

FILED

MAY 31 2023

By [Signature]
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

JOHN HAJNY, RICARDO
VILLALOBOS, ANTHONY SERVICE
and JEREMY ADAMS, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC., AUDI OF AMERICA, LLC, AND
SANCTUS, LLC D/B/A SHIFT DIGITAL,

Defendants.

Case No.: C22-01841

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

1 John Hajny, Ricardo Villalobos, Anthony Service, and Jeremy Adams move for final
2 approval of their settlement with Volkswagen Group of America (VWGoA), Audi of America,
3 LLC (Audi), and Sanctus, LLC d/b/a Shift Digital, of their putative class action. The action
4 arises out of a data breach. (Complaint at ¶ 2.)

5 The motion is granted.

6 **A. Litigation Background**

7 This particular case arises out of a nationwide class action complaint originally filed in
8 the United States District Court for the District of New Jersey, titled *Villalobos v. Volkswagen*
9 *Group of America, Inc.*, No. 2:21-cv-13049-JMV-JBC (D.N.J.) on June 28, 2021, by Plaintiff
10 Ricardo Villalobos. (Byrd Decl. at ¶ 7.) On July 8, 2021, Plaintiff John Hajny filed his Class
11 Action Complaint in the same court, titled *Hajny v. Volkswagen Group of America, Inc.*, No.
12 2:21-cv-13442-JMV-JBC (D.N.J.). (*Id.*) On August 9, 2021, Plaintiff Villalobos filed a First
13 Amended Class Action Complaint, adding Plaintiff Jeremy Adams. (*Id.*) On September 14, 2021,
14 the court consolidated the Villalobos and Hajny actions, and the plaintiffs in those actions filed a
15 Consolidated Class Action Complaint on October 14, 2021, which added a fourth Plaintiff,
16 Anthony Service, under the consolidated caption, “*In re: Volkswagen Group of America, Inc.*
17 *Data Breach Litigation*” (the “Consolidated Action”). (*Id.*)

18 On November 29, 2021, upon the Parties’ stipulation, the *In Re: Volkswagen* Action was
19 transferred to the Northern District of California, so that it could be consolidated with an earlier
20 filed case, *Wynne v. Audi of America* (N.D. Cal.) No. 4:21-cv-08518-DMR. (Simpson Decl. at ¶
21 4, Ex. 1.) Before the consolidation could occur, however, Wynne moved to remand, which was
22 ultimately denied. (Byrd Decl. at ¶ 10.)

23 The Hon. Wayne R. Andersen (Ret.) presided over the settlement negotiations between
24 Class Plaintiffs, Defendants, and objector Wynne. (Andersen Decl. at ¶ 1.) Counsel for Class
25 Plaintiffs, Defendants, and Wynne attended and participated in settlement discussions at an
26 in-person mediation session on May 16, 2022, in Chicago, IL. (*Id.* at ¶ 9.) Wynne’s counsel
27 chose to depart this session in the early evening, while settlement discussions were still ongoing.

1 (*Id.* at ¶ 11.) Counsel for Wynne recalls these settlement discussions differently, but does not
2 dispute that he was present at the mediation. (Righetti Decl. at ¶ 8.)

3 On August 10, 2022, Plaintiffs and Defendants informed Judge Ryu that they had signed
4 a term sheet and, to avoid potential unnecessary disputes, planned to seek judicial approval of the
5 settlement in state court. (Simpson Decl. at ¶ 6.) The instant class action complaint (the *Service*
6 action) was filed on August 30, 2022, in this Court.

7 On September 15, Plaintiffs moved for preliminary approval of the Settlement
8 Agreement, and the Court set a preliminary approval hearing for October 20. On October 13, one
9 week before the preliminary approval hearing, Wynne filed an *ex parte* application for leave to
10 intervene in this action. Although the *ex parte* application was denied, the Court permitted
11 Wynne to file her motion to intervene, set it for hearing on November 17, 2022, and continued
12 the hearing on the preliminary approval motion to December 1, 2022. On November 17, the
13 motion to intervene was denied.

