Volkswagen added its Claims Portal to the Claims Website [www.vwcourtsettlement.com](http://www.vwcourtsettlement.com). Prior to this point, the Claims Website was more limited and provided links to the Court filings. Adding the Claims Portal and allowing interested

stakeholders to begin initial registration steps was an important milestone for enabling consumers to begin identifying potential remedies and evaluating whether to opt out of the settlement. By registering, consumers also had the ability to receive updates on the progress of the Settlement Program via email.

After Volkswagen launched the Claims Portal, both the FTC and the Claims Supervisor reviewed its functionality to assess the corresponding components of the user experience. Following the FTC's review of the Claims Website it conveyed its findings to Volkswagen. Generally, the FTC found that the website functioned as intended, and that online registration took approximately eight minutes. The Claims Supervisor's review of the Claims Website found, among other things, that the information complied with requirements of the FTC Consent Order. The information reflected was generally clear, and allowed consumers to make initial determinations regarding eligibility and potential compensation based on their specific vehicle's VIN. As required by the FTC's Consent Order, the Claims Website included links to copies of all three Resolution Agreements, provided an overview of the options available to consumers, and allowed consumers to make an initial determination of eligibility. The Claims Website also provided functionality to assist users in locating vehicle VINs and determining potential compensation based on those corresponding VINs. Moreover, the Claims Website included an "En Español" link that routed viewers to a Spanish version of the site. At the time of its launch, the Claims Website did not contain any restricted promotional materials or other information prohibited by the FTC Consent Order.

While the Claims Portal portion of the Claims Website did not have full functionality (for example, document upload capability) on July 26, 2016, it did provide Eligible Sellers the opportunity to register with Volkswagen prior to the September 16, 2016, deadline as a condition

of eligibility. The FTC noted that functionality could be improved by allowing consumers to access the claim offer calculator without registering, enabling them to better evaluate the different remedies, or giving them the option to change their selected remedy via the website.

Some of this functionality was addressed over time and efforts to enhance the user experience were added. For instance, in early September, Volkswagen uploaded a five minute, thirty-one second video that provided an overview of the Settlement Program. Volkswagen also included an eleven minute, thirty-five second video demonstrating how consumers could create an account and register online. The Claims Website was also updated to include frequently asked questions (“FAQs”) relating to eligibility, settlement benefit options, emissions modifications, monetary compensation, and the claims program. Later, on September 18, 2016, the Claims Website allowed consumers to upload documents required to substantiate claims.

Usage data suggests that the Claims Website was frequently visited by consumers to learn about the Settlement Program and the process. Through November 21, 2016, the website received a total of over three million unique visits. The daily visits ranged from a high of 66,583 on October 25, 2016, to a low of 6,320 on September 4, 2016. As might be expected, the often-concentrated volume of usage resulted in occasional technological challenges. For example, on the days leading up to the September 16, 2016, deadline to register as an Eligible Seller, there were reports that the Claims Website crashed numerous times. Volkswagen worked to address the technical problems as quickly as possible, but also recognized that the error messages consumers received might have hindered some individuals from registering by the deadline. In light of this, consumers who contacted Volkswagen or the PSC in the three days following the

deadline and provided a name and VIN, were deemed by Volkswagen to have timely registered.<sup>40</sup>

