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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

14 _____)
15 IN RE: VOLKSWAGEN “CLEAN)
16 DIESEL” MARKETING, SALES)
17 PRACTICES, AND PRODUCTS)
18 LIABILITY LITIGATION)
19)
20)
21 _____)

Case No: MDL No. 2672 CRB (JSC)

PARTIAL CONSENT DECREE

Hon. Charles R. Breyer

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1 **WHEREAS**, Plaintiff United States of America, on behalf of the United States
2 Environmental Protection Agency, filed a complaint in this action on January 4, 2016, against
3 Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America
4 Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North
5 America, Inc. alleging that Defendants violated Sections 203(a)(1), (2), (3)(A), and (3)(B) of the
6 Clean Air Act, 42 U.S.C. §§ 7522(a)(1), (2), (3)(A), and (3)(B), with regard to approximately
7 500,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines (more
8 specifically defined elsewhere as “2.0 Liter Subject Vehicles”) and approximately 80,000 model
9 year 2009 to 2016 motor vehicles containing 3.0 liter diesel engines (more specifically defined
10 elsewhere as “3.0 Liter Subject Vehicles”), for a total of approximately 580,000 motor vehicles
11 (collectively, “Subject Vehicles”);
12

13 **WHEREAS**, the U.S. Complaint alleges that each Subject Vehicle contains, as part of
14 the engine control module (“ECM”), certain computer algorithms that cause the emissions
15 control system of those vehicles to perform differently during normal vehicle operation and use
16 than during emissions testing. The U.S. Complaint alleges that these computer algorithms are
17 prohibited defeat devices under the Act, and that during normal vehicle operation and use, the
18 Subject Vehicles emit levels of oxides of nitrogen (“NOx”) significantly in excess of the EPA
19 compliant levels. The U.S. Complaint alleges and asserts four claims for relief related to the
20 presence of the defeat devices in the Subject Vehicles;
21
22

23 **WHEREAS**, the People of the State of California, by and through the California Air
24 Resources Board and Kamala D. Harris, Attorney General of the State of California, filed a
25 complaint on June 28, 2016, against Defendants alleging that Defendants violated Cal. Health &
26 Safety Code §§ 43106, 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs.
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1 tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections incorporated by
2 reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq.*, 17500 *et seq.*,
3 and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. § 5531 *et seq.*, with regard to approximately
4 71,000 model year 2009 to 2015 motor vehicles containing 2.0 liter diesel engines and
5 approximately 16,000 model year 2009 to 2016 motor vehicles containing 3.0 liter diesel
6 engines, for a total of approximately 87,000 motor vehicles. The California Complaint alleges,
7 in relevant part, that the motor vehicles contain prohibited defeat devices and have resulted in,
8 and continue to result in, increased NOx emissions from each such vehicle significantly in excess
9 of CARB requirements, that these vehicles have resulted in the creation of a public nuisance, and
10 that Defendants engaged in related conduct that violated unfair competition, false advertising,
11 and consumer protection laws;

14 **WHEREAS**, the United States and California enter into this Partial Consent Decree with
15 Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of
16 America Chattanooga Operations, LLC (“Settling Defendants”) (collectively, the “Parties”) to
17 address the 2.0 Liter Subject Vehicles on the road and the associated environmental
18 consequences resulting from the past and future excess emissions from the 2.0 Liter Subject
19 Vehicles;

21 **WHEREAS**, Settling Defendants admit that software in the 2.0 Liter Subject Vehicles
22 enables the vehicles’ ECMs to detect when the vehicles are being driven on the road, rather than
23 undergoing Federal Test Procedures, and that this software renders certain emission control
24 systems in the vehicles inoperative when the ECM detects the vehicles are not undergoing
25 Federal Test Procedures, resulting in emissions that exceed EPA-compliant and CARB-
26 compliant levels when the vehicles are driven on the road;

1 **WHEREAS**, Settling Defendants admit that this software was not disclosed in the
2 Certificate of Conformity and Executive Order applications for the 2.0 Liter Subject Vehicles,
3 and, as a result, the design specifications of the 2.0 Liter Subject Vehicles, as manufactured,
4 differ materially from the design specifications described in the Certificate of Conformity and
5 Executive Order applications;
6

7 **WHEREAS**, except as expressly provided in this Consent Decree, nothing in this
8 Consent Decree shall constitute an admission of any fact or law by any Party except for the
9 purpose of enforcing the terms or conditions set forth herein;
10

11 **WHEREAS**, the Parties agree that:

12 1. The 2.0 Liter Subject Vehicles on the road emit NOx at levels above the standards
13 to which they were certified to EPA and CARB pursuant to the Clean Air Act and the California
14 Health and Safety Code, and a prompt remedy to address the noncompliance is needed;

15 2. At the present time, there are no practical engineering solutions that would,
16 without negative impact to vehicle functions and unacceptable delay, bring the 2.0 Liter Subject
17 Vehicles into compliance with the exhaust emission standards and the on-board diagnostics
18 requirements to which VW certified the vehicles to EPA and CARB;

19 3. Accordingly, as one element of the remedy to address the Clean Air Act and
20 California Health and Safety Code violations, Settling Defendants are required to remove from
21 commerce in the United States and/or perform an Approved Emissions Modification on at least
22 85% of the 2.0 Liter Subject Vehicles (“Recall Rate”). To this end, Settling Defendants must
23 offer each and every Eligible Owner and Eligible Lessee of an Eligible Vehicle the option of the
24 Buyback of the Eligible Vehicle or the Lease Termination, in accordance with the terms
25 specified in Appendix A (Buyback, Lease Termination, and Vehicle Modification Recall
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1 Program). In addition, Settling Defendants shall offer Eligible Owners and Eligible Lessees the
2 option of an emissions modification in accordance with the technical specifications of Appendix
3 B (Vehicle Recall and Emissions Modification Program), if Settling Defendants propose such a
4 modification and EPA/CARB approve it. Settling Defendants estimate that the total cost of
5 injunctive relief pursuant to the requirements of Appendix A and the related Class Action
6 Settlement and FTC Order may be up to \$10,033,000,000. In the event Settling Defendants do
7 not achieve an 85% Recall Rate, Settling Defendants must pay additional funds into the
8 Mitigation Trust;
9

10
11 4. The practical engineering solutions provided by Appendix B (Vehicle Recall and
12 Emissions Modification Program), should Settling Defendants propose such emissions
13 modifications consistent with the provisions of Appendix B, would substantially reduce NOx
14 emissions from the 2.0 Liter Subject Vehicles and improve their on-board diagnostics, would
15 avoid undue waste and potential environmental harm that would be associated with removing the
16 2.0 Liter Subject Vehicles from service, and would allow Eligible Owners and Eligible Lessees
17 to retain their Eligible Vehicles if they want to do so;
18

19 5. Members of the public who are Eligible Owners or Eligible Lessees of Eligible
20 Vehicles will benefit from the relief provided by this Consent Decree;
21

22 6. As described in Appendix C (ZEV Investment Commitment), Settling Defendants
23 will direct \$2,000,000,000 of investments over a 10-year period to support increased use of
24 technology for Zero Emission Vehicles (“ZEV”) in California and the United States and may
25 include investments related to ZEV infrastructure, access to ZEVs, and ZEV education. The
26 ZEV investments required by this Consent Decree are intended to address the adverse
27 environmental impacts arising from consumers’ purchases of the 2.0 Liter Subject Vehicles,
28

1 which the United States and California contend were purchased with the mistaken belief that
2 they were lower-emitting vehicles;

3 7. As described below and in Appendix D (Form of Environmental Mitigation Trust
4 Agreement), Settling Defendants will pay a total of \$2,700,000,000 to fund Eligible Mitigation
5 Actions that will reduce emissions of NOx where the 2.0 Liter Subject Vehicles were, are, or will
6 be operated. The funding for the Eligible Mitigation Actions required by this Consent Decree is
7 intended to fully mitigate the total, lifetime excess NOx emissions from the 2.0 Liter Subject
8 Vehicles; and
9

10 **WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds,
11 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
12 among the Parties regarding certain relief with respect to the 2.0 Liter Subject Vehicles for the
13 claims alleged in the Complaints, and that this Consent Decree is fair, reasonable, and in the
14 public interest;
15

16 **WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds,
17 that the United States and California are not enforcing the laws of other countries, including the
18 emissions laws or regulations of any jurisdiction outside the United States. Nothing in this
19 Consent Decree is intended to apply to, or affect, Settling Defendants' obligations under the laws
20 or regulations of any jurisdiction outside the United States. At the same time, the laws and
21 regulations of other countries shall not affect the Settling Defendants' obligations under this
22 Consent Decree.
23

24 **NOW, THEREFORE**, before the taking of any testimony, without the adjudication of
25 any issue of fact or law, and with the consent of the Parties, **IT IS HEREBY ADJUDGED,**
26 **ORDERED, AND DECREED** as follows:
27
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1 **I. JURISDICTION AND VENUE**

2 1. The Court has jurisdiction over the subject matter of this action, pursuant to 28
3 U.S.C. §§ 1331, 1345, and 1355, and Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522,
4 7523, and 7524, and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1407
5 and the MDL Panel’s Transfer Order, dated December 8, 2015, and filed in this MDL action as
6 Dkt. # 1. The Court has supplemental jurisdiction over the California State law claims pursuant
7 to 28 U.S.C. § 1367. For purposes of this Decree, Settling Defendants consent to the Court’s
8 jurisdiction over this Consent Decree, over any action to enforce this Consent Decree, and over
9 Settling Defendants, and consent to venue in this judicial district. Settling Defendants reserve
10 the right to challenge and oppose any claims to jurisdiction that do not arise from the Court’s
11 jurisdiction over this Consent Decree or an action to enforce this Consent Decree.
12