14 As to the substance of the matter, Volkswagen collects personal information from
15 customers and potential customers. “Personal Information” (PI) includes names, addresses,
16 phone numbers and information about vehicles purchased. For customers who applied for loans
17 through Volkswagen, “Sensitive Personal Information” (SPI) was collected, which includes
18 driver’s license numbers, Social Security numbers, and other bank account, credit card, and tax
19 numbers. PI was collected for about 3.1 million people. SPI was collected from about 90,000.
20 Volkswagen kept the data, and shared it with third parties, including Shift Digital. Plaintiffs
21 claim that Shift Digital “left that unredacted data exposed for nearly two years.” Allegedly, some
22 of the data was stolen and some posted for sale on the web, which can result in it being used for a
23 variety of fraudulent purposes. In March of 2021, Volkswagen learned of the problem, and began
24 notifying consumers and law enforcement officials.

25 The above-referenced litigation ensued.

26 Plaintiffs’ motion for preliminary approval of the settlement was heard on December 1,
27 2022. The Court had a number of questions for the parties, which they addressed by subsequent
28

1 filings. The Court was satisfied with the supplemental responses and granted preliminary
2 approval by order dated December 23, 2022.

3 **B. Terms of the Settlement**

4 The settlement will approve a settlement class, which will consist of “[A]] persons
5 residing in the United States to whom VWGoA and/or Audi sent notice that their SPI and/or PI
6 may have been exposed as a result of the Incident.” Within the class, there would be three
7 subclasses: Tier 1 (California Residents whose sensitive personal information was exposed and
8 who would receive \$350); Tier 2 (non-California residents whose sensitive personal information
9 was exposed and who would receive \$80); and Tier 3 (nationwide class members whose personal
10 information [not “sensitive” personal information] was exposed and who would receive \$20).

11 Tier 1 and 2 members who document actual losses greater than the payment amount will receive
12 the higher amount (up to \$5,000). These cash payment amounts are not guaranteed, however. If
13 the amount of valid claims within any Tier exceeds the amount available, the payments will be
14 reduced pro rata. Money from the Tier 3 fund can be used to pay Tier 1 and 2 members if their
15 funds would otherwise be reduced. The class has about 3,177,240 members; Tier 1 has about
16 19,593 members, Tier 2 has about 70,591 members, and Tier 3 has about 3,087,056 members.

17 Class members will release all claims arising from the Incident, which occurred between
18 August 17, 2019 and June 15, 2021. Thus, there is no “class period.”

19 A settlement fund of \$3,500,000 is created, which provides for cash payments or (for Tier
20 1 and tier 2 members) reimbursement of out-of-pocket losses for class members who submit
21 valid claims. \$500,000 was originally allocated to notice and administrative costs, though in the
22 actual event the amount expended and now sought has risen to \$612,486. \$20,000 is allocated to
23 representative incentive awards for the four plaintiffs (\$5,000 each); \$1,050,000 in attorney’s
24 fees (30% of the gross settlement amount), and up to \$50,000 in litigation costs. The funds will
25 be paid to the administrator within thirty days after entry of an order directing notice to the class.
26 The gross settlement amount would be divided among the three subclasses: Tier 1 California SPI
27 subclass (\$2,000,000), Tier 2 Nationwide SPI subclass (\$800,000), and Tier 3 Nationwide PI
28 subclass (\$700,000). The net funding available is \$1,880,000, just over half of the gross amount.

1 The amount available to each tier is less: Tier 1: \$1,074,285, Tier 2: \$429,714, and Tier 3:
2 \$376,000.

3 Detailed criteria are provided concerning the nature of the reimbursable out-of-pocket
4 expenses and the necessary documentation.

5 Defendant Shift Digital also would make various improvements to its existing security
6 systems and practices, for three years.

7 **C. Class Notices, Claims Submitted, Opt-Outs, and Objections**

8 The class administrator, Epiq, reports in detail as to the extensive scope of the class
9 notice given here, pursuant to the preliminary approval order. The starting point for these efforts
10 was the notice that defendants had given of the data breach prior to settlement.

11 E-mail notices were sent to 2,583,575 class members at 2,688,030 e-mail addresses
12 (some members having multiple e-mails). The emails were crafted to maximize actual receipt,
13 by such means as designing them to avoid standard spam filters. There were 450,701 class
14 members for whom no e-mail addresses were known, and 343,650 of the e-mail notices sent
15 were bounced back as undeliverable. To reach these class members, Epiq sent summary-notice
16 postcards to 714,284 class members. Between the e-mails and the postcards, Epiq succeeded in
17 sending notice to 96.6% of the known class members. It also sent nearly 3 million reminder
18 notices by e-mail.