## 2. Claims Hotline

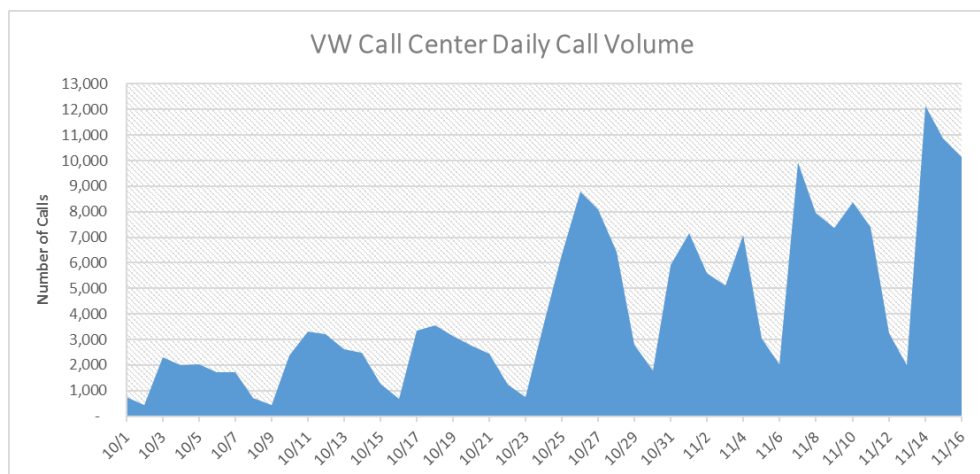
On July 26, 2016, a toll-free phone number was established to enable individuals to obtain information about the Resolution Agreements and Claims Program.<sup>41</sup> The Claims Hotline operates seven days a week, from 7 a.m. to 11 p.m. eastern time. Hotline staffing resources were established to answer consumer questions regarding the settlement, the claims program and potential remedies. Claims Hotline employees received training on active listening in order to allow them to better respond to consumer needs as well as technical training to handle Volkswagen's phone systems. Volkswagen has indicated that it is evaluating the potential to provide consumers with the ability to engage in live electronic chats with Claims Hotline agents in the near future.

Between the period of October 1, 2016, and November 16, 2016, the Claims Hotline received just under 200,000 phone calls, with an average daily call volume of over 4,000 calls. Chart 6-1 below depicts the daily call volume.

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<sup>40</sup> A total of 2,657 individuals who submitted Eligible Seller claims were ultimately deemed ineligible for failure to timely register.

<sup>41</sup> Prior to this date, Volkswagen customer service staff fielded consumer calls relating to the Settlement Program.

**Chart 6-1**

Before Claims Portal functionality was available and in advance of Court approval of the Resolution Agreements, there were limited complaints concerning the accessibility of Volkswagen's Claims Hotline. However, in the period leading up to and following the Court's approval of the Resolution Agreements, call volume spiked and the Hotline became overwhelmed with consumer calls. For example, on November 14th, Volkswagen received more than 10,000 calls. Some consumers complained of wait times of several hours, and Volkswagen reported hang-up rates approaching 70%. Some consumers also have expressed frustration with how calls have been handled, particularly highlighting instances where Volkswagen Hotline agents did not have answers to consumer questions.

To address wait times, Volkswagen did take immediate steps by adding additional staff to the Hotline. The Hotline originally deployed sixty-seven telephone agents, but after the surge in call volume following Court approval, Volkswagen initially increased the staff to 109 agents, with staff levels subsequently growing to approximately 300 agents over the course of

subsequent weeks. This increase in staff significantly reduced wait times, with the average wait time decreasing to eight minutes after additional telephone agents were added.<sup>42</sup>

While the increase in staffing levels reduced the wait times, the rapid on-boarding of additional agents will be further evaluated to determine the impact, if any, on quality control. Volkswagen has also attempted to reduce the number of telephone calls agents must address by providing additional FAQs on the Claims Website and also offering consumers with options to immediately select pre-recorded answers to common questions in lieu of waiting to speak with a live agent.

In an effort to better assess Hotline functionality, a review was conducted of a sampling of fifty recorded calls from the period July 27, 2016 to September 7, 2016, a period before the Court granted approval of the Resolution Agreements. As a general matter, the telephone agents were able to answer consumer questions, and when they could not, offered to escalate the call to a supervisor or call the consumer back with an answer. Without exception, the sample recordings reflected that the telephone agents were courteous to consumers, though at times their answers lacked formality. Consumer questions often focused on technical difficulties with the Claims Website – either that the website was crashing or generating error messages. In several instances, the Hotline agents were able to coordinate with supervisors to resolve the difficulty. Questions also focused on calculating the anticipated Buyback value. Early calls indicated some discrepancies between the value provided by the online calculator and the value listed in the FTC Consent Order. The Claims Supervisor also reviewed a sample of an additional fifty-six recorded Hotline calls from October 26, 2016 through October 30, 2016, after final Court

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<sup>42</sup> While the average wait time was significantly reduced, data reveals that in some instances callers still experienced wait times of up to an hour.

approval of the Resolution Agreements. Consumers expressed frustration with the wait times, but frequently conveyed gratitude to the Hotline agents for their help and patience. The majority of calls focused on questions regarding the mechanics of the two ten-business-day review periods. The Hotline agents' answers were generally accurate, but additional training on this topic could assist agents in providing consumers with more precise information.