13
14 2. For purposes of this Consent Decree, Settling Defendants agree that the U.S.
15 Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, and
16 205 of the Act, 42 U.S.C. §§ 7522, 7523, and 7524, and that the California Complaint states
17 claims upon which relief may be granted pursuant to Cal. Health & Safety Code §§ 43106,
18 43107, 43151, 43152, 43153, 43205, 43211, and 43212; Cal. Code Regs., tit. 13, §§ 1903, 1961,
19 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections incorporated by reference in those
20 California regulations; Cal. Bus. & Prof. Code §§ 17200 *et seq.*, 17500 *et seq.*, and 17580.5; Cal.
21 Civ. Code § 3494; and 12 U.S.C. § 5531 *et seq.*
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23

24 **II. APPLICABILITY**

25 3. The obligations of this Consent Decree apply to and are binding upon the United
26 States and California, and upon Settling Defendants and any of Settling Defendants’ successors,
27 assigns, or other entities or persons otherwise bound by law.
28

1 4. Settling Defendants' obligations to comply with the requirements of this Consent
2 Decree are joint and several. In the event of the insolvency of any Settling Defendant or the
3 failure by any Settling Defendant to implement any requirement of this Consent Decree, the
4 remaining Settling Defendants shall complete all such requirements.
5

6 5. Any legal successor or assign of any Settling Defendant shall remain jointly and
7 severally liable for the payment and other performance obligations hereunder. Settling
8 Defendants shall include an agreement to so remain liable in the terms of any sale, acquisition,
9 merger, or other transaction changing the ownership or control of any of the Settling Defendants,
10 and no change in the ownership or control of any Settling Defendant shall affect the obligations
11 hereunder of any Settling Defendant without modification of the Decree in accordance with
12 Section XVI.
13

14 6. Settling Defendants shall provide a copy of this Consent Decree to the members
15 of their respective Board of Management and/or Board of Directors and their executives whose
16 duties might reasonably include compliance with any provision of this Decree. Settling
17 Defendants shall condition any contract providing for work required under this Consent Decree
18 to be performed in conformity with the terms thereof. Settling Defendants shall also ensure that
19 any contractors, agents, and employees whose duties might reasonably include compliance with
20 any provision of the Decree are made aware of those requirements of the Decree relevant to their
21 performance.
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23

24 7. In any action to enforce this Consent Decree, Settling Defendants shall not raise
25 as a defense the failure by any of its officers, directors, employees, agents, or contractors to take
26 any actions necessary to comply with the provisions of this Consent Decree.
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III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Terms that are defined in an Appendix to this Consent Decree have the meaning assigned to them in that Appendix. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

“2.0 Liter Subject Vehicles” means each and every light duty diesel vehicle equipped with a 2.0 liter TDI engine that Settling Defendants sold or offered for sale in, or introduced or delivered for introduction into commerce in the United States or its Territories, or imported into the United States or its Territories, and that is or was purported to have been covered by the following EPA Test Groups:

Model Year	EPA Test Group	Vehicle Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen
2014	EVWXV02.0U4S	VW Passat

2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3
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“3.0 Liter Subject Vehicles” means each and every model year 2009 to 2016 light duty diesel vehicle equipped with a 3.0 liter TDI engine that Settling Defendants sold or offered for sale in, or introduced or delivered for introduction into, commerce in the United States or its Territories, or imported into the United States or its Territories, and that is or was purported to have been covered by the EPA test groups set forth in Appendix B to the U.S. Complaint;

“Approved Emissions Modification” has the meaning set forth in Appendix B;

“Buyback” has the meaning set forth in Appendix A;

“CA AG” means the California Attorney General’s Office and any of its successor departments or agencies;

“California” means the People of the State of California, acting by and through the California Attorney General and the California Air Resources Board;

“California Complaint” means the complaint filed by California in this action;

“CARB” means the California Air Resources Board and any of its successor departments or agencies;

“Class Action Settlement” has the meaning set forth in Appendix A;

“Clean Air Act” or “Act” means 42 U.S.C. §§ 7401-7671q;

“Complaints” means the U.S. Complaint and the California Complaint;

“Consent Decree” or “Decree” or “Partial Consent Decree” means this partial consent decree and all appendices attached hereto (listed in Section XXII);

“Day” means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday,

1 Sunday, or federal or California holiday, the period shall run until the close of business of the
2 next business day;

3 “Defendants” means the persons or entities named in the U.S. Complaint and California
4 Complaint, specifically, Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen
5 Group of America Chattanooga Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and
6 Porsche Cars North America, Inc.;

8 “Effective Date” has the meaning set forth in Section XIV;

9 “Eligible Lessee” has the meaning set forth in Appendix A;

10 “Eligible Mitigation Actions” has the meaning set forth in Appendix D;

11 “Eligible Owner” has the meaning set forth in Appendix A;

12 “Eligible Vehicle” has the meaning set forth in Appendix A;

13 “EPA” means the United States Environmental Protection Agency and any of its
14 successor departments or agencies;

15 “FTC Order” has the meaning set forth in Appendix A;

16 “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or
17 community that the Secretary of the Interior acknowledges to exist as an Indian tribe. The list of
18 federally recognized Indian entities is maintained and updated by the Department of the Interior
19 and published in the Federal Register pursuant to the Federally Recognized Indian Tribe List Act
20 of 1994, 25 U.S.C. 479a-1;

21 “Lease Termination” has the meaning set forth in Appendix A;

22 “Materials” means Submissions and other documents, certifications, plans, reports,
23 notifications, data, or other information that is required to be submitted pursuant to this Decree;

1 “Mitigation Trust” or “Trust” means the trust to be established pursuant to Paragraph 16
2 and governed by a trust agreement in the form set forth in Appendix D;

3 “Mitigation Trust Payment” means any payment required to be paid into the Trust
4 Account;

5 “Paragraph” means a portion of this Decree identified by an Arabic numeral;

6 “Parties” means the United States, California, and Settling Defendants;

7 “Retail Replacement Value” has the meaning set forth in Appendix A;

8 “Section” means a portion of this Decree identified by a Roman numeral;

9 “Settling Defendants” means Volkswagen AG, Audi AG, Volkswagen Group of
10 America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC;

11 “Submission” means any plan, report, guidance, or other item that is required to be
12 submitted for approval pursuant to this Consent Decree;

13 “Trust Account” has the meaning set forth in the Trust Agreement;

14 “Trust Agreement” means a trust agreement in the form set forth in Appendix D to be
15 entered into by the Settling Defendants and the trustee selected pursuant to Paragraph 15;

16 “Trust Effective Date” means the date upon which a fully executed version of the Trust
17 Agreement is filed with the Court pursuant to Paragraph 17;

18 “United States” means the United States of America, acting on behalf of EPA, except
19 when used in Paragraph 75.h, when it shall mean the United States of America;

20 “U.S. Complaint” means the complaint filed by the United States in this action on
21 January 4, 2016; and

22 “ZEV Investments” has the meaning set forth in Appendix C.
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1 **IV. PARTIAL INJUNCTIVE RELIEF**

2 **A. Buyback, Lease Termination, and Vehicle Modification Recall Program**
3 **(Appendix A)**

4 9. Settling Defendants shall implement the Buyback, Lease Termination, and
5 Vehicle Modification Recall Program in accordance with the requirements set forth in Appendix
6 A as one element of the remedy to address the Clean Air Act and California Health and Safety
7 Code violations.

8 10. Settling Defendants shall remove from commerce in the United States and/or
9 perform an Approved Emissions Modification (as described in Section IV.B) on at least 85% of
10 the 2.0 Liter Subject Vehicles as set forth in Appendix A. Settling Defendants must offer each
11 and every Eligible Owner and Eligible Lessee of an Eligible Vehicle the option of the Buyback
12 of the Eligible Vehicle at a price no less than Retail Replacement Value, or the Lease
13 Termination in accordance with the terms specified in Appendix A.

14 11. In the event Settling Defendants do not achieve an 85% Recall Rate, Settling
15 Defendants shall pay additional funds into the Mitigation Trust as set forth in Appendix A.

16 **B. Vehicle Recall and Emissions Modification Program (Appendices A & B)**

17 12. Settling Defendants shall not sell or cause to be sold, or lease or cause to be
18 leased, any 2.0 Liter Subject Vehicle, except as provided in Appendices A and B. Settling
19 Defendants shall not modify or cause to be modified any emission control system or emissions
20 aftertreatment or any other software or hardware that affects the emission control system on any
21 2.0 Liter Subject Vehicle except in compliance with Appendices A and B. If the Settling
22 Defendants elect to propose a vehicle recall and Emissions Modification for any 2.0 Liter
23 Subject Vehicle, approval and implementation of that modification shall be governed by
24 Appendices A and B. As specified in Appendices A and B, Settling Defendants may export from
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1 the United States to another country any 2.0 Liter Subject Vehicle, provided that such vehicle
2 has received the applicable Approved Emissions Modification, and that no vehicle may be
3 exported if the applicable Approved Emissions Modification has been suspended as set forth in
4 Appendix B, Paragraph 7.3.

5
6 **C. ZEV Investment Commitment (Appendix C)**

7 13. Settling Defendants shall make \$2,000,000,000 in ZEV Investments in
8 accordance with the requirements set forth in Appendix C.

