

Exhibit 2

Declaration of Shannon Wheatman

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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12 IN RE: VOLKSWAGEN “CLEAN DIESEL”
13 MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

14

This Documents Relates to:

**DECLARATION OF SHANNON R.
WHEATMAN, PH.D. ON ADEQUACY
OF THE CLASS NOTICE PROGRAM**

15

16 ALL CONSUMER AND RESELLER
ACTIONS

Hearing: July 26, 2016
Time: 8:00 a.m.
Courtroom: 6, 17th floor

17

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The Honorable Charles R. Breyer

19

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I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

21

22 1. I am president of Kinsella Media, LLC (“KM”), an advertising and legal
notification firm in Washington, D.C. specializing in the design and implementation of
23 notification programs to reach unidentified putative class members, primarily in consumer and
24 antitrust class actions, and claimants in bankruptcy and mass tort litigation. My business address
25 is 2001 Pennsylvania Avenue NW, Suite 300, Washington, D.C. 20006. My telephone number is
26 (202) 686-4111.

27

2. KM was retained to design and implement the Notice Program in this litigation.

28

1 8. I have been involved in some of the largest and most complex national notification
2 programs in the country, including: *In re: Transpacific Passenger Air Transportation Antitrust*
3 *Litigation*, MDL No. 1913 (N.D. Cal.) (involving millions of international airline passengers); *In*
4 *re Dynamic Random Memory Antitrust Litig.*, MDL No. 1486 (N.D. Cal.) (involving tens of
5 millions of consumers); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.)
6 (involving millions of indirect purchasers); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in*
7 *the Gulf of Mexico on April 20, 2010*, MDL No. 2179 (E.D. La.); *Kramer v. B2Mobile, LLC*, No.
8 10-cv-02722 (N.D. Cal.) (text messaging case involving tens of millions of consumers); *In re*
9 *Enfamil LIPIL Mkt'g & Sales Pract. Litig.*, No. 11-MD-02222 (S.D. Fla.) (consumer fraud
10 settlement involving millions of infant formula purchasers); *Fogel v. Farmers Group, Inc.*, No.
11 BC300142 (Cal. Super. Ct., LA County) (\$455 million settlement involving tens of millions of
12 insureds); *In re Katrina Canal Breaches Consolidated Litig.*, No. 05-4182 (E.D. La.) (settlement
13 obtained for Hurricane Katrina and Rita survivors); *Lockwood v. Certegy Check Services, Inc.*,
14 No. 8:07-CV-1434 (M.D. Fla.) (data theft settlement involving over 37 million consumers);
15 *Grays Harbor Adventist Christian School v. Carrier Corp.*, No. 05-05437 (W.D. Wash.)
16 (defective product settlement involving high efficiency furnaces); and many others.

17 9. Courts have admitted my expert testimony on quantitative and qualitative
18 evaluations of the effectiveness of notice programs, and several courts have commented
19 favorably, on the record, regarding the effectiveness of notice plans I have done. Selected
20 judicial comments are included in the attached curriculum vitae.

21 10. My qualifications include expertise in the form and content of notice. For
22 example, while serving with the Federal Judicial Center ("FJC"), I played an integral part in the
23 development of the illustrative, "model" forms of notice designed to satisfy the plain language
24 requirements of Federal Rule of Civil Procedure 23(c)(2). This research formed the basis for my
25 doctoral dissertation, *The Effects of Plain Language Drafting on Layperson's Comprehension of*
26 *Class Action Notices* (2001) (Ph.D. dissertation, University of Georgia). To assist judges and
27 attorneys, both in state and federal courts, the FJC posted the notices at www.fjc.gov.