### 3. Class Notice Process

On June 28, 2016, the PSC filed a Motion for Preliminary Approval with the Court which included a description of the proposed Notice Program and a supporting Declaration that outlined a plan for broad and multifaceted outreach to affected Volkswagen consumers. On July 25, 2016, the PSC filed a Supplemental Declaration on Amended Notices and Class Notice Program. In connection with the Court's preliminary approval of the PSC settlement on July 26, 2016, Kinsella Media, LLC ("Kinsella Media") was appointed as the Notice Administrator and it was ordered that Notice be provided according to the Class Notice Program by July 27, 2016.

The Class Notice Program began on July 27, 2016, and was completed on August 19, 2016. The Class Notice Program was both designed and implemented by Kinsella Media, an established advertising and legal notification firm in Washington, D.C. The Notice Program consisted of the notification to consumers through the "Long Form Notice," "Short Form Notice," and Claims Website, as well as other forms of notice designed to notify as many potential class members as reasonably practicable.

The Long Form Notice included a series of questions and answers designed to explain the Settlement by providing an overview of the litigation, an explanation of the benefits, and detailed instructions on how to opt-out of the Settlement, if so desired. Beginning on or about August 10, 2016, the Long Form Notice was sent via First Class U.S. Mail to all Class Members identifiable

through Volkswagen's records or registration data. The forms were sent with a personalized cover letter to all identifiable Class Members as well as anyone who requested a copy through the Hotline or directly from the Notice Administrator.

In total, 811,944 Long Form Notices were sent out to identifiable Class Members and Non-Volkswagen/Non-Audi New and Used Car Dealers. 36,440 mailings were returned as undeliverable. Each Long Form Notice returned as non-deliverable was traced and re-mailed as appropriate to any new address on file with the United States Postal Service. 734 mailings have been re-mailed to forwarding addresses. For those mailings which a forwarding address was not available, a Lexis-Nexis search was performed to identify the correct mailing address. 12,148 mailings have had new addresses identified though this means. As of November 17, 2016, 23,730 returned Long Form Notices have not had new addresses identified.

The direct mail notice was supplemented with a paid media program that included print and digital advertisements as well as an earned media program. The print portion of the paid media program included publication of the Short Form Notice in national and local newspapers, consumer and trade magazines, and digital media. The Short Form Notice was designed to direct readers to the Claims Website or Claims Hotline in order to allow individuals to receive the more detailed information in the Long Form Notice. For print media, a two-color advertisement consisting of the Short Form Notice was run in a total of 125 newspapers between August 7-18, 2016, with a total estimated circulation in excess of 15 million. The newspapers consisted of national and local newspapers, as well as Spanish-language newspapers and African American newspapers. The Short Form Notice was translated into Spanish for publication in the Spanish-language newspapers.



Targeted internet advertising consisted of banner advertisements containing the information from the Short Form Notice on websites that provide detailed vehicle information, such as pricing and reviews. Banner advertisements were also placed on websites targeted to fleet owners. The banner advertisements ran between July 27, 2016 and August 19, 2016 and generated a total of 250,724 clicks to the Website. Finally, the Short Form Notice was also advertised on Facebook, Instagram, LinkedIn and Twitter, as well as through the Google Display Network. Sponsored keywords and phrases were implemented with all major search engines, including: Google AdWords, Bing Microsoft Advertising, and their search partners. Kinsella Media used a third-party ad management platform to audit the digital portion of the paid media program.

The earned media program included a press release (or “campaign hero microsite”) that was sent to PR Newswire’s USI National Circuit on July 29, 2016. This press release contained text, photos, documents and related social media, as well as a link to the Claims Website. There were 5,630 pieces of news generated between preliminary approval to the opt-out deadline of September 16, 2016. Finally, Kinsella Media sent a link to the press release to dealer, fleet, and multicultural organizations asking them to distribute the information to their members.