9
10 **D. Mitigation of Excess Emissions and Mitigation Trust (Appendix D)**

11 14. Payment of Mitigation Funds. In addition to any Mitigation Trust Payments
12 required by Appendices A and B, Settling Defendants shall make \$2,700,000,000 in Mitigation
13 Trust Payments to the Trust to be used to fund Eligible Mitigation Actions to achieve reductions
14 of NOx emissions in accordance with requirements to be set forth in a Trust Agreement, the form
15 of which is attached as Appendix D. Settling Defendants shall notify the Trustee and the United
16 States and CARB by mail and email in accordance with the requirements of Section XIII
17 (Notices) on the Day any such payments are made. Settling Defendants shall make the payments
18 as follows:
19

20 a. Initial Deposit by Settling Defendants. Not later than 30 Days after the
21 Effective Date, Settling Defendants shall deposit \$900,000,000 into the Trust Account
22 (“Initial Deposit”).
23

24 b. Subsequent Deposits by Settling Defendants. Settling Defendants shall make
25 two subsequent deposits into the Trust Account, each in the amount of \$900,000,000,
26 the first no later than the first anniversary of the date of the Initial Deposit, and the
27 second no later than the second anniversary of the date of the Initial Deposit (each a
28

1 “Subsequent Deposit”).

2 c. Additional Mitigation Trust Payments. All Mitigation Trust Payments
3 required by Appendices A and B shall be deposited into the Trust Account.

4 d. Court Registry. If any payments required under this Paragraph 14 become
5 due before the Trust Account is established, Settling Defendants shall deposit such
6 payments with the Court in accordance with Fed. R. Civ. P. 67. The Settling
7 Defendants shall execute such documents and support such actions as necessary to
8 facilitate the deposit of payments with the Court. For purposes of Fed. R. Civ. P. 67,
9 this Consent Decree constitutes an order permitting such deposits. For purposes of 28
10 U.S.C. § 2042, this Consent Decree constitutes an order permitting the Trustee, upon
11 filing a designation and identification of Trust Account as required by Appendix D, to
12 withdraw all such funds, including all accrued interest, for immediate and concurrent
13 deposit into the Trust Account. In the event that the United States determines that the
14 funds cannot be deposited in accordance with Fed. R. Civ. P. 67, and unless otherwise
15 agreed in writing by the Parties, the Settling Defendants shall hold the funds in an
16 interest-bearing escrow account, for deposit (together with all accrued interest) into the
17 Trust Account when established.

18 15. Selection of Trustee Procedure

19 a. Recommendation of Trustee Candidates. Not later than 30 Days after the
20 Effective Date, the following parties (the “Recommending Parties”) may submit to the
21 United States a list of between three and five recommended trustee candidates:

22 i. California;

23 ii. the entities (other than Indian tribes) listed in Appendix D-1 (which, if
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1 they submit a list, must submit one consolidated list); and

2 iii. Indian tribes (which, if they submit a list, must submit one consolidated
3 list).

4 b. The United States may also consider additional trustee candidates in its
5 discretion.

6 c. The Recommending Parties shall confer among each other, and with the
7 United States, in a good faith effort to agree on one list of between three and five
8 recommended trustee candidates.

9 d. Trustee Nomination Criteria. Each Recommending Party shall, for each
10 trustee candidate, and in a form that can be filed with the Court, submit to the United
11 States:

12 i. A resume, biographical information, and any other relevant material
13 concerning the candidate and his or her competence and qualifications to serve as
14 trustee;

15 ii. A description of any past, present, or future business or financial
16 relationship that the candidate has with the Settling Defendants, EPA, any entity
17 listed in Appendix D-1, or any Indian tribe;

18 iii. A verification that, to the knowledge of the Recommending Party, the
19 candidate has no conflicts of interest with regard to this matter, or that any actual
20 or apparent conflict has been waived by the Recommending Parties and the
21 United States;

22 iv. A verification that, to the knowledge of the Recommending Party, the
23 candidate is willing to agree not to be employed by any Recommending Party
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1 during the course of the Trust and for a minimum of two years after termination
2 of his or her term as trustee; and

3 v. A summary, after conferring with the other Recommending Parties and the
4 United States, of whether any other Recommending Parties or the United States
5 consents or objects to the candidate.
6

7 e. Selection of Trustee. After receiving candidate lists, and supporting
8 information (including for such additional candidates that the United States considers),
9 the United States will file a motion with the Court requesting that the Court select and
10 appoint a trustee from among the candidates. If no candidate is selected by the Court
11 in accordance with this subparagraph e, the process under this Paragraph 15 shall be
12 repeated until a trustee is selected and approved.
13

14 16. Finalization of Trust Agreement. Upon selection of the trustee under Paragraph
15 15, the United States will notify the selected trustee of his or her selection, and provide a copy of
16 this Consent Decree. The United States will provide the selected trustee with an opportunity
17 promptly to provide to the United States any requested changes to Appendix D, and the United
18 States will confer with the selected trustee, California, the entities (other than Indian tribes) listed
19 in Appendix D-1, and the Settling Defendants, to finalize the Trust Agreement. Any changes
20 made to Appendix D shall be made in accordance with Section XVI of this Decree
21 (Modification). After conferring pursuant to the preceding sentence, the United States will
22 present the final Trust Agreement to Settling Defendants for execution, and Settling Defendants
23 shall execute the final Trust Agreement and send it to the U.S. Department of Justice (“DOJ”) by
24 overnight mail within 15 Days after receipt. The United States reserves the right to disqualify
25 the selected trustee if he or she unreasonably impedes finalization of the Trust Agreement. Any
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1 dispute regarding finalization of the terms of the Trust Agreement shall be resolved in
2 accordance with the dispute resolution provisions set forth in Paragraph 6.2 of Appendix D. In
3 resolving any such dispute, deference shall be given to the terms of Appendix D, and such terms
4 shall be altered only as necessary to enhance the ability of the Trust to fund Eligible Mitigation
5 Actions in order to achieve reductions of NOx emissions in the United States. Without the
6 express written consent of the Settling Defendants, the final Trust Agreement shall not: (i)
7 require the Settling Defendants to make any payments to the Trust other than the Mitigation
8 Trust Payments required by the Consent Decree; or (ii) impose any greater obligation on Settling
9 Defendants than those set forth in Appendix D.
10
11

12 17. Establishment of Trust. The Trust shall come into being upon the United States'
13 filing with the Court of a finalized Trust Agreement, approved by the United States, and
14 executed by the Settling Defendants and the Trustee.
15

16 18. Selection of Substitute Trustee. Unless otherwise ordered by the Court, substitute
17 trustees shall be selected in accordance with the provisions of Paragraph 15 of this Consent
18 Decree.
19

20 19. Modification of Trust Agreement and Appendices. After the Trust is established
21 pursuant to Paragraph 17, it may only be modified in accordance with the Modification provision
22 set forth in Paragraph 6.4 of Appendix D. In the event that the final Trust Agreement does not
23 contain a Modification provision, it may only be Modified in accordance with the procedures set
24 forth in Section XVI (Modification) of this Consent Decree. Without the express written consent
25 of the Settling Defendants, no modification of the Trust Agreement shall: (i) require the Settling
26 Defendants to make any payments to the Trust other than the Mitigation Trust Payments required
27 by the Consent Decree; or (ii) impose any greater obligation on Settling Defendants than those
28

1 set forth in Appendix D. To the extent the consent of the Settling Defendants is required to
2 effectuate a modification of the Trust Agreement, such consent shall not be unreasonably
3 withheld.

4
5 **V. APPROVAL OF SUBMISSIONS AND EPA/CARB DECISIONS**

6 20. For purposes of this Consent Decree, unless otherwise specified in this Consent
7 Decree:

8 a. with respect to any Submission, other obligation, or force majeure claim of
9 Settling Defendants concerning Appendix B, EPA and CARB, or the United States
10 and California as applicable, will issue a joint decision concerning the Submission,
11 other obligation, or force majeure claim;

12
13 b. with respect to any Submission, other obligation, or force majeure claim of
14 Settling Defendants under the Consent Decree that relates to National ZEV
15 Investments or California ZEV Investments, EPA in the case of National ZEV
16 Investment requirements and CARB in the case of California ZEV Investment
17 requirements will have sole authority for making decisions concerning the National
18 ZEV Investments or California ZEV Investment requirements, respectively; and

19
20 c. with respect to any other Submission, obligation, or force majeure claim of
21 Settling Defendants under the Consent Decree, the position of EPA or the United
22 States, after consultation with CARB or California, as applicable, shall control.

23
24 21. For purposes of this Section, Section VII (Stipulated Penalties and Other
25 Mitigation Trust Payments), Section VIII (Force Majeure), and Section IX (Dispute Resolution),
26 in accordance with the decision-making authorities set forth in Paragraph 20, references to
27 “EPA/CARB” mean EPA and CARB jointly, or EPA or CARB, as applicable; references to “the
28

1 United States/California” mean the United States and California jointly, or the United States or
2 California, as applicable; and references to the United States/CARB mean the United
3 States/CARB jointly, or the United States or CARB, as applicable.
4

5 22. Any specific procedures or specifications for the review of Submissions set forth
6 in the Appendices shall govern, as applicable, the review of any Submission submitted pursuant
7 to such Appendix. Except as otherwise specified in the Appendices, after review of any
8 Submission, EPA/CARB shall in writing: (a) approve the Submission; (b) approve the
9 Submission upon specified conditions; (c) approve part of the Submission and disapprove the
10 remainder; or (d) disapprove the Submission. In the event of disapproval, in full or in part, of
11 any portion of the Submission, if not already provided with the disapproval, upon the request of
12 Settling Defendants, EPA/CARB will provide in writing the reasons for such disapproval.
13

14 23. If the Submission is approved pursuant to Paragraph 22, Settling Defendants shall
15 take all actions required by the Submission in accordance with the schedules and requirements of
16 the Submission, as approved. If the Submission is conditionally approved or approved only in
17 part pursuant to Paragraph 22(b) or (c), Settling Defendants shall, upon written direction from
18 EPA/CARB, take all actions required by the Submission that EPA/CARB determine(s) are
19 technically severable from any disapproved portions.
20

21 24. If the Submission is disapproved in whole or in part pursuant to Paragraph 22(c)
22 or (d), Settling Defendants shall, within 30 Days or such other time as the Parties agree to in
23 writing, correct all deficiencies and resubmit the Submission, or disapproved portion thereof, for
24 approval, in accordance with Paragraphs 22 to 23. If the resubmission is approved in whole or in
25 part, Settling Defendants shall proceed in accordance with Paragraph 23.
26

27 25. If a resubmitted Submission, or portion thereof, is disapproved in whole or in part,
28

1 EPA/CARB may again require Settling Defendants to correct any deficiencies, in accordance
2 with Paragraphs 23 and 24, or EPA/CARB may itself/themselves correct any deficiencies.