1 11. I have authored and co-authored articles on notice and due process. I believe
2 notice and due process depend upon clear communication with the people affected. *See, e.g.,*
3 Shannon R. Wheatman & Katherine M. Kinsella, *International Class Action Notice*, in WORLD
4 CLASS ACTION: A GUIDE TO GROUP AND REPRESENTATIVE CLASS ACTIONS AROUND THE GLOBE
5 673-686 (Paul Karlsgodt ed., 2012); Katherine Kinsella & Shannon Wheatman, *Class Notice and*
6 *Claims Administration*, in PRIVATE ENFORCEMENT OF ANTITRUST LAW IN THE UNITED STATES: A
7 HANDBOOK 338-348 (Albert A. Foer & Randy M. Stutz eds., 2012); Shannon R. Wheatman &
8 Terri R. LeClercq, *Majority of Class Action Publication Notices Fail to Satisfy Rule 23*
9 *Requirements*, 30 REV. LITIG. 53 (2011); Katherine Kinsella & Shannon R. Wheatman, *Class*
10 *Notice and Claims Administration*, in THE INTERNATIONAL PRIVATE ENFORCEMENT OF
11 COMPETITION LAW 264–274 (Albert A. Foer & Jonathan W. Cuneo eds., 2010); Todd B. Hilsee,
12 Shannon R. Wheatman & Gina M. Intrepido, *Do you really want me to know my rights? The*
13 *ethics behind due process in class action notice is more than just plain language: A desire to*
14 *actually inform*, 18 GEO. J. LEGAL ETHICS 1359 (2005); Todd B. Hilsee, Gina M. Intrepido &
15 Shannon R. Wheatman, *Hurricanes, Mobility and Due Process: The “Desire-to-Inform”*
16 *Requirement for Effective Class Action Notice Is Highlighted by Katrina*, 80 TULANE LAW REV.
17 1771 (2006).

18 12. The proposed Class Notice Program was jointly developed with Katherine
19 Kinsella, the founder and former president of KM, and a court-recognized notice expert with 22
20 years of experience in the design and execution of notice programs in class actions and
21 bankruptcies. Her curriculum vitae is attached as **Attachment B**.

NOTICE PROGRAM OVERVIEW

22
23 13. The proposed Class Notice Program was designed to reach the greatest practicable
24 number of Class Members and ensure that they will be exposed to, see, review, and understand
25 the Notice.

26 14. Although each case is unique, the methods and tools used in developing the Class
27 Notice Program for the Class Settlement have been employed in many other court-approved
28 notice programs.

1 in the expired automatic forwarding order. Notices returned as non-deliverable, but for which a
2 new address is not indicated by the USPS, will be further searched through LexisNexis or a
3 similar vendor to obtain a more current address. LexisNexis uses a variety of third-party sources
4 to compare latest addresses for U.S. businesses and returns updated addresses for them. If any
5 such address is found, the Notice will be re-mailed.

6 **Paid Media**

7 23. To supplement the Direct Mail Notice, KM recommends a paid media program
8 that includes national newspapers, local newspapers, consumer magazines, trade magazines, and
9 digital media.

10 24. The Short Form Notice will appear as a two-color advertisement in the following
11 national newspapers:

- 12 a. In the Sunday edition of *The New York Times*, which has an estimated
13 circulation of 2,579,166.
14 b. In the daily edition of *The Wall Street Journal*, which has an estimated
15 circulation of 1,321,827.
16 c. In the daily edition of *USA Today*, which has an estimated circulation of
17 1,100,000.

18 25. The Short Form Notice will also appear as a two-color advertisement in local daily
19 newspapers as follows:

- 20 a. In both the Sunday and daily editions of 19 newspapers that cover markets
21 with 5,000 or more Eligible Vehicles, and
22 b. In the Sunday edition of 26 newspapers that cover markets with 2,000 to
23 4,999 Eligible Vehicles.

24 26. A complete list of the newspapers and circulation information is attached as
25 **Attachment C.**

26 27. The Class Notice Program includes digital advertising to provide Class Members
27 with additional notice opportunities beyond the print placements. Internet advertising delivers an
28

1 immediate message and allows the viewer of an advertisement to instantly click through to a
2 website for further information.

3 28. Targeted Internet advertising may include:

4 a. Third-Party Targeting: Banner advertisements will be delivered to websites
5 using IHS Automotive (Polk)¹ data to Eligible Owners and Eligible
6 Lessees.