19 Additional steps were taken to try to maximize notice. A website was created, and
20 settlement information was publicized through press releases, social media, and an industry
21 influencer list.

22 Unlike most class settlements, this settlement rests on a process for submitting claims. Of
23 the approximately 3 million class members given notice of the settlement, a total of 63,949
24 members submitted claims, as follows:

- 25 • 36 class members requested reimbursement of actual out-of-pocket losses,
26 totaling \$59,254.50.
- 27 • 693 members of Tier 1 (California SPI), representing about 3.56% of the total,
28 submitted claims for the set cash payment.

- 1,645 members of Tier 2 (non-California SPI), representing about 2.35% of the total, submitted claims for the set cash payment.
- 61,213 members of Tier 3 (nationwide PI), representing about 2.05% of the total, submitted claims for the set cash payment.

The result of these figures is that members of Tiers 1 and 2 submitting claims will be paid the full amounts allocated in the settlement agreement, including requested out-of-pocket reimbursements. Some money will be left over after paying those claims, which is reallocated to Tier 3. As a result, the set payments to Tier 3 claimants will be slightly higher than the \$20 apiece called for in the settlement agreement and class notices—between \$22.79 to \$23.24.

Twenty-two class members opted out of the settlement. Four objections were received. Of these, two were the result of misunderstanding of the subclass definitions, and were withdrawn after explanation. The Court will address the remaining two below.

D. Legal Standards

The primary determination to be made is whether the proposed settlement is “fair, reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction . . . to the proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC*, (2021) 69 Cal.App.5th 521.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Nearby v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)

1 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply,
2 because “[w]here the rights of the public are implicated, the additional safeguard of judicial
3 review, though more cumbersome to the settlement process, serves a salutary purpose.”
4 (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th
5 48, 63.)

6 **E. Discussion**

7 Plaintiffs have adequately discussed the strengths and weaknesses of the case, including
8 both the merits and whether a class would be certified. California class members also have a
9 claim under the California Consumer Privacy Act, which creates a statutory damages remedy,
10 with specific minimum damages of \$100. This statute, however, took effect on January 1, 2020,
11 while the data in question was “exposed” from August 17, 2019 to June 15, 2021. As between
12 defendants, Volkswagen might shift liability to Shift Digital (but since the settlement includes
13 Shift Digital, that would not appear to be a significant problem). Counsel estimate the maximum
14 damages available to the Tier 1 subclass at about \$14.6 million, simply by multiplying the \$750
15 maximum statutory damages per subclass member. No estimate of potential actual damages is
16 provided. Nor is an estimate provided of the likely value of the Tier 2 and Tier 3 subclasses. It
17 stands to reason, however, that the Tier 2 subclass members, who do not have a claim under
18 California law, and the Tier 3 subclass members, who did not have “sensitive” information
19 disclosed, have a less valuable claim than Tier 1 subclass members.

20 The Court granted preliminary approval of the settlement based on this analysis, and the
21 post-notice experience gives it no reason to reconsider. The number of opt-outs and objections is
22 quite low, indicating general approval of the settlement. Moreover, the number of actual claims
23 made allows for not only full payment of all claims as called for in the settlement, but in fact a
24 small increase in payments to the Tier 3 claimants. The results of the notice process has also
25 been quite satisfactory, reflecting on the very able efforts of Epiq.

26 As for the two remaining objections: One, Woeste, is a member of Tier 3, and his
27 objection is basically that he should be entitled to reimbursement of his claimed out-of-pocket
28 expense for identity theft monitoring, a form of claim made available only to Tiers 1 and 2. The

1 Court understands the request, but Tier 3 by definition consists of class members whose released
2 information is not sensitive and not likely to result in fraud or identity theft.

3 That leaves Wynne, the named plaintiff in a parallel action (and unsuccessful proposed
4 intervenor). Her critique of the settlement is lengthier and more detailed. However, it contains
5 nothing that wasn't already adduced in opposition to the preliminary approval, considered by the
6 Court then, and previously rejected. The Court has no more reason to reconsider now.