3
4 26. Settling Defendants may elect to invoke the dispute resolution procedures set
5 forth in Section IX (Dispute Resolution) concerning any decision of EPA/CARB to disapprove,
6 approve on specified conditions, or modify a Submission. If Settling Defendants elect to invoke
7 dispute resolution, they shall do so within 30 Days (or such other time as the Parties agree to in
8 writing) after receipt of the applicable decision.

9
10 27. Any stipulated penalties applicable to the original Submission, as provided in
11 Section VII(Stipulated Penalties and Other Mitigation Trust Payments), shall accrue during the
12 30-Day period or other specified period pursuant to Paragraph 24. Such stipulated penalties shall
13 not be payable unless the resubmission of the Submission is untimely or is disapproved in whole
14 or in part; provided that, if the original Submission was so deficient as to constitute a material
15 breach of Settling Defendants' obligations under this Decree in making that Submission, the
16 stipulated penalties applicable to the original Submission shall be due and payable
17 notwithstanding any subsequent resubmission.

18
19 **VI. REPORTING AND CERTIFICATION REQUIREMENTS**

20 28. Timing of Reports. Unless otherwise specified in this Consent Decree, or the
21 Parties otherwise agree in writing:

22
23 a. To the extent quarterly reporting is required by this Decree, Settling
24 Defendants shall submit each report one month after the end of the calendar quarter,
25 and the report shall cover the prior calendar quarter. That is, reports shall be submitted
26 on April 30, July 31, October 31, and January 31 for the prior respective calendar
27 quarter (*i.e.*, the report submitted on April 30 covers January 1 through March 31), as
28

1 further specified, and covering the items specified, elsewhere in the Consent Decree.

2 b. To the extent semi-annual or annual reporting is required, Settling Defendants
3 shall submit each report one month after the end of the applicable prior 6-month or
4 annual calendar period, *i.e.*, April 30, July 31, October 31, or January 31, as
5 applicable, and as further specified, and covering the items specified, elsewhere in the
6 Consent Decree.
7

8 29. Settling Defendants may assert that information submitted under this Consent
9 Decree is protected as Confidential Business Information (“CBI”) as set out in 40 C.F.R. Part 2
10 or Cal. Code of Regs. tit. 17, §§ 91000 to 91022.
11

12 30. Reporting of Violations

13 a. Except to the extent the Appendices specify different timeframes or notice
14 recipients, if Settling Defendants reasonably believe they have violated, or that they
15 may violate, any requirement of this Consent Decree, Settling Defendants shall notify
16 EPA, CARB, and CA AG of such violation and its likely duration, in a written report
17 submitted within 10 business days after the Day Settling Defendants first reasonably
18 believe that a violation has occurred or may occur, with an explanation of the
19 violation’s likely cause and of the remedial steps taken, or to be taken, to prevent or
20 minimize such violation. If Settling Defendants believe the cause of a violation cannot
21 be fully explained at the time the report is due, Settling Defendants shall so state in the
22 report. Settling Defendants shall investigate the cause of the violation and shall then
23 submit an amendment to the report, including a full explanation of the cause of the
24 violation, within 30 Days after the Day on which Settling Defendants reasonably
25 believe they have determined the cause of the violation. Nothing in this Paragraph or
26
27
28

1 the following Paragraph relieves Settling Defendants of their obligation to provide the
2 notice required by Section VIII (Force Majeure).

3 b. Semi-Annual Report of Violations. On January 31 and July 31 of each year,
4 Settling Defendants shall submit a summary to the United States and California of any
5 violations of the Decree that occurred during the preceding six months (or potentially
6 shorter period for the first semi-annual report), and that are required to be reported
7 pursuant to subparagraph 30.a, including the date of the violation, the date the notice
8 of violation was sent, and a brief description of the violation.

9
10
11 31. Whenever Settling Defendants reasonably believe that any violation of this
12 Consent Decree or any other event affecting Settling Defendants' performance under this Decree
13 may pose an immediate threat to the public health or welfare or the environment, Settling
14 Defendants shall notify EPA and California by email as soon as practicable, but no later than 24
15 hours after Settling Defendants first reasonably believe the violation or event has occurred. This
16 procedure is in addition to the requirements set forth in Paragraph 30.

17
18 32. All plans, reports, and other information required to be posted to a public website
19 by this Consent Decree shall be accessible on the website www.VWCourtSettlement.com, and a
20 link to such website shall be displayed on www.vw.com and www.audiusa.com.

21
22 33. Each report or other item that is required by an Appendix to be certified pursuant
23 to this Paragraph shall be signed by an officer or director of Settling Defendants and shall
24 include the following sworn certification, which may instead be certified as provided in 28
25 U.S.C. § 1746:

26 I certify under penalty of perjury under the laws of the United States and California
27 that this document and all attachments were prepared under my direction or
28 supervision in accordance with a system designed to assure that qualified personnel
properly gather and evaluate the information submitted. Based on my inquiry of

1 the person or persons who manage the system, or those persons directly responsible
2 for gathering the information, the information submitted is, to the best of my
3 knowledge and belief, true, correct, and complete. I have no personal knowledge,
4 information or belief that the information submitted is other than true, correct, and
5 complete. I am aware that there are significant penalties for submitting false
6 information, including the possibility of fine and imprisonment for knowing
7 violations.

8 34. Settling Defendants agree that the certification required by Paragraph 33 is
9 subject to 18 U.S.C. §§ 1001(a) and 1621, and California Penal Code §§ 115, 118, and 132.

10 35. The certification requirement in Paragraph 33 does not apply to emergency or
11 similar notifications where compliance would be impractical.

12 36. The reporting requirements of this Consent Decree do not relieve Settling
13 Defendants of any reporting obligations required by the Act or implementing regulations, or by
14 any other federal, state, or local law, regulation, permit, or other requirement.

15 37. Any information provided pursuant to this Consent Decree may be used by the
16 United States or California in any proceeding to enforce the provisions of this Consent Decree
17 and as otherwise permitted by law.

18 **VII. STIPULATED PENALTIES AND OTHER MITIGATION TRUST PAYMENTS**

19 38. Settling Defendants shall be liable for stipulated penalties and additional
20 Mitigation Trust Payments (collectively, “stipulated payments”) to the United States and
21 California for violations of this Consent Decree as specified in this Section and the Appendices,
22 unless excused under Section VIII (Force Majeure). A violation includes failing to perform any
23 obligation required by the terms of this Decree, including any work plan or schedule approved
24 under this Decree, according to all applicable requirements of this Decree and within the
25 specified time schedules established by or approved under this Decree.

26 39. Partial Injunctive Relief Requirements: Appendices A, B, and C. The stipulated
27
28

1 payments and other remedies for violations of requirements of Appendices A, B, and C are set
2 forth in those Appendices.

3 40. Partial Injunctive Relief Requirements: Section IV.D. The following additional
4 Mitigation Trust Payments shall accrue for each violation of Section IV.D., as follows:
5

6 a. For the Initial Deposit of \$900,000,000 required by subparagraph 14.a, and for
7 each Subsequent Deposit (collectively, "Deposit") of \$900,000,000 required by
8 subparagraph 14.b:

9 i. For each Day that any such Deposit is late, Settling Defendants shall pay
10 into the Trust Account an additional Mitigation Trust Payment of interest, as
11 provided in Paragraph 43, on the Deposit for the first four days, and then as
12 follows:
13

\$50,000	5th through 30th Day
\$100,000	31st through 45th Day
\$200,000	46th Day and beyond

14
15
16
17 ii. The additional Mitigation Trust Payments required by subparagraph 40.a.i
18 are in addition to the Deposits required by subparagraphs 14.a and 14.b, and those
19 Deposits shall not be reduced on account of the payment of additional Mitigation
20 Trust Payments.
21

22 iii. For failure to execute and deliver the final Trust Agreement pursuant to
23 Paragraph 16, Settling Defendants shall pay the following payments per Day into
24 the Trust Account as additional Mitigation Trust Payments, plus interest on the
25 additional Mitigation Trust Payments as provided for in Paragraph 43.
26

\$100,000	1st through 14th Day
\$250,000	15th Day and beyond

b. In the event that no Trust Account has been established as of the date that any additional Mitigation Trust Payment required pursuant to subparagraphs 40.a.i or 40.a.iii become due, such payments shall be made into the Court Registry account in accordance with subparagraph 14.d.