Potential Class Members can also receive information, including the Long Form Notice through the Claims Website, [www.vwcourtsettlement.com](http://www.vwcourtsettlement.com), or through the Settlement Hotline 1-844-98-CLAIM. Anyone who provided an email address when registering for the Volkswagen or Audi Goodwill Program<sup>43</sup> should have received an email summarizing the settlements.

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<sup>43</sup> Volkswagen and Audi offered a Goodwill Package that provided consumers with a \$500 Visa pre-paid gift card, a \$500 Volkswagen Dealership card, and 24-hour roadside assistance.

While the official Class Notice Program is complete, it is contemplated that if an Approved Emissions Modification is approved, the Notice Administrator would provide a supplemental direct mailing. In addition, as the Settlement Program draws to a close, additional notices will be sent out to remind Class Members who have not yet submitted a claim to do so 180 days before the end of the Claims Program.

Between the breadth of the direct mail efforts and paid media efforts,<sup>44</sup> it appears that the Notice Administrator satisfied the notice requirements regarding outreach to potential Class Members.

#### 4. Opt-Outs

After the proposed settlement agreement was reached between the PSC and Volkswagen, potential Class Members had the option to “opt out” from the Class Action Settlement Agreement, meaning they could elect to refuse any benefits to which they otherwise would be entitled under the proposed agreement and reserve the right to independently take legal action against Volkswagen. Class Members who chose to exclude themselves from the Class Action Settlement Agreement were provided the opportunity to opt out within a prescribed timeframe.<sup>45</sup> In accordance with Section 6 of the Class Action Settlement Agreement, the Claims Supervisor established a post office box (Opt Out VW Settlement, P.O. Box 57424, Washington, D.C. 20037)<sup>46</sup> to receive and log opt-out submissions from Class Members and to provide copies of the opt-outs to the Parties and the Court.

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<sup>44</sup> Volkswagen spent over \$3.7 million dollars on print and media advertisements to provide additional notice to potential Class Members.

<sup>45</sup> The Opt-Out Deadline for most Class Members was September 16, 2016. However, as per the Class Action Settlement Agreement, certain individuals may opt out of the class for the duration of the Claims Program.

<sup>46</sup> This address was provided to consumers in the Long Form Notice.

In total, the Claims Supervisor received 3,566 timely opt-outs which included information required by Section 6 of the Class Action Settlement Agreement. A number of Class Members withdrew their opt-out requests, and the aforementioned number of opt-outs reflects those revocations. Additional information regarding the opt-out process and its results, may be found in the October 24, 2016, declaration filed by the PSC with the Court.

A number of Class Members submitted opt-out requests that did not fully comply with Section 6 of the Class Action Settlement Agreement. The Parties determined that opt-outs were compliant if they met the following criteria: the opt-out was postmarked by September 16, 2016, it contained one form of contact information together with an eligible VIN and at least one of three identifying characters of an eligible vehicle, it included an indication of an intent to opt out, and it contained a signature. Eligible Sellers were also required to provide the date of sale/transfer of their vehicle in order to determine eligibility.

The established post office box will continue to be monitored for the duration of the Claims Program.

#### 5. Objections

Section 7 of the Class Action Settlement Agreement prescribes the manner in which Class Members could present written objections prior to the Fairness Hearing explaining why the settlement should not be approved by the Court as fair, reasonable, and adequate.<sup>47</sup> A total of 462 unique objections were received and considered by the Court.

A review of a sample of the objections revealed that a significant number of objectors did not include all of the information required by Section 7 of the Class Action Settlement Agreement. The Parties determined, however, that to further the goal of reaching a fair

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<sup>47</sup> In addition, as set forth below, some individuals had the opportunity to address the Court at the Fairness Hearing.

settlement, objections not meeting the technical requirements of the Class Action Settlement Agreement should still be considered prior to final Court approval.

Section 6.3 of the Class Action Settlement Agreement prohibits a Class Member from both objecting to the settlement and opting out. A total of three such Class Members elected to both object and opt out. The Parties determined that the decision to opt out would control.