7 In particular, Wynne's most forcefully expressed objection rests on the very low amount
8 of the gross or net settlement compared with the approximately 3 million class members. That
9 arithmetic looks less impressive, however, when one considers that she is simply looking to the
10 wrong denominator. As the parties and the Court fully considered at the time of preliminary
11 approval, the relevant math comes from the predictable (and correct) projection that actual
12 claims made would be a small percentage of the noticed class. The result of that process remains
13 that all class members will be paid the full amounts called for in the settlement, and in most
14 cases a little more. The Court remains satisfied that the payments to actual claimants are realistic
15 and reasonable in light of analysis of the merits and demerits of the claims being settled.

16 The moving papers sufficiently establish that the proposed settlement is fair, reasonable,
17 and adequate to justify final approval.

18 The motion is granted.

19 It is hereby ORDERED, ADJUDGED, and DECREED that:

20 1. The Court, for purposes of this Final Order, adopts all defined terms as set forth in
21 the Settlement Agreement (SA) (Section III, Definitions, ¶¶ 3.1 – 3.44).

22 2. This Court has jurisdiction over the subject matter of the Action, over all claims
23 raised therein, over the Settling Parties and over the Settlement Class Members.

24 3. Based on its review of the record, including the Settlement, all submissions in
25 support of the Settlement, and all prior proceedings in the Action, the Court finally certifies the
26 following Class for settlement purposes only:

27 All persons residing in the United States to whom Volkswagen Group
28 of America, Inc. and/or Audi of America, LLC sent notice that their

1 Sensitive Personal Information and/or Personal Information may
2 have been exposed as a result of the Incident.

3 4. Excluded from the Settlement Class are those persons identified in Exhibit A to
4 the Final Judgment, each of whom submitted a timely and valid request to be excluded from the
5 Settlement Class. Such persons shall not receive the benefits of the Settlement and shall not be
6 bound by this Final Approval Order or the Judgment to be entered.

7 5. Plaintiffs Ricardo Villalobos, John Hajny, Anthony Service, and Jeremy Adams
8 fairly and adequately represented the Settlement Class Members.

9 6. M. Anderson Berry of Clayco C. Arnold, A Professional Law Corp; Gayle M.
10 Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield LLP; Rachele R. Byrd of Wolf
11 Haldenstein Adler Freeman & Herz LLP; and Karen Hanson Riebel of Lockridge Grindal Nauen
12 P.L.L.P. as Class Counsel fairly, adequately, and competently represented the Settlement
13 Class Members.

14 7. The Court finds, similar to its order conditionally certifying the Settlement Class
15 in the Preliminary Approval Order, that the requirements of California Code of Civil Procedure
16 section 382 are satisfied. Specifically, the Court finds and concludes for settlement purposes only
17 that the prerequisites to a class action are satisfied in that:

- 18 (a) the members of the Settlement Class are so numerous that joinder of all
19 members is impracticable;
- 20 (b) there are questions of law or fact common to the Settlement Class;
- 21 (c) Plaintiffs and Class Counsel (as defined below) fairly and adequately
22 represent the Settlement Class;
- 23 (d) Plaintiffs' claims are typical of those of Settlement Class Members;
- 24 (e) common issues predominate over any individual issues affecting the
25 members of the Settlement Class;
- 26 (f) Plaintiffs fairly and adequately protect and represent the interests of all
27 members of the Settlement Class, and Plaintiffs' interests are aligned
28 with the interests of all other members of the Settlement Class; and

1 (g) settlement of the Action on a class action basis is superior to other means
2 of resolving this matter.

3 8. Class Notice was provided to the Class in accordance with the Preliminary
4 Approval Order and satisfied the requirements of due process, California Code of Civil
5 Procedure section 382 and rule 3.766 of the California Rules of Court and: (a) provided the best
6 notice practicable; and (b) was reasonably calculated under the circumstances to apprise
7 Settlement Class Members of the pendency of the Action, the terms of the settlement, their right
8 to appear at the Final Approval Hearing, their right to object to the settlement, and their right to
9 exclude themselves from the settlement.