41. Reporting and Certification Requirements: Section VI

a. Reporting of Violations. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements of Paragraph 30 (Reporting of Violations):

\$2,000	1st through 14th Day
\$5,000	15th through 30th Day
\$10,000	31st Day and beyond

b. Certification Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the certification requirements of Paragraph 33, except for false statements as described in subparagraph 41.c, below, in which case the stipulated penalty shall be the higher of the penalty provided for here in subparagraph 41.b or in subparagraph 41.c:

\$10,000	1st through 14th Day
\$25,000	15th through 30th Day
\$50,000	31st Day and beyond

c. False Statements. Settling Defendants shall pay \$1,000,000 for each report or Submission required to be submitted pursuant to this Consent Decree that contains a knowingly false, fictitious, or fraudulent statement or representation of material fact.

42. Stipulated payments under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue

1 to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated
2 payments shall accrue simultaneously for separate violations of this Consent Decree.

3 43. If Settling Defendants fail to pay stipulated penalties or the Mitigation Trust
4 Payments required by subparagraphs 14.a and 14.b according to the terms of this Consent
5 Decree, Settling Defendants shall be liable for interest on such payments at the rate provided for
6 in 28 U.S.C. § 1961, accruing as of the date payment became due and continuing until payment
7 has been made in full. Nothing in this Paragraph shall be construed to limit the United States or
8 California from seeking any remedy otherwise provided by law for Settling Defendants' failure
9 to pay any stipulated payments.
10

11
12 44. Stipulated Penalty Demands and Payments

13 a. Except as provided in Paragraph 46, the United States, in consultation with
14 CARB, will issue any demand for stipulated penalties.

15 b. Settling Defendants shall pay stipulated penalties to the United States/CARB
16 within 30 Days after a written demand by the United States and/or CARB, as
17 applicable, in accordance with Paragraphs 44.a or 46, unless Settling Defendants
18 invoke the dispute resolution procedures under Section IX (Dispute Resolution) within
19 the 30-Day period. Except as provided in Paragraph 46 and Appendix B, Settling
20 Defendants shall pay 75% percent of the total stipulated penalty amount due to the
21 United States and 25% percent to CARB.
22

23 45. Except as provided in Paragraph 46, either the United States or CARB may in the
24 unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it
25 under this Consent Decree. However, no action by either the United States or CARB may reduce
26 or waive stipulated penalties due to the other.
27
28

1 46. With respect to stipulated penalties for violations of the National ZEV Investment
2 requirements and the California ZEV Investment requirements (both as defined in Appendix C)
3 only the United States may demand, collect, reduce, or waive stipulated penalties with respect to
4 the National ZEV Investment requirements, and only CARB may demand, collect, reduce, or
5 waive stipulated penalties with respect to the California ZEV Investment requirements.
6

7 47. Stipulated payments shall continue to accrue as provided in Paragraph 42, during
8 any Dispute Resolution, but need not be paid until the following:

9 a. If the dispute is resolved by agreement of the Parties or by a decision of
10 EPA/CARB that is not appealed to the Court, Settling Defendants shall pay accrued
11 stipulated payments determined to be owing, together with interest as provided in
12 Paragraph 43, to the United States/CARB within 30 Days after the effective date of the
13 agreement or the receipt of EPA's/CARB's decision or order.
14

15 b. If the dispute is appealed to the Court and the United States/California
16 prevail(s) in whole or in part, Settling Defendants shall pay all accrued penalties
17 determined by the Court to be owing, together with interest as provided in Paragraph
18 43, to the United States/CARB within 60 Days after receiving the Court's decision or
19 order, except as provided in subparagraph c, below.
20

21 c. If any Party appeals the District Court's decision, Settling Defendants shall
22 pay to the United States/CARB all accrued penalties determined to be owing, together
23 with interest as provided in Paragraph 43, within 15 Days after receiving the final
24 appellate court decision.
25

26 48. Settling Defendants shall pay stipulated penalties owing to the United States by
27 FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions
28

1 provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the United States
2 Attorney’s Office for the Northern District of California after the Effective Date. The payment
3 instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”)
4 number, which Settling Defendants shall use to identify all payments required to be made in
5 accordance with this Consent Decree. The FLU will provide the payment instructions to:

7 Head of Treasury of Volkswagen AG
8 Joerg Boche
9 Joerg.boche@volkswagen.de
011-49-5361-92-4184

10 on behalf of Settling Defendants. Settling Defendants may change the individual to receive
11 payment instructions on their behalf by providing written notice of such change to the United
12 States and CARB in accordance with Section XIII (Notices).

14 49. Settling Defendants shall pay stipulated penalties owing to CARB by check,
15 accompanied by a Payment Transmittal Form (which CARB will provide to the addressee listed
16 in Paragraph 48 after the Effective Date), with each check mailed to:

17 Air Resources Board, Accounting Branch
18 P.O. Box 1436
19 Sacramento, CA 95812-1436;

20 or by wire transfer, in which case Settling Defendants shall use the following wire transfer
21 information and send the Payment Transmittal Form to the above address prior to each wire
22 transfer:

23 State of California Air Resources Board
24 c/o Bank of America, Inter Branch to 0148
25 Routing No. 0260-0959-3 Account No. 01482-80005
26 Notice of Transfer: Yogeeta Sharma Fax: (916) 322-9612
Reference: ARB Case # MSES-15-085

27 Settling Defendants are responsible for any bank charges incurred for processing wire transfers.

28 Except as otherwise provided by this Consent Decree, stipulated penalties paid to CARB shall be

1 deposited into the Air Pollution Control Fund and used by CARB to carry out its duties and
2 functions.

3 50. At the time of payment, Settling Defendants shall send notice that a stipulated
4 payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular
5 mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio
6 45268; (ii) to the DOJ via email or regular mail in accordance with Section XIII; and/or (iii) to
7 CARB via email or regular mail in accordance with Section XIII. Such notice shall state that the
8 payment is for stipulated penalties or Mitigation Trust Payments, as applicable, owed pursuant to
9 the Consent Decree in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and*
10 *Products Liability Litigation*, and shall state for which violation(s) the penalties are being paid.
11 Such notice shall also reference MDL No. 2672 CRB (JSC), CDCS Number and DOJ # 90-5-2-
12 1-11386.
13

14
15 51. Settling Defendants shall not deduct any stipulated penalties paid under this
16 Decree pursuant to this Section in calculating their income taxes due to federal, state, or local
17 taxing authorities in the United States.
18

19 52. The payment of stipulated payments and interest, if any, shall not alter in any way
20 Settling Defendants' obligation to complete the performance of the requirements of this Consent
21 Decree.
22

23 53. Non-Exclusivity of Remedy. Stipulated payments and other remedies provided
24 for in the Consent Decree are not the United States' or California's exclusive remedy for
25 violations of this Consent Decree, including violations of the Consent Decree that are also
26 violations of law. Subject to the provisions in Section XI (Effect of Settlement/Reservation of
27 Rights), the United States and California reserve all legal and equitable remedies available to
28

1 enforce the provisions of this Consent Decree. In addition to the remedies specifically reserved
2 and those specifically agreed to elsewhere in this Consent Decree, the United States and
3 California expressly reserve the right to seek any other relief they deem appropriate for Settling
4 Defendants' violation of this Consent Decree, including but not limited to an action against
5 Settling Defendants for statutory penalties where applicable, additional injunctive relief,
6 mitigation or offset measures, contempt, and/or criminal sanctions. However, the amount of any
7 statutory penalty assessed for a violation of this Consent Decree (and payable to the United
8 States or to California, respectively) shall be reduced by an amount equal to the amount of any
9 stipulated penalty assessed and paid pursuant to this Consent Decree (to the United States or to
10 California, respectively) for the same violation.
11
12

13 **VIII. FORCE MAJEURE**

14 54. "Force majeure," for purposes of this Consent Decree, is defined as any event
15 arising from causes beyond the control of Settling Defendants, of any entity controlled by
16 Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the
17 performance of any obligation under this Consent Decree despite Settling Defendants' best
18 efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to
19 fulfill the obligation" includes using best efforts to anticipate any potential force majeure event
20 and best efforts to address the effects of any potential force majeure event (a) as it is occurring,
21 and (b) following the potential force majeure, such that the delay and any adverse effects of the
22 delay are minimized. "Force majeure" does not include Settling Defendants' financial inability
23 to perform any obligation under this Consent Decree.
24
25

26 55. If any event occurs or has occurred that may delay the performance of any
27 obligation under this Consent Decree, for which Settling Defendants intend or may intend to
28

1 assert a claim of force majeure, whether or not caused by a force majeure event, Settling
2 Defendants shall provide notice by email to EPA and CARB, within 7 Days of when Settling
3 Defendants first knew that the event might cause a delay. Within 14 Days thereafter, Settling
4 Defendants shall provide in writing to EPA and CARB an explanation and description of the
5 reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to
6 prevent or minimize the delay or the effect of the delay; a schedule for implementation of any
7 such measures; Settling Defendants' rationale for attributing such delay to a force majeure event
8 if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling
9 Defendants, such event may cause or contribute to an endangerment to public health, welfare or
10 the environment. Settling Defendants shall include with any notice all available documentation
11 supporting the claim that the delay was attributable to a force majeure. Failure to comply with
12 the above requirements shall preclude Settling Defendants from asserting any claim of force
13 majeure for that event for the period of time of such failure to comply, and for any additional
14 delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance
15 of which Settling Defendants, any entity controlled by Settling Defendants, or Settling
16 Defendants' contractors knew or should have known.

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18
19
20 56. If EPA/CARB agree(s) that the delay or anticipated delay is attributable to a force
21 majeure event, the time for performance of the obligations under this Consent Decree that are
22 affected by the force majeure event will be extended by EPA/CARB for such time as is
23 necessary to complete those obligations. An extension of the time for performance of the
24 obligations affected by the force majeure event shall not, of itself, extend the time for
25 performance of any other obligation. EPA/CARB will notify Settling Defendants in writing of
26 the length of the extension, if any, for performance of the obligations affected by the force
27
28

1 majeure event.