7 29. To target individuals who are researching or have an interest in automobiles,
8 banner advertisements will be placed on automotive websites that provide detailed vehicle
9 information, such as pricing and reviews, to consumers. Banner advertisements will appear, on a
10 rotating basis, on the National Automobile Dealers Association (www.nada.org), *Hemmings*
11 *Motor News* (www.hemmings.com), and *Kelley Blue Book* (www.kbb.com) websites. Banner ads
12 and high impact units² will also be placed on websites associated with the following consumer
13 magazines: *Automobile*, *Car and Driver*, *Motor Trend*, and *Road & Track*.

14 30. To specifically reach fleet owners, banner advertisements will appear on the
15 National Association of Fleet Administrators website (www.nafa.org). Banner ads and high
16 impact units will also be placed on websites associated with the following the following trade
17 publications: *Automotive Fleet*, *Automotive News*, *Auto Rental News*, *FLEETSolutions*.

18 31. Social Media advertising will include targeted advertising on Facebook, Instagram,
19 and Twitter.

20 32. KM will place ads on the Google Display Network to reach potential Class
21 Members. The Google Display Network provides banner and/or video ad placement on a variety
22 of websites, blogs, and other niche sites in Google's network to reach the broad and diverse
23 interests of potential Class Members.

24 33. KM will implement sponsored keywords and phrases with all major search
25 engines, including: Google AdWords, Bing Microsoft Advertising, and their search partners.

26 _____
27 ¹ IHS Automotive (Polk) collects and analyzes data related to vehicle registration and title
information, new vehicle transactions from major auto manufacturers, and vehicle financing data.

28 ² High Impact Units are banner ad units that drive higher response rates than standard display ads
because of their larger size and interactive features.

1 When a user searches for one of the specified search terms or phrases, sponsored links will appear
2 on the results page.

3 **Earned Media**

4 34. An earned media program will also be implemented to amplify the paid media and
5 to provide additional notice to Class Members. A multimedia news release (also known as a
6 “campaign hero microsite”) will be distributed on PR Newswire’s US1 National Circuit, reaching
7 approximately 5,000 media outlets and 5,400 websites. The release will blend text, audio, video,
8 photos, related documents, and social media.

9 **VW Class Updates**

10 35. Updates will be provided to all identifiable Eligible Owners and Eligible Lessees,
11 by mail or email, when and if an emissions modification proposed by Volkswagen is approved by
12 EPA and CARB. VW Class Updates will also be sent to affiliated Volkswagen dealerships. The
13 availability of any Approved Emissions Modification will also be disclosed on the Settlement
14 Website.

15 36. When and if the proposed emissions modification(s) are rejected, or no emissions
16 modification is proposed, a VW Class Update will be mailed or emailed to all identifiable
17 Eligible Owners and Eligible Lessees to inform them.

18 **Other**

19 37. Volkswagen will establish a website at www.VWCourtSettlement.com to enable
20 Class Members to get information on the Class Settlement, including the Long Form Notice and
21 the Settlement Agreement.

22 38. Volkswagen will establish a toll-free phone number to allow Class Members to
23 call and request that a Long Form Notice be mailed to them or listen to answers to frequently
24 asked questions.

25 39. The Notice Administrator will establish a post office box to allow Class Members
26 to contact Class Counsel by mail with any specific requests or questions.

NOTICE FORM AND CONTENT

1
2 40. The Notices effectively communicate the require information about the Class
3 Settlement.

4 41. The Long Form Notice provides substantial information, including background on
5 the issues in the case and all specific instructions Class Members need to follow to properly
6 exercise their rights. No important or required information is missing or omitted. It is designed
7 to encourage readership and understanding, in a well-organized and reader-friendly format.

8 42. The Short Form Notice is designed to capture Class Members' attention with
9 concise, plain language. It directs readers to the case website or toll-free number for more
10 information.

11 **CONCLUSION**

12 43. It is my opinion that the Class Notice Program and content of the Notices are
13 adequate and reasonable under the circumstances and provide the best notice practicable. The
14 Class Notice Program is consistent with the standards employed by KM in notification programs
15 designed to reach class members. The Notice Program, as designed, is fully compliant with Rule
16 23 of the Federal Rules of Civil Procedure.

17
18 I declare under penalty of perjury that the foregoing is true and correct. Executed in
19 Washington, D.C. this 27th day of June 2016.

20 

21 Shannon R. Wheatman, Ph.D.