10 9. The Court finds that the Notice Plan set forth in the SA and effectuated pursuant
11 to the Preliminary Approval Order constitutes the best notice practicable under the circumstances
12 and shall constitute due and sufficient notice to the Settlement Class of the pendency of the
13 Action, certification of the Settlement Class, the terms of the SA, and the Final Approval
14 Hearing, and satisfies the requirements of California law and due process of law.

15 10. The SA was arrived at following serious, informed, adversarial, and arm's-length
16 negotiations conducted in good faith by counsel for the Settling Parties, facilitated by an
17 experienced mediator, and is supported by the majority of the members of the Settlement Class.

18 11. The settlement, as set forth in the SA, is in all respects fair, reasonable, adequate,
19 and in the best interests of the Settlement Class and is approved. The Parties shall effectuate the
20 SA according to its terms, including the Business Practice Commitments. The SA shall be
21 deemed incorporated herein as if explicitly set forth and shall have the full force and effect of an
22 Order of this Court.

23 12. Upon the Effective Date, Class Representatives and each Settlement Class
24 Member, on behalf of themselves and any other legal or natural persons who may claim by,
25 through or under them, are deemed to have fully, finally and forever released and discharged the
26 Released Parties from any and all Released Claims.

27 13. Settlement Class Members, including the Class Representatives, are hereby barred
28 from hereafter instituting, maintaining, prosecuting, and/or asserting any suit, action, and/or

1 proceeding against the Released Parties, either directly or indirectly, on their own behalf, on
2 behalf of a class or on behalf of any other person or entity with respect to the claims, causes of
3 action, and/or any other matters released through the settlement.

4 14. This Final Order, the SA, the settlement which it reflects, and any and all acts,
5 statements, documents or proceedings relating to the settlement, are not, and shall not, be
6 construed as or used as an admission by or against Defendants or any of the other Released
7 Parties of any fault, wrongdoing, or liability on their part, or of the validity of any Released
8 Claim or of the existence or amount of damages.

9 15. For the reasons set forth in their application for an Attorneys' Fees and Expenses
10 Award, the Court hereby awards Class Counsel attorneys' fees in the amount of \$1,050,000.00
11 and reimbursement of expenses in the amount of \$48,491.97. Five percent of the attorneys' fees
12 are to be withheld by the Claims Administrator pending satisfactory compliance as found by the
13 Court. For the reasons set forth in the Class Representatives' request for service awards, the
14 Court hereby awards Class Representatives a service award of \$5,000.00 each for their time,
15 effort, and risk in connection with the Action. The foregoing sums shall be paid from the
16 Settlement Fund in accordance with the SA.

17 16. This Order does not constitute an expression by the Court of any opinion,
18 position, or determination as to the merit or lack of merit of any of the claims or defenses of
19 Class Representatives or Defendants. This Order is not an admission or indication by
20 Defendants of the validity of any claims in this action or of any liability or wrongdoing or of any
21 violation of law.

22 17. Class Representatives and the Settlement Class, on the one hand, and the
23 Defendants, on the other, shall take nothing further from the other side except as expressly set
24 forth in the SA and this Final Order.

25 18. The Parties are authorized to implement the terms of the SA.

26 19. Pursuant to California Code of Civil Procedure section 664.6 and rule 3.769(h) of
27 the California Rules of Court, and without affecting the finality of the Final Judgment, the Court
28 reserves exclusive and continuing jurisdiction over this Action, the Class Representatives, the

1 Settlement Class Members, and Defendants for purposes of administrating, consummating,
2 enforcing, and interpreting the SA, the Final Order and Final Judgment, including any release in
3 connection with the settlement, and for any other necessary purpose, and to issue related orders
4 necessary to effectuate the final approval of the SA.

5 20. The Claims Administrator shall post the Final Order and Final Judgment on the
6 settlement website, www.AudiDataSettlement.com, forthwith and it shall remain there until at
7 least thirty (30) days after the Effective Date.


8 21. The objections to the settlement are without merit and are overruled.

9 22. The Court approves the Settlement Administration expenses associated with
10 the settlement.

11 23. The Clerk is directed to enter this Final Order forthwith.

12 **IT IS SO ORDERED.**

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14 DATED: MAY 31 2023

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17 HON. CHARLES S. TREAT
18 JUDGE OF THE SUPERIOR COURT
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