2 57. If EPA/CARB do(es) not agree that the delay or anticipated delay has been or will
3 be caused by a force majeure event, EPA/CARB will notify Settling Defendants in writing of
4 its/their decision.
5

6 58. If Settling Defendants elect to invoke the dispute resolution procedures set forth
7 in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of
8 EPA's/CARB's notice. In any such proceeding, Settling Defendants shall have the burden of
9 demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or
10 will be caused by a force majeure event, that the duration of the delay or the extension sought
11 was or will be warranted under the circumstances, that best efforts were exercised to avoid and
12 mitigate the effects of the delay, and that Settling Defendants complied with the requirements of
13 Paragraphs 54 and 55. If Settling Defendants carry this burden, the delay at issue shall be
14 deemed not to be a violation by Settling Defendants of the affected obligation of this Consent
15 Decree identified to EPA/CARB and the Court.
16
17

18 **IX. DISPUTE RESOLUTION**

19 59. Unless otherwise expressly provided for in this Consent Decree, the dispute
20 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
21 under or with respect to this Consent Decree. Failure by the Settling Defendants to seek
22 resolution of a dispute under this Section shall preclude Settling Defendants from raising any
23 such issue as a defense to an action by the United States or California to enforce any obligation
24 of Settling Defendants arising under this Decree.
25

26 60. Informal Dispute Resolution. Any dispute subject to dispute resolution under this
27 Consent Decree shall first be the subject of informal negotiations. The dispute shall be
28

1 considered to have arisen when Settling Defendants send the United States and California by
2 mail a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute,
3 including, where applicable, whether the dispute arises from a decision made by EPA and CARB
4 jointly, or EPA or CARB individually. The period of informal negotiations shall not exceed 30
5 Days after the date the dispute arises, unless that period is modified by written agreement. If the
6 Parties cannot resolve a dispute by informal negotiations, then the position advanced by the
7 United States/California shall be considered binding unless, within 30 Days after the conclusion
8 of the informal negotiation period, Settling Defendants invoke formal dispute resolution
9 procedures as set forth below.
10
11

12 61. Formal Dispute Resolution. Settling Defendants shall invoke formal dispute
13 resolution procedures, within the time period provided in the preceding Paragraph, by serving on
14 the United States/California a written Statement of Position regarding the matter in dispute,
15 except that disputes concerning the National ZEV Investment or California ZEV Investment
16 need only be served on the United States or California, as applicable. The Statement of Position
17 shall include, but need not be limited to, any factual data, analysis, or opinion supporting Settling
18 Defendants' position and any supporting documentation relied upon by Settling Defendants.
19

20 62. The United States/California will serve its/their Statement of Position within 45
21 Days after receipt of Settling Defendants' Statement of Position. The United States'/California's
22 Statement of Position will include, but need not be limited to, any factual data, analysis, or
23 opinion supporting that position and any supporting documentation relied upon by the United
24 States/California. The United States'/California's Statement of Position shall be binding on
25 Settling Defendants, unless Settling Defendants file a motion for judicial review of the dispute in
26 accordance with Paragraph 63.
27
28

1 63. Settling Defendants may seek judicial review of the dispute by filing with the
2 Court and serving on the United States/California, in accordance with Section XIII (Notices), a
3 motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days
4 after receipt of the United States'/California's Statement of Position pursuant to the preceding
5 Paragraph. The motion shall contain a written statement of Settling Defendants' position on the
6 matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and
7 shall set forth the relief requested and any schedule within which the dispute must be resolved
8 for orderly implementation of the Consent Decree.
9

10 64. The United States/California will respond to Settling Defendants' motion within
11 the time period allowed by the Local Rules of the Court. Settling Defendants may file a reply
12 memorandum, to the extent permitted by the Local Rules.
13

14 65. Standard of Review for Judicial Disputes

15 a. Disputes Concerning Matters Accorded Record Review. In any dispute
16 arising under (1) Appendix B, or (2) Appendix C relating to agency approval of ZEV
17 Investment Plans, and brought pursuant to Paragraph 63, Settling Defendants shall
18 have the burden of demonstrating that EPA's/CARB's action or determination or
19 position is arbitrary and capricious or otherwise not in accordance with law based on
20 the administrative record. For purposes of this subparagraph, EPA/CARB will
21 maintain an administrative record of the dispute, which will contain all statements of
22 position, including supporting documentation, submitted pursuant to this Section.
23 Prior to the filing of any motion, the Parties may submit additional materials to be part
24 of the administrative record pursuant to applicable principles of administrative law.
25

26 b. Other Disputes. Except as otherwise provided in this Consent Decree, in any
27
28

1 other dispute brought pursuant to Paragraph 63, Settling Defendants shall bear the
2 burden of demonstrating by a preponderance of the evidence that their actions were in
3 compliance with this Consent Decree.

4 66. In any disputes brought under this Section, it is hereby expressly acknowledged
5 and agreed that this Consent Decree was jointly drafted in good faith by the United States,
6 California, and Settling Defendants. Accordingly, the Parties hereby agree that any and all rules
7 of construction to the effect that ambiguity is construed against the drafting party shall be
8 inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent
9 Decree.
10

11 67. The invocation of dispute resolution procedures under this Section shall not, by
12 itself, extend, postpone, or affect in any way any obligation of Settling Defendants under this
13 Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties
14 with respect to the disputed matter shall continue to accrue from the first Day of noncompliance,
15 but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If
16 Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed
17 and paid as provided in Section VII (Stipulated Penalties and Other Mitigation Trust Payments).
18
19

20 **X. INFORMATION COLLECTION AND RETENTION**

21 68. The United States, California, and their representatives, including attorneys,
22 contractors, and consultants, shall have the right of entry, upon presentation of credentials, at all
23 reasonable times into any of Settling Defendants' offices, plants, or facilities:
24

- 25 a. to monitor the progress of activities required under this Consent Decree;
26 b. to verify any data or information submitted to the United States or California
27 in accordance with the terms of this Consent Decree;
28

- 1 c. to inspect records related to this Consent Decree;
- 2 d. to conduct testing related to this Consent Decree;
- 3 e. to obtain documentary evidence, including photographs and similar data,
- 4 related to this Consent Decree;
- 5
- 6 f. to assess Settling Defendants' compliance with this Consent Decree; and
- 7 g. for other purposes as set forth in 42 U.S.C. § 7542(b) and Cal. Gov't Code §
- 8 11180.

9 69. Upon request, and for purposes of evaluating compliance with the Consent
10 Decree, Settling Defendants shall promptly provide to EPA and California or their authorized
11 representatives at locations to be designated by EPA and California:

- 13 a. vehicles, in specified configurations, for emissions testing;
- 14 b. engine control units for vehicles of specified configurations;
- 15 c. specified software and related documentation for vehicles of specified
- 16 configurations;
- 17
- 18 d. reasonable requests for English translations of software documents; or
- 19 e. other items or information that could be requested pursuant to 42 U.S.C.
- 20 § 7542(a) or Cal. Gov't Code § 11180.

21 70. Until three years after the termination of this Consent Decree, Settling Defendants
22 shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of
23 all documents, records, reports, or other information (including documents, records, or other
24 information in electronic form) (hereinafter referred to as "Records") in their or their contractors'
25 or agents' possession or control, or that come into their or their contractors' or agents' possession
26 or control, relating to Settling Defendants' performance of their obligations under this Consent
27
28

1 Decree. This information-retention requirement shall apply regardless of any contrary corporate
2 or institutional policies or procedures. At any time during this information-retention period,
3 upon request by the United States or California, Settling Defendants shall provide copies of any
4 Records required to be maintained under this Paragraph, notwithstanding any limitation or
5 requirement imposed by foreign laws. Nothing in this Paragraph shall apply to any documents in
6 the possession, custody, or control of any outside legal counsel retained by Settling Defendants
7 in connection with this Consent Decree or of any contractors or agents retained by such outside
8 legal counsel solely to assist in the legal representation of Settling Defendants. Settling
9 Defendants may assert that certain Records are privileged or protected as provided under federal
10 or California law. If Settling Defendants assert such a privilege or protection, they shall provide
11 the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of each
12 author of the Record; (d) the name and title of each addressee and recipient; (e) a description of
13 the subject of the Record; and (f) the privilege or protection asserted by Settling Defendants.
14 However, Settling Defendants may make no claim of privilege or protection regarding: (1) any
15 data regarding the Subject Vehicles or compliance with this Consent Decree; or (2) the portion of
16 any Record that Settling Defendants are required to create or generate pursuant to this Consent
17 Decree.
18
19
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21

22 71. At the conclusion of the information-retention period provided in the preceding
23 Paragraph, Settling Defendants shall notify the United States and California at least 90 Days
24 prior to the destruction of any Records subject to the requirements of the preceding Paragraph
25 and, upon request by the United States or California, Settling Defendants shall deliver any such
26 Records to EPA or California. Settling Defendants may assert that certain Records are
27 privileged or protected as provided under federal or California law. If Settling Defendants assert
28

1 such a privilege or protection, they shall provide the following: (a) the title of the Record; (b) the
2 date of the Record; (c) the name and title of each author of the Record; (d) the name and title of
3 each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege
4 or protection asserted by Settling Defendants. However, Settling Defendants may make no claim
5 of privilege or protection regarding: (1) any data regarding the Subject Vehicles or compliance
6 with this Consent Decree; or (2) the portion of any Record that Settling Defendants are required
7 to create or generate pursuant to this Consent Decree.
8