In addition to receiving written objections, the Court entertained oral objections from seventeen individuals at the Fairness Hearing on October 18, 2016. These objections included opposition to the Buyback amount; to the disparate treatment between Eligible Sellers and Eligible Owners; the perceived inadequacy of the penalties imposed by the Resolution Agreements in light of the misconduct at issue; and a variety of other objections. The Parties were given an opportunity to respond. Ultimately, the Court concluded that the “number of objections [was] small, and their substance did not call into doubt the Settlement’s fairness” *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*; 3:15-md-02672, Dkt 2102, pg. 44 (October 25, 2016).

### **B. Volkswagen’s Payout Calculation**

As discussed in greater detail in Section III(A)(2) of this report, the calculation of offers under the Resolution Agreements is an objective process. This subsection describes the steps the Claims Supervisor took to verify the underlying components supporting offer amounts.

Prior to final approval of the Resolution Agreements and launch of the Claims Program, the Claims Supervisor performed an audit of Volkswagen’s VIN database, which contains Option Adjusted NADA Clean Trade-in Values for all Eligible Vehicles. As part of the audit, Volkswagen’s VIN database was compared with a separate database provided to the Claims

Supervisor by the FTC. Some discrepancies were revealed, which were subsequently resolved by the Parties. The most significant discrepancy related to certain 2015 non-Passat vehicles that the September 2015 NADA book did not value.<sup>48</sup> Initially, if Volkswagen did not have an actual MSRP for a vehicle, it utilized an estimated MSRP value to generate a Base Clean Trade-in Value. Volkswagen later substituted the estimated MSRP with the actual, resulting in different values for approximately 590 vehicles. To resolve this discrepancy, the Parties agreed to use the higher of the two values.

The Claims Supervisor also audited a 5,000 VIN sample from Volkswagen's VIN database to validate the NADA Base Clean Trade-in Values and NADA Option Values that were determined for each VIN. The audit identified very minor discrepancies, which, like the discrepancies identified above, were resolved in the consumer's favor.

Finally, Volkswagen and the Claims Supervisor conducted blind reviews of 110 valuation scenarios, which were selected using a technique that would ensure a representative sample of the various types of claims that will be encountered throughout the Claims Program. For example, the sample was designed to cover all vehicle models, years, and options, as well as all eligibility categories. The sample was also designed to test Volkswagen's processing of low-value claims to ensure that minimum Restitution was paid. The results of the exercise reflected that Volkswagen and the Claims Supervisor arrived at consistent outcomes.

Now that the Claims Program has launched, the Claims Supervisor is responsible for verifying the payment calculation for each claim deemed Eligible. The Claims Supervisor performs this function by independently calculating the offer components for each complete

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<sup>48</sup> See § III(A)(2), *supra*.

claim that Volkswagen presents, and then comparing this number to Volkswagen's valuation. If the numbers align, the Claims Supervisor verifies the claim, allowing Volkswagen to then generate an offer letter. If the values do not align, the Claims Supervisor engages Volkswagen staff in the ordinary course to seek resolution on the appropriate payout calculation before an offer letter is generated.<sup>49</sup>

### **C. System Integrity Measures**

#### **1. Curbing Waste, Fraud, and Abuse**

There are certain measures Volkswagen built into the Claims Program that effectively curb waste, fraud, and abuse. For example, requiring the vehicle to be turned-in before payment is a fundamental mechanism to curb waste, fraud, and abuse. With respect to required documentation, because this settlement covers the entire United States, Volkswagen must be familiar with the legal requirements and prescribed forms of documentation for each jurisdiction. For this reason, Volkswagen has continued to build out a database of exemplars of drivers licenses, registrations, titles, and other documents from each jurisdiction in order to cross-check and confirm the authenticity of documents submitted and reduce the risk of fraud. Based on the unique issues that can arise across jurisdictions, it is indeed useful for Volkswagen to understand the state in which the vehicle is registered and nuances in corresponding documentation.

Volkswagen has incorporated into its operation a number of other measures to identify and mitigate fraud. In an effort to avoid jeopardizing the efficacy of those measures, they will not be detailed here. Nevertheless, to date it appears that Volkswagen has done an adequate job in balancing its desire to maintain overall program integrity, while prioritizing the need to

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<sup>49</sup> In the event a consumer disagrees with the payout calculation or other determination made in the review process, they have the option to appeal the decision to the Claims Review Committee appointed by the Court.

process claims as quickly and efficiently as possible. Moreover, Volkswagen has indicated that it will continue to evaluate additional mechanisms to curb waste, fraud, and abuse, while being sensitive to the consumer experience.