9 72. Settling Defendants may also assert that information required to be provided
10 under this Section is protected as CBI as defined in Paragraph VI.29. As to any information that
11 Settling Defendants seek to protect as CBI, Settling Defendants shall follow the procedures set
12 forth in 40 C.F.R. Part 2 or equivalent California law.
13

14 73. This Consent Decree in no way limits or affects any right of entry and inspection,
15 or any right to obtain information, held by the United States or California pursuant to applicable
16 federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of
17 Settling Defendants to maintain Records imposed by applicable federal or state laws, regulations,
18 or permits.
19

20 **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

21 74. Satisfaction of all the requirements of this Partial Consent Decree shall resolve
22 and settle all of the United States' and California's civil claims in the Complaints for injunctive
23 relief, based on facts that were disclosed by Settling Defendants to EPA and CARB prior to
24 April 18, 2016 relating to any defeat devices or auxiliary emission control devices ("AECDS") in
25 the 2.0 Liter Subject Vehicles, that they made or could have made against Settling Defendants:
26

27 a. requiring Settling Defendants to take action to buy back, recall, or modify the
28

1 2.0 Liter Subject Vehicles in order to remedy the violations alleged in the Complaints
2 concerning the 2.0 Liter Subject Vehicles;

3 b. requiring Settling Defendants to make payments to owners and lessees of the
4 2.0 Liter Subject Vehicles in order to remedy the violations alleged in the Complaints
5 concerning the 2.0 Liter Subject Vehicles; and
6

7 c. requiring Settling Defendants to mitigate the environmental harm associated
8 with the violations alleged in the Complaints concerning the 2.0 Liter Subject
9 Vehicles.
10

11 75. The United States reserves, and this Partial Consent Decree is without prejudice
12 to, all claims, rights, and remedies against Settling Defendants with respect to all matters not
13 expressly resolved in Paragraph 74. Notwithstanding any other provision of this Decree, the
14 United States reserves all claims, rights, and remedies against Settling Defendants with respect
15 to:
16

17 a. Further injunctive relief, including prohibitory and mandatory injunctive
18 provisions intended to enjoin, prevent, and deter future violations of the Act of the
19 types alleged in the U.S. Complaint related to the 2.0 Liter Subject Vehicles;

20 b. All rights to address noncompliance with Appendix B as set forth in
21 Paragraph 8.1 of Appendix B;
22

23 c. All rights reserved by Paragraph 53;

24 d. Civil penalties with respect to the 2.0 Liter Subject Vehicles;

25 e. Any and all civil claims related to any 3.0 Liter Subject Vehicle or to any
26 other vehicle other than the 2.0 Liter Subject Vehicles;
27

28 f. Any and all civil claims and administrative authorities for injunctive relief: (i)

1 based on facts that were not disclosed by Settling Defendants to EPA and CARB prior
2 to April 18, 2016, related to any defeat devices or AECs installed on or in the 2.0
3 Liter Subject Vehicles; or (ii) related to any other failures by the 2.0 Liter Subject
4 Vehicles to conform with the Act or its implementing regulations;

5
6 g. Any criminal liability; and

7 h. Any claim(s) of any agency of the United States, other than EPA, including
8 but not limited to claims by the Federal Trade Commission.

9
10 76. California reserves, and this Partial Consent Decree is without prejudice to, all
11 claims, rights, and remedies against Settling Defendants with respect to all matters not expressly
12 resolved in Paragraph 74. Notwithstanding any other provision of this Decree, California
13 reserves all claims, rights, and remedies against Settling Defendants with respect to:

14 a. An order requiring Settling Defendants to take all actions necessary to enjoin,
15 prevent, and deter future violations of the Health and Safety Code and related
16 regulations of the types alleged in the California Complaint related to the 2.0 Liter
17 Subject Vehicles;

18
19 b. Further injunctive relief, including prohibitory and mandatory injunctive
20 provisions intended to enjoin, prevent, and deter future misconduct, and/or incentivize
21 its detection, disclosure, and/or prosecution; or to enjoin false advertising, violation of
22 environmental laws, the making of false statements, or the use or employment of any
23 practice that constitutes unfair competition;

24
25 c. All rights to address noncompliance with Appendix B as set forth in Appendix
26 B, Paragraph 8.1;

27
28 d. All rights reserved by Paragraph 53;

1 e. Civil penalties with respect to the 2.0 Liter Subject Vehicles;

2 f. Any and all civil claims related to any 3.0 Liter Subject Vehicle, or to any
3 vehicle other than the 2.0 Liter Subject Vehicles;

4 g. Any and all civil claims and administrative authorities for injunctive relief (i)
5 based on facts that were not disclosed by Settling Defendants to EPA and CARB prior
6 to April 18, 2016, related to any defeat devices or AECs installed on or in the 2.0
7 Liter Subject Vehicles; or (ii) related to any other failures by the 2.0 Liter Subject
8 Vehicles to conform with the California Health and Safety Code or its implementing
9 regulations;
10

11 h. Any criminal liability;

12 i. Any part of any claims for the violation of securities or false claims laws;

13 j. Costs and attorneys' fees, including investigative costs, incurred after the
14 Effective Date; and
15

16 k. Any other claim(s) of any officer or agency of the State of California, other
17 than CARB or CA AG.
18

19 77. CA AG releases its claims against Settling Defendants and VW Credit, Inc. for
20 relief to consumers, including claims for restitution, refunds, rescission, damages, and
21 disgorgement, arising from the conduct alleged in the California Complaint related to the 2.0
22 Liter Subject Vehicles. In exchange for this release of claims for relief to consumers, Settling
23 Defendants shall provide the relief to consumers provided for in this Consent Decree, as well as
24 the relief to consumers provided for in the related FTC Order and Class Action Settlement
25 concerning the 2.0 Liter Subject Vehicles. The requirements of this paragraph are enforceable
26 by the CA AG. This paragraph does not release any claims of individual consumers.
27
28

1 78. By entering into this Consent Decree, the United States and California are not
2 enforcing the laws of other countries, including the emissions laws or regulations of any
3 jurisdiction outside the United States. Nothing in this Consent Decree is intended to apply to, or
4 affect, Settling Defendants' obligations under the laws or regulations of any jurisdiction outside
5 the United States. At the same time, the laws and regulations of other countries shall not affect
6 the Settling Defendants' obligations under this Consent Decree.
7

8 79. This Consent Decree shall not be construed to limit the rights of the United States
9 or California to obtain penalties or injunctive relief under the Act or implementing regulations,
10 or under other federal or state laws, regulations, or permit conditions, except as specifically
11 provided in Paragraph 74. The United States and California further reserve all legal and
12 equitable remedies to address any imminent and substantial endangerment to the public health or
13 welfare or the environment arising at any of Settling Defendants' facilities, or posed by Settling
14 Defendants' 2.0 Liter Subject Vehicles, whether related to the violations addressed in this
15 Consent Decree or otherwise.
16
17

18 80. In any subsequent administrative or judicial proceeding initiated by the United
19 States or California for injunctive relief, civil penalties, other appropriate relief relating to
20 Settling Defendants' violations, Settling Defendants shall not assert, and may not maintain, any
21 defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue
22 preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that
23 the claims raised by the United States or California in the subsequent proceeding were or should
24 have been brought in the instant case, except with respect to the claims that have been
25 specifically resolved pursuant to Paragraph 74.
26
27

28 81. This Consent Decree is not a permit, or a modification of any permit, under any

1 federal, State, or local laws or regulations. Settling Defendants are responsible for achieving and
2 maintaining complete compliance with all applicable federal, State, and local laws, regulations,
3 and permits; and Settling Defendants' compliance with this Consent Decree shall be no defense
4 to any action commenced pursuant to any such laws, regulations, or permits, except as set forth
5 herein. The United States and California do not, by their consent to the entry of this Consent
6 Decree, warrant or aver in any manner that Settling Defendants' compliance with any aspect of
7 this Consent Decree will result in compliance with provisions of the Act, or with any other
8 provisions of United States, State, or local laws, regulations, or permits.
9

10
11 82. This Consent Decree does not limit or affect the rights of Settling Defendants or
12 of the United States or California against any third parties, not party to this Consent Decree, nor
13 does it limit the rights of third parties, not party to this Consent Decree, against Settling
14 Defendants, except as otherwise provided by law.

15
16 83. This Consent Decree shall not be construed to create rights in, or grant any cause
17 of action to, any third party not party to this Consent Decree.

18 **XII. COSTS**

19 84. The Parties shall bear their own costs of this Consent Decree, including attorneys'
20 fees, except that the United States and California shall be entitled to collect the costs and
21 reasonable attorneys' fees incurred in any action necessary to collect any portion of the stipulated
22 penalties due under this Consent Decree but not paid by Settling Defendants.
23

24 **XIII. NOTICES**

25 85. Except as specified elsewhere in this Decree, whenever any Materials are required
26 to be submitted pursuant to this Consent Decree, or whenever any communication is required in
27 any action or proceeding related to or bearing upon this Consent Decree or the rights or
28

1 obligations thereunder, they shall be submitted with a cover letter or otherwise be made in
2 writing (except that if any attachment is voluminous, it shall be provided on a disk, hard drive, or
3 other equivalent successor technology), and shall be addressed as follows:
4

5 As to the United States: DOJ and EPA at the email or mail addresses
6 below, as applicable

7 As to DOJ by mail: EES Case Management Unit
8 Environment and Natural Resources
9 Division
10 U.S. Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044-7611
13 Re: DJ # 90-5-2-1-11386

14 As to DOJ by overnight mail: Chief
15 Environmental Enforcement Section
16 Environment and Natural Resources
17 Division
18 U.S. Department of Justice
19 601 D St. NW
20 Washington, D.C. 20004

21 As to DOJ by email: eescdcopy.enrd@usdoj.gov
22 Re: DJ # 90-5-2-1-11386

23 As to EPA by mail: Director
24 Air Enforcement Division
25 Office of Civil Enforcement
26 U.S. Environmental Protection Agency
27 1200 Pennsylvania Avenue NW
28 3142 William Jefferson Clinton South
Mail Code 2242A
Washington, D.C. 20460

As to EPA by email
(including for Paragraphs 31, 55): Kaul.Meetu@epa.gov
Kakade.Seema@epa.gov
Iddings.Brianna@epa.gov

1 As to California: CARB and CA AG at the email or mail
2 addresses below, as applicable

3 As to CARB by email (including for
4 Paragraphs 31, 55): Alexandra.Kamel@arb.ca.gov

5 As to CARB by mail: Chief Counsel
6 California Air Resources Board
7 Legal Office
8 1001 I Street
9 Sacramento, California 95814

10 As to CA AG by email: nicklas.akers@doj.ca.gov
11 judith.fiorentini@doj.ca.gov
12 david.zonana@doj.ca.gov

13 As to CA AG by mail: Senior Assistant Attorney General
14 Consumer Law Section
15 California Department of Justice
16 455 Golden Gate Ave., Suite 11000
17 San Francisco, CA 94102-7004

18 Senior Assistant Attorney General
19 Environment Section
20 Office of the Attorney General
21 P.O. Box 944255
22 Sacramento, CA 94244-2550

23 As to Volkswagen AG by mail: Volkswagen AG
24 Berliner Ring 2
25 38440 Wolfsburg, Germany
26 Attention: Company Secretary

27 With copies to each of the following:

28 Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

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As to Audi AG by mail:

Audi AG
Auto-Union-Straße 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of
America, Inc. by mail:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to Volkswagen Group of America
Chattanooga Operations, LLC by mail:

Volkswagen Group of America
Chattanooga Operations, LLC
8001 Volkswagen Dr.
Chattanooga, TN 37416
Attention: Company Secretary

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With copies to each of the following:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to one or more of the Settling
Defendants by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
giuffrar@sullcrom.com
nelless@sullcrom.com

As to one or more of the Settling
Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

86. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

87. Communications submitted pursuant to this Section shall be deemed submitted upon mailing (or emailing if that is an option), except as provided elsewhere in this Consent Decree or by mutual agreement of the Parties in writing.

88. The Parties anticipate that a non-public secure web-based electronic portal may be developed in the future for submission of Materials. The Parties may agree in the future to use such a portal, or any other means, for submission of Materials. Any such agreement shall be approved as a non-material modification to the Decree in accordance with Paragraphs 91-92.

XVII. TERMINATION

1
2 94. After Settling Defendants have completed the requirements of Section IV (Partial
3 Injunctive Relief), except for Appendix A, Paragraph 5.2 (No End Date for Emissions
4 Modification Recall) and associated requirements, have complied with all other requirements of
5 this Consent Decree, and have paid any accrued stipulated penalties as required by this Consent
6 Decree, Settling Defendants may serve upon the United States and California a Request for
7 Termination, stating that Settling Defendants have satisfied those requirements, together with all
8 necessary supporting documentation.
9

10
11 95. Following receipt by the United States and California of Settling Defendants’
12 Request for Termination, the Parties shall confer informally concerning the Request and any
13 disagreement that the Parties may have as to whether Settling Defendants have satisfactorily
14 complied with the requirements for termination of this Consent Decree. If the United States,
15 after consultation with California, agrees that the Decree may be terminated, the United States
16 will file a motion to terminate the Decree, provided, however, that the provisions associated with
17 effectuating and enforcing Appendix A, Paragraph 5.2 (No End Date for Emissions Modification
18 Recall) shall continue in full force and effect indefinitely.
19

20 96. If the United States, after consultation with California, does not agree that the
21 Decree may be terminated, Settling Defendants may invoke Dispute Resolution under Section
22 IX. However, Settling Defendants shall not seek Dispute Resolution of any dispute regarding
23 termination until 45 Days after service of their Request for Termination.
24

XVIII. PUBLIC PARTICIPATION

25
26 97. This Consent Decree shall be lodged with the Court for a period of not less than
27 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States
28

1 reserves the right to withdraw or withhold its consent if the comments regarding the Consent
2 Decree disclose facts or considerations indicating that the Consent Decree is inappropriate,
3 improper, or inadequate. California reserves the right to withdraw or withhold its consent if the
4 United States does so. Settling Defendants consent to entry of this Consent Decree without
5 further notice and agree not to withdraw from or oppose entry of this Consent Decree by the
6 Court or to challenge any provision of the Decree, unless the United States has notified Settling
7 Defendants in writing that it no longer supports entry of the Decree.
8

9
10 **XIX. SIGNATORIES/SERVICE**

11 98. Each undersigned representative of Settling Defendants and California, and the
12 Assistant Attorney General for the Environment and Natural Resources Division of the DOJ
13 certifies that he or she is fully authorized to enter into the terms and conditions of this Consent
14 Decree and to execute and legally bind the Party he or she represents to this document.

15 99. This Consent Decree may be signed in counterparts, and its validity shall not be
16 challenged on that basis. For purposes of this Consent Decree, a signature page that is
17 transmitted electronically (*e.g.*, by facsimile or e-mailed “PDF”) shall have the same effect as an
18 original.
19

20 **XX. INTEGRATION**

21 100. This Consent Decree constitutes the final, complete, and exclusive agreement and
22 understanding among the Parties with respect to the settlement embodied in the Decree and
23 supersedes all prior agreements and understandings, whether oral or written, concerning the
24 settlement embodied herein. Other than deliverables that are subsequently submitted and
25 approved pursuant to this Decree, the Parties acknowledge that there are no documents,
26 representations, inducements, agreements, understandings, or promises that constitute any part of
27
28

1 this Decree or the settlement it represents other than those expressly contained in this Consent
2 Decree.

3 **XXI. FINAL JUDGMENT**

4 101. Upon approval and entry of this Consent Decree by the Court, this Consent
5 Decree shall constitute a final judgment of the Court as to the United States, California, and
6 Settling Defendants. The Court finds that there is no just reason for delay and therefore enters
7 this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
8

9 **XXII. APPENDICES**

10 102. The following Appendices (and any attachments thereto) are attached to and
11 part of this Consent Decree:

12 “Appendix A” is the Buyback, Lease Termination, and Vehicle Modification Recall Program.

13 “Appendix B” is the Vehicle Recall and Emissions Modification Program.

14 “Appendix C” is the ZEV Investment Commitment.

15 “Appendix D” is the Form of Environmental Mitigation Trust Agreement.
16
17
18
19
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21 Dated and entered this 25 day of October, 2016,

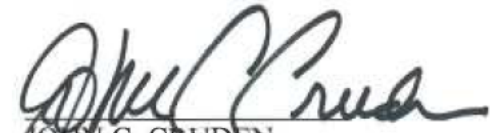
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23 _____
24 CHARLES R. BREYER
25 UNITED STATES DISTRICT JUDGE
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1 FOR THE UNITED STATES OF AMERICA:

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27 June 2016
Date


JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


JOSHUA H. VAN EATON
BETHANY ENGEL
GABRIEL ALLEN
LESLIE ALLEN
PATRICK BRYAN
NIGEL COONEY
KAREN DWORKIN
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josh.van.eaton@usdoj.gov
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Counsel for the United States


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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

6/24/16
Date


CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460


SUSAN SHINKMAN
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460


PHILLIP A. BROOKS
Director, Air Enforcement Division, Office of Civil
Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460


EVAN BELSER
MEETU KAUL
SEEMA KAKADE
BRIANNA IDDINGS
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

1 FOR THE PEOPLE OF THE STATE OF CALIFORNIA BY AND THROUGH THE
2 CALIFORNIA AIR RESOURCES BOARD AND KAMALA D. HARRIS, ATTORNEY
GENERAL OF THE STATE OF CALIFORNIA:

3
4 6/27/16

5 Date



6 NICKLAS A. AKERS (CA-211222)
7 Senior Assistant Attorney General
8 California Department of Justice
9 455 Golden Gate Ave, Suite 11000
10 San Francisco, CA 94102-7004
11 Telephone: (415) 703-5500
12 E-mail: nicklas.akers@doj.ca.gov

13 KAMALA D. HARRIS
14 Attorney General of California
15 NICKLAS A. AKERS
16 ROBERT W. BYRNE
17 SALLY MAGNANI
18 Senior Assistant Attorneys General
19 JUDITH A. FIORENTINI
20 GAVIN G. McCABE
21 DAVID A. ZONANA
22 Supervising Deputy Attorneys General
23 AMOS E. HARTSTON
24 WILLIAM R. PLETCHER
25 ELIZABETH B. RUMSEY
26 JOHN S. SASAKI
27 JON F. WORM
28 Deputy Attorneys General

Attorneys for the People of the State of California

1 FOR THE CALIFORNIA AIR RESOURCES BOARD:

2 6/26/16

3 _____
4 Date



MARY D. NICHOLS
Chair
California Air Resources Board
1001 I Street
Sacramento CA 95814

7 _____
8 RICHARD W. COREY
9 Executive Officer
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FOR VOLKSWAGEN AG:

Date: June 24, 2016



/s/ Francisco Javier Garcia Sanz
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Date: June 24, 2016

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1 COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA,
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