## 2. Personal Identification Information

Pursuant to Section XIII.C.10 of the FTC Consent Order, Volkswagen's system must protect the Personal Identification Information ("PII") of consumers and include other system integrity measures.

In this regard, Volkswagen has a defined classification process that, based on the nature of the data being collected, establishes a status for the data uploaded into its system. That status in turn defines the necessary levels of protections that must be built into the system to protect the data and any PII. For example, consumer-entry data (e.g., name; address; phone number) is categorized as Confidential, which carries certain encryption requirements. The status definition determination is based on Volkswagen protocols, and both business and IT personnel ultimately must agree on the classification of the type of data being received, which defines the level of system protection incorporated. Volkswagen also employs data usage agreements with third parties to further ensure safeguards on data and documents being collected and maintained when it is necessary to share data with those third parties.

Preliminary review of Volkswagen's system integrity, data integrity, and process integrity measures indicates that its safeguards appear to be adequate. Additional audits of Volkswagen's system, data, and process integrity may be expected during future review periods.

**VII. CONCLUSION**

Pursuant to the compliance oversight efforts undertaken by the Claims Supervisor to date, and the information derived from Volkswagen and relevant third parties, it appears that Volkswagen has worked in good faith to comply with the requirements of the Resolution Agreements during this initial reporting period. As noted in this Report, while Volkswagen has made significant progress, there have been challenges at the outset of the Claims Program that have led to frustration among some consumers. Volkswagen has sought to respond to these challenges expeditiously and its leadership has reaffirmed that it will continue to make improvements to the Claims Program. As contemplated by the Resolution Agreements, the Claims Supervisor will continue to evaluate and report on Volkswagen's progress with and adherence to the terms of the Resolution Agreements for the duration of the Settlement Program.

Sincerely,

**Ankura Consulting Group, LLC**



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Senior Managing Director



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Submitted: November 25, 2016



## **GLOSSARY**

1. Approved Emissions Modification – if approved by government regulators, a modification to Eligible Vehicles that will render them compliant with emissions standards
2. CARB – California Air Resources Board
3. Claims Hotline – toll-free telephone number which consumers can call to ask questions relating to the Claims Program
4. Claims Portal – online mechanism for consumers to register and submit claims
5. CVS – Claims Verification System used by the Claims Supervisor to verify eligibility and payout calculations from Volkswagen
6. Claims Website – website designed by Volkswagen to provide information to consumers and allow Class Members to register for the Claims Program through the Claims Portal
7. Class Action Settlement Agreement - settlement agreement between Volkswagen and the PSC
8. DOJ – Department of Justice
9. DOJ Consent Decree – DOJ’s Partial Consent Decree
10. EPA – Environmental Protection Agency
11. FAQs – frequently asked questions
12. First ten-business-day review period – the period beginning the first business day after a consumer submits a claim, during which Volkswagen has ten business days (excluding holidays) to review the submission and determine whether the claim is complete or deficient
13. FTC – Federal Trade Commission
14. FTC Consent Order – FTC’s partial stipulated order for Permanent Injunction and Monetary Judgment
15. IT – information technology
16. MSRP – Manufacturer’s Suggested Retail Price
17. NADA – National Automobile Dealer Association
18. NO<sub>x</sub> – nitrogen oxides
19. Parties – Volkswagen, PSC, FTC, DOJ, EPA, and CARB
20. PII – personal identification information
21. PSC – Plaintiffs’ Steering Committee
22. Resolution Agreements – Class Action Settlement Agreement, DOJ Consent Decree and FTC Consent Order
23. Second ten-business-day review period – Volkswagen has ten business days from the date it concludes that a consumer’s claim is complete and preliminarily eligible to issue an offer, *provided that* the Claims Supervisor must independently validate Volkswagen’s completeness and eligibility determination as well as its offer calculation before an offer letter can issue
24. TDI – turbocharged direct-injection
25. VCI – Volkswagen Credit, Inc.

26. VIN – Vehicle Identification Number

27. Volkswagen – Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc.