

1 JOHN C. CRUDEN  
Assistant Attorney General  
2 Environment and Natural Resources Division

3 JOSHUA H. VAN EATON (WA-39871)  
4 BETHANY ENGEL (MA-660840)  
Trial Attorneys  
5 Environmental Enforcement Section

6 U.S. Department of Justice  
7 P.O. Box 7611  
8 Washington DC 20044-7611  
9 Telephone: (202) 514-5474  
Facsimile: (202) 514-0097  
10 Email: Josh.Van.Eaton@usdoj.gov

11 *Attorneys for Plaintiff United States of America*

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

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

Case No: MDL No. 2672 CRB (JSC)

**SECOND PARTIAL CONSENT  
DECREE**

Hon. Charles R. Breyer

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. JURISDICTION AND VENUE ..... 6  
II. APPLICABILITY ..... 7  
III. DEFINITIONS ..... 8  
IV. PARTIAL INJUNCTIVE RELIEF ..... 14  
V. APPROVAL OF SUBMISSIONS AND EPA/CARB DECISIONS ..... 17  
VI. REPORTING AND CERTIFICATION REQUIREMENTS ..... 19  
VII. STIPULATED PENALTIES AND ADDITIONAL MITIGATION TRUST  
PAYMENTS ..... 23  
VIII. FORCE MAJEURE ..... 29  
IX. DISPUTE RESOLUTION ..... 31  
X. INFORMATION COLLECTION AND RETENTION ..... 34  
XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS ..... 37  
XII. COSTS ..... 42  
XIII. NOTICES ..... 43  
XIV. EFFECTIVE DATE ..... 48  
XV. RETENTION OF JURISDICTION ..... 48  
XVI. MODIFICATION ..... 48  
XVII. TERMINATION ..... 49  
XVIII. PUBLIC PARTICIPATION ..... 49  
XIX. SIGNATORIES/SERVICE ..... 50  
XX. INTEGRATION ..... 50  
XXI. FINAL JUDGMENT ..... 51  
XXII. APPENDICES ..... 51

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

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           **WHEREAS**, the People of the State of California, by and through the California Air  
22 Resources Board (“CARB”) and Kamala D. Harris, Attorney General of the State of California,  
23 filed a complaint on June 27, 2016, against Defendants alleging that Defendants violated Cal.  
24

1 Health & Safety Code §§ 43016, 43017, 43151, 43152, 43153, 43205, 43211, and 43212; Cal.  
2 Code Regs. tit. 13, §§ 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and 40 C.F.R. Sections  
3 incorporated by reference in those California regulations; Cal. Bus. & Prof. Code §§ 17200 *et*  
4 *seq.*, 17500 *et seq.*, and 17580.5; Cal. Civ. Code § 3494; and 12 U.S.C. § 5536 *et seq.*, with  
5 regard to approximately 71,000 model year 2009 to 2015 motor vehicles containing 2.0 liter  
6 diesel engines and approximately 16,000 model year 2009 to 2016 motor vehicles containing 3.0  
7 liter diesel engines, for a total of approximately 87,000 motor vehicles in California. The  
8 California Complaint alleges, in relevant part, that the motor vehicles contain prohibited defeat  
9 devices and have resulted in, and continue to result in, increased NOx emissions from each such  
10 vehicle significantly in excess of CARB requirements, that these vehicles have resulted in the  
11 creation of a public nuisance, and that Defendants engaged in related conduct that violated unfair  
12 competition, false advertising, and consumer protection laws;

13  
14  
15         **WHEREAS**, on June 28, 2016, the United States lodged a Partial Consent Decree, Dkt.  
16 No. 1605-1 (“First Partial Consent Decree”), concerning the 2.0 Liter Subject Vehicles, which  
17 was entered into by the United States, California, and certain Defendants (Volkswagen AG, Audi  
18 AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga  
19 Operations, LLC). The First Partial Consent Decree was entered by this Court on October 25,  
20 2016. Dkt. No. 2103;

21  
22  
23         **WHEREAS**, the United States and California enter into this Second Partial Consent  
24 Decree with Defendants (collectively, the “Parties”) to address the 3.0 Liter Subject Vehicles on  
25 the road and the associated environmental consequences resulting from the past and future  
26 excess emissions from the 3.0 Liter Subject Vehicles;

1           **WHEREAS**, Defendants admit that software in the 3.0 Liter Subject Vehicles enables  
2 the vehicles' ECMs to detect when the vehicles are being driven on the road, rather than  
3 undergoing Federal Test Procedures, and that this software renders certain emission control  
4 systems in the vehicles inoperative when the ECM detects the vehicles are not undergoing  
5 Federal Test Procedures, resulting in emissions that exceed EPA-compliant and CARB-  
6 compliant levels when the vehicles are driven on the road;

7           **WHEREAS**, Defendants admit that this software was not disclosed in the Certificate of  
8 Conformity and Executive Order applications for the 3.0 Liter Subject Vehicles, and, as a result,  
9 the design specifications of the 3.0 Liter Subject Vehicles, as manufactured, differ materially  
10 from the design specifications described in the Certificate of Conformity and Executive Order  
11 applications;

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

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

16           1.     The 3.0 Liter Subject Vehicles on the road emit NOx at levels above the standards  
17 to which they were certified to EPA and CARB pursuant to the Clean Air Act and the California  
18 Health and Safety Code, and a prompt remedy to address the noncompliance is needed;

19           2.     At the present time, there are no practical engineering solutions that would,  
20 without negative impact to vehicle functions and unacceptable delay, bring the Generation 1.x  
21 3.0 Liter Subject Vehicles into compliance with the exhaust emission standards and the on-board  
22 diagnostics requirements to which Defendants certified the vehicles to EPA and CARB.  
23 Defendants expect there to be a practical engineering solution to bring the Generation 2.x 3.0  
24  
25  
26  
27  
28

1 Liter Subject Vehicles into compliance with the exhaust emission standards to which Defendants  
2 certified the vehicles to EPA and CARB;

3           3.       Accordingly, as one element of the remedy to address the Clean Air Act and  
4 California Health and Safety Code violations, Defendants are required to perform two vehicle  
5 recalls as follows:  
6

7                   a. First, for Generation 1.x 3.0 Liter Subject Vehicles, Defendants  
8 must offer the Buyback or the Lease Termination, for 100% of the Generation 1.x  
9 vehicles under terms described in Appendix A of this Consent Decree (Buyback,  
10 Lease Termination, Vehicle Modification, and Emissions Compliant Recall  
11 Program). In addition, if approved by EPA/CARB, Defendants may, in  
12 accordance with the requirements specified in Appendix B of this Consent Decree  
13 (Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject  
14 Vehicles), modify such vehicles to substantially reduce their NO<sub>x</sub> emissions in  
15 accordance with standards established by EPA/CARB in this Consent Decree.  
16  
17

18                   b. Second, for Generation 2.x 3.0 Liter Subject Vehicles, if proposed  
19 by Defendants and approved by EPA/CARB, Defendants must offer an Emissions  
20 Compliant Recall as set forth in Appendix A to bring these vehicles into  
21 compliance with their Certified Exhaust Emission Standards in accordance with  
22 the requirements specified in Appendix B. If Defendants are unable to effect a  
23 recall that meets Certified Exhaust Emission Standards for a particular Test Group  
24 or Groups of Generation 2.x 3.0 Liter Subject Vehicles within the timeframe and  
25 in accordance with the other requirements specified in Appendix B, Defendants  
26 must offer the Buyback or Lease Termination, under terms described in Appendix  
27  
28

1 A, for 100% of such vehicles and may, if proposed by Defendants and approved  
2 by EPA/CARB, consistent with the provisions in Appendix B, modify such  
3 vehicles to substantially reduce their NOx emissions in accordance with standards  
4 established by EPA/CARB in this Consent Decree.  
5

6 c. In the event Defendants do not achieve the 85% recall rates  
7 required by Appendix A, Defendants must pay additional funds into the Mitigation  
8 Trust;  
9

10 4. The practical engineering solutions provided by Appendix B, should Defendants  
11 propose such emissions modifications consistent with the provisions of Appendix B, would  
12 substantially reduce NOx emissions from the 3.0 Liter Subject Vehicles and improve their on-  
13 board diagnostics, would avoid undue waste and potential environmental harm that would be  
14 associated with removing the 3.0 Liter Subject Vehicles from service, and would allow Eligible  
15 Owners and Eligible Lessees to retain their Eligible Vehicles;  
16

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

19 6. As described below, Defendants will pay a total of \$225,000,000 to fund Eligible  
20 Mitigation Actions that will reduce emissions of NOx where the 3.0 Liter Subject Vehicles were,  
21 are, or will be operated. The funding for the Eligible Mitigation Actions required by this  
22 Consent Decree is intended to fully mitigate the total, lifetime excess NOx emissions from the  
23 3.0 Liter Subject Vehicles;  
24

25 **WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds,  
26 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation  
27 among the Parties regarding certain relief with respect to the 3.0 Liter Subject Vehicles for the  
28







1 “2.0 Liter Subject Vehicles” means each and every light duty diesel vehicle equipped  
 2 with a 2.0 liter TDI engine that Defendants sold or offered for sale in, or introduced or delivered  
 3 for introduction into commerce in the United States or its Territories, or imported into the United  
 4 States or its Territories, and that is or was purported to have been covered by the following EPA  
 5 Test Groups:  
 6

7 <b>Model Year</b>	<b>EPA Test Group</b>	<b>Vehicle Make and Model(s)</b>
8 2009	9VWXV02.035N	VW Jetta, VW Jetta Sportwagen
9 2009	9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
10 2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
11 2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
12 2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
13 2012	CVWXV02.0U4S	VW Passat
14 2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
15 2013	DVWXV02.0U4S	VW Passat
16 2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen
17 2014	EVWXV02.0U4S	VW Passat
18 2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

19  
 20  
 21  
 22 “3.0 Liter Subject Vehicles” means each and every model year 2009 to 2016 light duty  
 23 diesel vehicle equipped with a 3.0 liter TDI engine that Defendants sold or offered for sale in, or  
 24 introduced or delivered for introduction into, commerce in the United States or its Territories, or  
 25 imported into the United States or its Territories, and that is or was purported to have been  
 26 covered by the following test groups:  
 27  
 28

Model Year	EPA Test Group(s)	Vehicle Make and Model(s)	Generation
2009	9ADXT03.03LD	VW Touareg, Audi Q7	1.1
2010	AADXT03.03LD	VW Touareg, Audi Q7	1.1
2011	BADXT03.02UG BADXT03.03UG	VW Touareg, Audi Q7	1.2
2012	CADXT03.02UG CADXT03.03UG	VW Touareg Audi Q7	1.2
2013	DADXT03.02UG DADXT03.03UG DPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel	2.1 SUV
2014	EADXT03.02UG EADXT03.03UG EPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel	2.1 SUV
2014	EADXJ03.04UG	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC
2015	FVGAT03.0NU3	Audi: Q7, A6 quattro, A7 quattro, A8, A8L, Q5	2.1 SUV
2015	FVGAT03.0NU2 FPRXT03.0CDD	VW Touareg Porsche Cayenne Diesel	2.2 SUV
2015	FVGAJ03.0NU4	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC
2016	GVGAT03.0NU2 GPRXT03.0CDD	VW Touareg Porsche Cayenne Diesel	2.2 SUV
2016	GVGAJ03.0NU4	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC

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

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

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

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

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

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

8 “Certified Exhaust Emissions Standards” has the meaning set forth in Appendix A;

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

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

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

13 “Day” means a calendar day unless expressly stated to be a business day. In computing  
14 any period of time under this Consent Decree, where the last day would fall on a Saturday,  
15 Sunday, or federal or California holiday, the period shall run until the close of business of the  
16 next business day;

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

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

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

1 “Eligible Mitigation Actions” has the meaning set forth in Appendix D to the First Partial  
2 Consent Decree;

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

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

5 “Emissions Compliant Recall” has the meaning set forth in Appendix A;

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

8 “First Partial Consent Decree” means the Partial Consent Decree entered in this action by  
9 the Court on October 25, 2016;

10 “First California Partial Consent Decree” means the Partial Consent Decree between the  
11 California Attorney General and Defendants entered by the Court on September 1, 2016;

12 “Generation” means the different versions of emission control technology installed in  
13 various configurations of 3.0 Liter Subject Vehicles. The Generation of each 3.0 Liter Subject  
14 Vehicle is specified in the chart set forth in the definition of 3.0 Liter Subject Vehicles;

15 “Generation 1.x 3.0 Liter Eligible Vehicle” and “Generation 2.x 3.0 Liter Eligible  
16 Vehicle” have the meanings set forth in Appendix A. The Generations are specified in the chart  
17 set forth in the definition of 3.0 Liter Subject Vehicles;

18 “Initial 3.0 Liter Mitigation Allocation Appendix” or “Mitigation Appendix” is the  
19 appendix setting forth the initial allocation of Mitigation Trust funds for the 3.0 Liter Subject  
20 Vehicles;

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;  
24

1 “Mitigation Trust” or “Trust” means the trust established or to be established pursuant to  
2 Section IV. and Appendix D of the First Partial Consent Decree;

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 Defendants;

7 “Porsche Defendants” means Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North  
8 America, Inc.;

9 “Porsche 3.0 Liter Subject Vehicles” means the Porsche vehicles specified in the chart set  
10 forth in the definition of 3.0 Liter Subject Vehicles;

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

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

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

15 “Test Group” has the meaning set forth in Appendix B;

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

17 “Trust Agreement” means a trust agreement in the form set forth in Appendix D to the  
18 First Partial Consent Decree, to be entered into by the Defendants and the Trustee selected  
19 pursuant to Paragraph 15 of the First Partial Consent Decree;

20 “Trustee” means the trustee selected for the Mitigation Trust in accordance with  
21 Paragraph 15 of the First Partial Consent Decree;

22 “United States” means the United States of America, acting on behalf of EPA, except  
23 when used in subparagraph 75.h, when it shall mean the United States of America; and  
24

1 “U.S. Complaint” means the complaint filed by the United States in this action on  
2 January 4, 2016 (as amended on October 7, 2016).

3 **IV. PARTIAL INJUNCTIVE RELIEF**

4 **Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant**  
5 **Recall Program (Appendix A) and Vehicle Recall and Emissions Modification**  
6 **Program for 3.0 Liter Vehicles (Appendix B)**

7 9. Defendants shall implement the Buyback, Lease Termination, Vehicle  
8 Modification, and Emissions Compliant Recall Program in accordance with the requirements set  
9 forth in Appendix A, together with the Vehicle Recall and Emissions Modification Program for  
10 3.0 Liter Subject Vehicles in accordance with the requirements set forth in Appendix B.

11 10. Generation 1.x 3.0 Liter Subject Vehicles. As required by Appendix A, by no later  
12 than November 30, 2019, Defendants shall remove from commerce in the United States and/or  
13 perform an Approved Emissions Modification (in accordance with Appendix B) on at least 85%  
14 of the Generation 1.x 3.0 Liter Subject Vehicles.

15 11. Generation 2.x 3.0 Liter Subject Vehicles. As required by Appendix A, by no later  
16 than May 31, 2020, Defendants shall perform an Emissions Compliant Recall (or, if no  
17 Emissions Compliant Recall is achieved, remove from commerce in the United States and/or  
18 perform an Approved Emissions Modification) on at least 85% of all Generation 2.x 3.0 Liter  
19 Subject Vehicles.

20 12. Defendants must offer each and every Eligible Owner and Eligible Lessee of a 3.0  
21 Liter Eligible Vehicle for which the offer of the Buyback is required pursuant to Appendix A, the  
22 option of the Buyback of the Eligible Vehicle at a price no less than Retail Replacement Value,  
23 or the Lease Termination in accordance with the terms specified in Appendix A.

24 13. In the event Defendants do not achieve these 85% recall rates, Defendants shall  
25  
26  
27  
28

1 pay additional funds into the Mitigation Trust as set forth in Appendix A.

2 14. If Defendants implement an Emissions Compliant Recall or a vehicle recall and  
3 Approved Emissions Modification for any 3.0 Liter Subject Vehicle, approval and  
4 implementation of that modification shall be governed by Appendices A and B.  
5

6 15. Defendants shall not sell or cause to be sold, or lease or cause to be leased, any 3.0  
7 Liter Subject Vehicle, except as provided in Appendices A and B. Defendants shall not modify  
8 or cause to be modified any emission control system or emissions aftertreatment or any other  
9 software or hardware that affects the emission control system on any 3.0 Liter Subject Vehicle  
10 except in compliance with Appendices A and B.  
11

12 16. Except as otherwise provided in Appendices A and B, Defendants may not export  
13 from the United States to another country any 3.0 Liter Subject Vehicle.

14 **Mitigation of Excess Emissions and Mitigation Trust (First Partial Consent**  
15 **Decree, Appendix D)**

16 17. Payment of Mitigation Funds.

17 a. Mitigation Trust Payment. Not later than 30 Days after the  
18 Effective Date, Defendants shall deposit \$225,000,000 in Mitigation Trust  
19 Payments into the Trust Account to be used to fund Eligible Mitigation Actions to  
20 achieve reductions of NOx emissions in accordance with the Trust Agreement.  
21

22 b. Mitigation Trust Payments under Appendices A and B. All  
23 Mitigation Trust Payments required by Appendices A and B shall be deposited  
24 into the Trust Account.  
25

26 c. Notice of Trust Payments. Defendants shall notify the Trustee and  
27 the United States and CARB by mail and email in accordance with the  
28 requirements of Section XIII (Notices) on the Day any such Mitigation Trust

1 Payments are made.

2 d. Court Registry. If any payments required under this Paragraph 17  
3 become due before the Trust Account is established, Defendants shall deposit such  
4 payments with the Court in accordance with Fed. R. Civ. P. 67. Defendants shall  
5 execute such documents and support such actions as necessary to facilitate the  
6 deposit of payments with the Court. For purposes of Fed. R. Civ. P. 67, this  
7 Consent Decree constitutes an order permitting such deposits and authorizing the  
8 Clerk of Court for the Northern District of California: (1) to accept an electronic  
9 funds transfer payment from Defendants of any payments required under this  
10 Paragraph 17; and (2) to hold such funds in the Clerk's Registry, including interest  
11 earned thereon, pending the further order of this Court. For purposes of 28 U.S.C.  
12 § 2042, this Consent Decree constitutes an order permitting the Trustee, upon  
13 filing a designation and identification of Trust Account as required by Appendix D  
14 to the First Partial Consent Decree, to withdraw all such funds, including all  
15 accrued interest, for immediate and concurrent deposit into the Trust Account. In  
16 the event that the United States determines that the funds cannot be deposited in  
17 accordance with Fed. R. Civ. P. 67, and unless otherwise agreed in writing by the  
18 Parties, the Defendants shall hold the funds in an interest-bearing escrow account,  
19 for deposit (together with all accrued interest) into the Trust Account when  
20 established.  
21  
22  
23  
24

25 18. Modification of Appendix D (Form of Environmental Mitigation Trust  
26 Agreement) and Appendix D-3 (Certification for Beneficiary Status under Environmental  
27 Mitigation Trust Agreement) to the First Partial Consent Decree. Upon the Effective Date of the  
28

1 Second Partial Consent Decree, the Parties agree to make non-material modifications to  
2 Appendix D and Appendix D-3 of the First Partial Consent Decree as follows to enable the  
3 Mitigation Payments from this Consent Decree to be placed in the Mitigation Trust created  
4 pursuant to the First Partial Consent Decree: (1) all references to 2.0 Liter Subject Vehicles will  
5 also include 3.0 Liter Subject Vehicles; (2) all references to Appendix D-1 will also include the  
6 Mitigation Appendix; (3) most references to Consent Decree will include both the First and  
7 Second Partial Consent Decrees; and (4) most references to Settling Defendants will also include  
8 Defendants.  
9

10  
11 19. Mitigation Appendix. The Mitigation Appendix, attached to this Second Partial  
12 Consent Decree, sets forth an initial allocation of Mitigation Trust funds for the 3.0 Liter Subject  
13 Vehicles for entities that may seek to become a Beneficiary under the Trust Agreement.

14 20. Modification of Trust Agreement and its Appendices. After the Trust is  
15 established pursuant to Paragraph 17 of the First Partial Consent Decree, the Trust may be  
16 modified only in accordance with Paragraph 19 of the First Partial Consent Decree.  
17

18 **V. APPROVAL OF SUBMISSIONS AND EPA/CARB DECISIONS**

19 21. For purposes of this Consent Decree, unless otherwise specified in this Consent  
20 Decree:

21 a. with respect to any Submission, other obligation, or force majeure  
22 claim of Defendants concerning Appendix B, EPA and CARB, or the United  
23 States and California as applicable, will issue a joint decision concerning the  
24 Submission, other obligation, or force majeure claim; and

25  
26 b. with respect to any other Submission, obligation, or force majeure  
27 claim of Defendants under the Consent Decree, the position of EPA or the United  
28

1 States, after consultation with CARB or California, as applicable, shall control.

2 22. For purposes of this Section, Section VII (Stipulated Penalties and Other  
3 Mitigation Trust Payments), Section VIII (Force Majeure), and Section IX (Dispute Resolution),  
4 in accordance with the decision-making authorities set forth in Paragraph 21, references to  
5 “EPA/CARB” mean EPA and CARB jointly, or EPA or CARB, as applicable; references to “the  
6 United States/California” mean the United States and California jointly, or the United States or  
7 California, as applicable; and references to the United States/CARB mean the United  
8 States/CARB jointly, or the United States or CARB, as applicable.  
9

10 23. Any specific procedures or specifications for the review of Submissions set forth  
11 in the Appendices shall govern, as applicable, the review of any Submission submitted pursuant  
12 to such Appendix. Except as otherwise specified in the Appendices, after review of any  
13 Submission, EPA/CARB shall in writing: (a) approve the Submission; (b) approve the  
14 Submission upon specified conditions; (c) approve part of the Submission and disapprove the  
15 remainder; or (d) disapprove the Submission. In the event of disapproval, in full or in part, of  
16 any portion of the Submission, if not already provided with the disapproval, upon the request of  
17 Defendants, EPA/CARB will provide in writing the reasons for such disapproval.  
18

19 24. If the Submission is approved pursuant to Paragraph 23, Defendants shall take all  
20 actions required by the Submission in accordance with the schedules and requirements of the  
21 Submission, as approved. If the Submission is conditionally approved or approved only in part  
22 pursuant to subparagraph 23(b) or (c), Defendants shall, upon written direction from  
23 EPA/CARB, take all actions required by the Submission that EPA/CARB determine(s) are  
24 technically severable from any disapproved portions.  
25

26 25. If the Submission is disapproved in whole or in part pursuant to subparagraph  
27  
28

1 23(c) or (d), Defendants shall, within 30 Days or such other time as provided by an Appendix or  
2 as the Parties agree to in writing, correct all deficiencies and resubmit the Submission, or  
3 disapproved portion thereof, for approval, in accordance with Paragraphs 23 and 24. If the  
4 resubmission is approved in whole or in part, Defendants shall proceed in accordance with  
5 Paragraph 24.  
6

7 26. If a resubmitted Submission, or portion thereof, is disapproved in whole or in part,  
8 EPA/CARB may again require Defendants to correct any deficiencies, in accordance with  
9 Paragraphs 24 and 25, or EPA/CARB may itself/themselves correct any deficiencies.  
10

11 27. Defendants may elect to invoke the dispute resolution procedures set forth in  
12 Section IX (Dispute Resolution) concerning any decision of EPA/CARB to disapprove, approve  
13 on specified conditions, or modify a Submission. If Defendants elect to invoke dispute  
14 resolution, they shall do so within 30 Days (or such other time as the Parties agree to in writing)  
15 after receipt of the applicable decision.  
16

17 28. Any stipulated penalties applicable to the original Submission, as provided in  
18 Section VII (Stipulated Penalties and Other Mitigation Trust Payments), shall accrue during the  
19 30-Day period or other specified period pursuant to Paragraph 25. Such stipulated penalties shall  
20 not be payable unless the resubmission of the Submission is untimely or is disapproved in whole  
21 or in part; provided that, if the original Submission was so deficient as to constitute a material  
22 breach of Defendants' obligations under this Decree in making that Submission, the stipulated  
23 penalties applicable to the original Submission shall be due and payable notwithstanding any  
24 subsequent resubmission.  
25

26 **VI. REPORTING AND CERTIFICATION REQUIREMENTS**

27 29. Timing of Reports. Unless otherwise specified in this Consent Decree, or the  
28

1 Parties otherwise agree in writing:

2 a. To the extent quarterly reporting is required by this Decree,  
3 Defendants shall submit each report one month after the end of the calendar  
4 quarter, and the report shall cover the prior calendar quarter. That is, reports shall  
5 be submitted on April 30, July 31, October 31, and January 31 for the prior  
6 respective calendar quarter (*i.e.*, the report submitted on April 30 covers January 1  
7 through March 31), as further specified, and covering the items specified,  
8 elsewhere in the Consent Decree.  
9

10 b. To the extent semi-annual or annual reporting is required,  
11 Defendants shall submit each report one month after the end of the applicable  
12 prior 6-month or annual calendar period, *i.e.*, April 30, July 31, October 31, or  
13 January 31, as applicable, and as further specified, and covering the items  
14 specified, elsewhere in the Consent Decree.  
15

16  
17 30. Defendants may assert that information submitted under this Consent Decree is  
18 protected as Confidential Business Information (“CBI”) as set out in 40 C.F.R. pt. 2 or Cal. Code  
19 Regs. tit. 17, §§ 91000 to 91022.

20 31. Reporting of Violations

21 a. Except to the extent the Appendices specify different timeframes  
22 or notice recipients, if Defendants reasonably believe they have violated, or that  
23 they may violate, any requirement of this Consent Decree, Defendants shall notify  
24 EPA, CARB, and CA AG of such violation and its likely duration, in a written  
25 report submitted within 10 business days after the Day Defendants first reasonably  
26 believe that a violation has occurred or may occur, with an explanation of the  
27  
28

1 violation's likely cause and of the remedial steps taken, or to be taken, to prevent  
2 or minimize such violation. If Defendants believe the cause of a violation cannot  
3 be fully explained at the time the report is due, Defendants shall so state in the  
4 report. Defendants shall investigate the cause of the violation and shall then  
5 submit an amendment to the report, including a full explanation of the cause of the  
6 violation, within 30 Days after the Day on which Defendants reasonably believe  
7 they have determined the cause of the violation. Nothing in this Paragraph or the  
8 following Paragraph relieves Defendants of their obligation to provide the notice  
9 required by Section VIII (Force Majeure).  
10  
11

12 b. Semi-Annual Report of Violations. On January 31 and July 31 of  
13 each year, Defendants shall submit a summary to the United States and California  
14 of any violations of the Decree that occurred during the preceding six months (or  
15 potentially shorter period for the first semi-annual report), and that are required to  
16 be reported pursuant to subparagraph 31.a, including the date of the violation, the  
17 date the notice of violation was sent, and a brief description of the violation.  
18

19 32. Whenever Defendants reasonably believe that any violation of this Consent Decree  
20 or any other event affecting Defendants' performance under this Decree may pose an immediate  
21 threat to the public health or welfare or the environment, Defendants shall notify EPA and  
22 California by email as soon as practicable, but no later than 24 hours after Defendants first  
23 reasonably believe the violation or event has occurred. This procedure is in addition to the  
24 requirements set forth in Paragraph 31.  
25

26 33. All plans, reports, and other information required to be posted to a public website  
27 by this Consent Decree shall be accessible on the public website that Defendants use to  
28

1 administer the Claims Program pursuant to Appendix A-1 (or the analogous website used by  
2 Defendants pursuant to a Parallel Agreement under Appendix A-1), and a link to such website  
3 shall be displayed on [www.vw.com](http://www.vw.com), [www.audiusa.com](http://www.audiusa.com), and [www.porsche.com](http://www.porsche.com).

4  
5 34. Each report or other item that is required by an Appendix to be certified pursuant  
6 to this Paragraph shall be signed by an officer or director of Defendants and shall include the  
7 following sworn certification, which may instead be certified as provided in 28 U.S.C. § 1746:

8 I certify under penalty of perjury under the laws of the United States and  
9 California that this document and all attachments were prepared under my  
10 direction or supervision in accordance with a system designed to assure that  
11 qualified personnel properly gather and evaluate the information submitted.  
12 Based on my inquiry of the person or persons who manage the system, or those  
13 persons directly responsible for gathering the information, the information  
14 submitted is, to the best of my knowledge and belief, true, correct, and complete.  
15 I have no personal knowledge, information or belief that the information  
16 submitted is other than true, correct, and complete. I am aware that there are  
17 significant penalties for submitting false information, including the possibility of  
18 fine and imprisonment for knowing violations.

19  
20 35. Defendants agree that the certification required by Paragraph 34 is subject to 18  
21 U.S.C. §§ 1001(a) and 1621, and California Penal Code §§ 115, 118, and 132.

22  
23 36. The certification requirement in Paragraph 34 does not apply to emergency or  
24 similar notifications where compliance would be impractical.

25  
26 37. The reporting requirements of this Consent Decree do not relieve Defendants of  
27 any reporting obligations required by the Act or implementing regulations, or by any other  
28 federal, state, or local law, regulation, permit, or other requirement.

39  
40 38. Any information provided pursuant to this Consent Decree may be used by the  
41 United States or California in any proceeding to enforce the provisions of this Consent Decree  
42 and as otherwise permitted by law.

**VII. STIPULATED PENALTIES AND ADDITIONAL MITIGATION TRUST PAYMENTS**

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

40. Partial Injunctive Relief Requirements: Appendices A and B. The stipulated payments and other remedies for violations of requirements of Appendices A and B are set forth in those Appendices.

41. Partial Injunctive Relief Requirements: Section IV, Paragraph 17 (Payment of Mitigation Funds). The following additional Mitigation Trust Payments shall accrue for each day that the Mitigation Trust Payment of \$225,000,000 required by subparagraph 17.a is late:

Interest (per	
Par. 44)	1 <sup>st</sup> through 4 <sup>th</sup> Day
\$50,000	5 <sup>th</sup> through 30 <sup>th</sup> Day
\$100,000	31 <sup>st</sup> through 45 <sup>th</sup> Day
\$200,000	46 <sup>th</sup> Day and beyond

a. The additional Mitigation Trust Payments required by this Paragraph 41 are in addition to the Payment required by subparagraph 17.a, which Payment shall not be reduced on account of the payment of additional Mitigation Trust Payments.

b. In the event that no Trust Account has been established as of the

1 date that any additional Mitigation Trust Payment required pursuant to this  
2 Paragraph 41 becomes due, such payment shall be made into the Court Registry  
3 account in accordance with subparagraph 17.d.  
4

5 42. Reporting and Certification Requirements: Section VI

6 a. Reporting of Violations. The following stipulated penalties shall  
7 accrue per violation per Day for each violation of the requirements of  
8 Paragraph 31 (Reporting of Violations):

9	\$2,000	1st through 14th Day
10	\$5,000	15th through 30th Day
11	\$10,000	31st Day and beyond

12 b. Certification Requirements. The following stipulated penalties  
13 shall accrue per violation per Day for each violation of the certification  
14 requirements of Paragraph 34, except for false statements as described in  
15 subparagraph 42.c, below, in which case the stipulated penalty shall be the higher  
16 of the penalty provided for here in subparagraph 42.b or in subparagraph 42.c:  
17

18	\$10,000	1st through 14th Day
19	\$25,000	15th through 30th Day
20	\$50,000	31st Day and beyond

21 c. False Statements. Defendants shall pay a stipulated penalty of  
22 \$1,000,000 for each report or Submission required to be submitted pursuant to this  
23 Consent Decree that contains a knowingly false, fictitious, or fraudulent statement  
24 or representation of material fact.  
25

26 43. Stipulated payments under this Section shall begin to accrue on the Day after  
27 performance is due or on the Day a violation occurs, whichever is applicable, and shall continue  
28

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  
4 44. If Defendants fail to pay stipulated penalties or the Mitigation Trust Payments  
5 required by subparagraphs 17.a (Mitigation Trust Payment) and .b (Mitigation Trust Payments  
6 under Appendices A and B) according to the terms of this Consent Decree, Defendants shall be  
7 liable for interest on such payments at the rate provided for in 28 U.S.C. § 1961, accruing as of  
8 the date payment became due and continuing until payment has been made in full. Nothing in  
9 this Paragraph shall be construed to limit the United States or California from seeking any  
10 remedy otherwise provided by law for Defendants' failure to pay any stipulated payments.  
11

12 45. Stipulated Payment Demands and Payments

13 a. The United States, in consultation with CARB, will issue any  
14 demand for stipulated Mitigation Trust Payments required by Paragraph 41 and  
15 Appendix B and for stipulated penalties required by this Consent Decree, except  
16 that CARB may issue a separate demand for a stipulated penalty pursuant to  
17 Appendix A, Paragraph 12.2.7 based on Defendants' failure to make an additional  
18 California Mitigation Trust Payment required under Appendix A, Paragraphs  
19 10.3.2, 10.3.4 and 10.4 .  
20

21 b. For the stipulated payments set forth in Paragraph 45.a, Defendants  
22 shall pay stipulated penalties to the United States/CARB and stipulated Mitigation  
23 Trust Payments to the Mitigation Trust within 30 Days after a written demand by  
24 the United States or CARB, as applicable, unless Defendants invoke the dispute  
25 resolution procedures under Section IX (Dispute Resolution) within the 30-Day  
26 period. Except as provided in Appendix B, Defendants shall pay 75% percent of  
27  
28

1 the total stipulated penalty amount due to the United States and 25% percent to  
2 CARB.

3 c. Stipulated Mitigation Trust Payments required by Appendix A,  
4 Paragraphs 10.3 and 10.4 shall be paid as set forth therein.

5  
6 46. Either the United States or CARB may, in the unreviewable exercise of its  
7 discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.  
8 However, no action by either the United States or CARB may reduce or waive stipulated  
9 penalties due to the other.

10  
11 47. Stipulated payments shall continue to accrue as provided in Paragraph 43 during  
12 any Dispute Resolution, but need not be paid until the following:

13 a. If the dispute is resolved by agreement of the Parties or by a  
14 decision of EPA/CARB that is not appealed to the Court, Defendants shall pay  
15 accrued stipulated payments determined to be owing, together with interest as  
16 provided in Paragraph 44, to the United States/CARB/the Mitigation Trust, as  
17 applicable, within 30 Days after the effective date of the agreement or the receipt  
18 of EPA's/CARB's decision or order.

19  
20 b. If the dispute is appealed to the Court and the United  
21 States/California prevail(s) in whole or in part, Defendants shall pay all accrued  
22 payments determined by the Court to be owing, together with interest as provided  
23 in Paragraph 44, to the United States/CARB/the Mitigation Trust within 60 Days  
24 after receiving the Court's decision or order, except as provided in subparagraph c,  
25 below.

26  
27 c. If any Party appeals the District Court's decision, Defendants shall  
28

1 pay to the United States/CARB/the Mitigation Trust all accrued payments  
2 determined to be owing, together with interest as provided in Paragraph 44, within  
3 15 Days after receiving the final appellate court decision.

4  
5 48. Defendants shall pay stipulated penalties owing to the United States by FedWire  
6 Electronic Funds Transfer (“EFT”) to the DOJ account, in accordance with instructions provided  
7 to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office  
8 for the Northern District of California after the Effective Date. The payment instructions  
9 provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number,  
10 which Defendants shall use to identify all payments required to be made in accordance with this  
11 Consent Decree. The FLU will provide the payment instructions to:

13 Head of Treasury of Volkswagen AG  
14 Joerg Boche  
15 Joerg.boche@volkswagen.de  
011-49-5361-92-4184

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

19  
20 49. Defendants shall pay stipulated penalties owing to CARB by check, accompanied  
21 by a Payment Transmittal Form (which CARB will provide to the addressee listed in Paragraph  
22 48 after the Effective Date), with each check mailed to:

23 Air Resources Board, Accounting Branch  
24 P.O. Box 1436  
25 Sacramento, CA 95812-1436;

26 or by wire transfer, in which case Defendants shall use the following wire transfer information  
27 and send the Payment Transmittal Form to the above address prior to each wire transfer:  
28

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

6 Defendants are responsible for any bank charges incurred for processing wire transfers. Except  
7 as otherwise provided by this Consent Decree, stipulated penalties paid to CARB shall be  
8 deposited into the Air Pollution Control Fund and used by CARB to carry out its duties and  
9 functions.

10 50. At the time of payment, Defendants shall send notice that a stipulated payment has  
11 been made: (i) to EPA via email at cinwd\_acctsreceivable@epa.gov or via regular mail at EPA  
12 Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ  
13 via email or regular mail in accordance with Section XIII; and/or (iii) to CARB via email or  
14 regular mail in accordance with Section XIII. Such notice shall state that the payment is for  
15 stipulated penalties or Mitigation Trust Payments, as applicable, owed pursuant to the Consent  
16 Decree in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*  
17 *Litigation*, and shall state for which violation(s) the stipulated payments are being paid. Such  
18 notice shall also reference MDL No. 2672 CRB (JSC), CDCS Number and DOJ # 90-5-2-1-  
19 11386.  
20

21 51. Defendants shall not deduct any stipulated penalties paid under this Decree  
22 pursuant to this Section in calculating their income taxes due to federal, state, or local taxing  
23 authorities in the United States.  
24

25 52. The payment of stipulated payments and interest, if any, shall not alter in any way  
26 Defendants' obligation to complete the performance of the requirements of this Consent Decree.  
27

28 53. Non-Exclusivity of Remedy. Stipulated payments and other remedies provided for

1 in the Consent Decree are not the United States’ or California’s exclusive remedy for violations  
2 of this Consent Decree, including violations of the Consent Decree that are also violations of  
3 law. Subject to the provisions in Section XI (Effect of Settlement/Reservation of Rights), the  
4 United States and California reserve all legal and equitable remedies available to enforce the  
5 provisions of this Consent Decree. In addition to the remedies specifically reserved and those  
6 specifically agreed to elsewhere in this Consent Decree, the United States and California  
7 expressly reserve the right to seek any other relief they deem appropriate for Defendants’  
8 violation of this Consent Decree, including but not limited to an action against Defendants for  
9 statutory penalties where applicable, additional injunctive relief, mitigation or offset measures,  
10 contempt, and/or criminal sanctions. However, the amount of any statutory penalty assessed for  
11 a violation of this Consent Decree (and payable to the United States or to California,  
12 respectively) shall be reduced by an amount equal to the amount of any stipulated penalty  
13 assessed and paid pursuant to this Consent Decree (to the United States or to California,  
14 respectively) for the same violation.  
15  
16  
17

18 **VIII. FORCE MAJEURE**

19 54. “Force majeure,” for purposes of this Consent Decree, is defined as any event  
20 arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or  
21 of Defendants’ contractors, that delays or prevents the performance of any obligation under this  
22 Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that  
23 Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate  
24 any potential force majeure event and best efforts to address the effects of any potential force  
25 majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the  
26 delay and any adverse effects of the delay are minimized. “Force majeure” does not include  
27  
28

1 Defendants' financial inability to perform any obligation under this Consent Decree.

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

19       56. If EPA/CARB agree(s) that the delay or anticipated delay is attributable to a force  
20 majeure event, the time for performance of the obligations under this Consent Decree that are  
21 affected by the force majeure event will be extended by EPA/CARB for such time as is  
22 necessary to complete those obligations. An extension of the time for performance of the  
23 obligations affected by the force majeure event shall not, of itself, extend the time for  
24

1 performance of any other obligation. EPA/CARB will notify Defendants in writing of the length  
2 of the extension, if any, for performance of the obligations affected by the force majeure event.

3 57. If EPA/CARB do(es) not agree that the delay or anticipated delay has been or will  
4 be caused by a force majeure event, EPA/CARB will notify Defendants in writing of its/their  
5 decision.  
6

7 58. If Defendants elect to invoke the dispute resolution procedures set forth in Section  
8 IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's/CARB's  
9 notice. In any such proceeding, Defendants shall have the burden of demonstrating by a  
10 preponderance of the evidence that the delay or anticipated delay has been or will be caused by a  
11 force majeure event, that the duration of the delay or the extension sought was or will be  
12 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the  
13 effects of the delay, and that Defendants complied with the requirements of Paragraphs 54 and  
14 55. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by  
15 Defendants of the affected obligation of this Consent Decree identified to EPA/CARB and the  
16 Court.  
17  
18

19 **IX. DISPUTE RESOLUTION**

20 59. Unless otherwise expressly provided for in this Consent Decree, the dispute  
21 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
22 under or with respect to this Consent Decree. Failure by the Defendants to seek resolution of a  
23 dispute under this Section shall preclude Defendants from raising any such issue as a defense to  
24 an action by the United States or California to enforce any obligation of Defendants arising  
25 under this Decree.  
26

27 60. Informal Dispute Resolution. Any dispute subject to dispute resolution under this  
28

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

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

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

27 63. Defendants may seek judicial review of the dispute by filing with the Court and  
28

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

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

13           65. Standard of Review for Judicial Disputes

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

25                   b. Other Disputes. Except as otherwise provided in this Consent  
26 Decree, in any other dispute brought pursuant to Paragraph 63, Defendants shall  
27  
28

1 bear the burden of demonstrating by a preponderance of the evidence that their  
2 actions were in compliance with this Consent Decree.

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

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

18 **X. INFORMATION COLLECTION AND RETENTION**

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

23 a. to monitor the progress of activities required under this Consent  
24 Decree;

25 b. to verify any data or information submitted to the United States or  
26 California in accordance with the terms of this Consent Decree;  
27  
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
- 4 data, related to this Consent Decree;
- 5
- 6 f. to assess Defendants' compliance with this Consent Decree; and
- 7 g. for other purposes as set forth in 42 U.S.C. § 7542(b) and Cal.
- 8 Gov't Code § 11180.

9 69. Upon request, and for purposes of evaluating compliance with the Consent Decree,  
10 Defendants shall promptly provide to EPA and California or their authorized representatives at  
11 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
- 16 specified configurations;
- 17
- 18 d. reasonable requests for English translations of software
- 19 documents; or
- 20 e. other items or information that could be requested pursuant to 42
- 21 U.S.C. § 7542(a) or Cal. Gov't Code § 11180.

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

1 or control, relating to Defendants' performance of their obligations under this Consent Decree,  
2 except that Defendants are not required to retain copies or images of military identification cards  
3 to the extent that retention of such copies or images would violate 18 U.S.C. § 701. This  
4 information-retention requirement shall apply regardless of any contrary corporate or  
5 institutional policies or procedures. At any time during this information-retention period, upon  
6 request by the United States or California, Defendants shall provide copies of any Records  
7 required to be maintained under this Paragraph, notwithstanding any limitation or requirement  
8 imposed by foreign laws. Nothing in this Paragraph shall apply to any documents in the  
9 possession, custody, or control of any outside legal counsel retained by Defendants in connection  
10 with this Consent Decree or of any contractors or agents retained by such outside legal counsel  
11 solely to assist in the legal representation of Defendants. Defendants may assert that certain  
12 Records are privileged or protected as provided under federal or California law. If Defendants  
13 assert such a privilege or protection, they shall provide the following: (a) the title of the Record;  
14 (b) the date of the Record; (c) the name and title of each author of the Record; (d) the name and  
15 title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the  
16 privilege or protection asserted by Defendants. However, Defendants may make no claim of  
17 privilege or protection regarding: (1) any data regarding the 3.0 Liter Subject Vehicles or  
18 compliance with this Consent Decree; or (2) the portion of any Record that Defendants are  
19 required to create or generate pursuant to this Consent Decree.  
20  
21  
22  
23

24 71. At the conclusion of the information-retention period provided in the preceding  
25 Paragraph, Defendants shall notify the United States and California at least 90 Days prior to the  
26 destruction of any Records subject to the requirements of the preceding Paragraph and, upon  
27 request by the United States or California, Defendants shall deliver any such Records to EPA or  
28

1 California. Defendants may assert that certain Records are privileged or protected as provided  
2 under federal or California law. If Defendants assert such a privilege or protection, they shall  
3 provide the following: (a) the title of the Record; (b) the date of the Record; (c) the name and  
4 title of each author of the Record; (d) the name and title of each addressee and recipient; (e) a  
5 description of the subject of the Record; and (f) the privilege or protection asserted by  
6 Defendants. However, Defendants may make no claim of privilege or protection regarding:  
7 (1) any data regarding the 3.0 Liter Subject Vehicles or compliance with this Consent Decree; or  
8 (2) the portion of any Record that Defendants are required to create or generate pursuant to this  
9 Consent Decree.  
10

11  
12 72. Defendants may also assert that information required to be provided under this  
13 Section is protected as CBI as defined in Paragraph 30. As to any information that Defendants  
14 seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. pt. 2 or  
15 equivalent California law.  
16

17 73. This Consent Decree in no way limits or affects any right of entry and inspection,  
18 or any right to obtain information, held by the United States or California pursuant to applicable  
19 federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of  
20 Defendants to maintain Records imposed by applicable federal or state laws, regulations, or  
21 permits.  
22

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

24 74. Satisfaction of all the requirements of this Second Partial Consent Decree (and, as  
25 to California, satisfaction of all the requirements of this Second Partial Consent Decree and the  
26 concurrently lodged Second California Partial Consent Decree) shall resolve and settle all of the  
27 United States' and California's civil claims in the Complaints for injunctive relief, based on facts  
28

1 that were disclosed by Defendants to EPA and CARB prior to October 24, 2016, relating to any  
2 defeat devices or auxiliary emission control devices (“AECDS”) in the 3.0 Liter Subject  
3 Vehicles, that they made or could have made against Defendants:

4 a. requiring Defendants to take action to buy back, recall, or modify  
5 the 3.0 Liter Subject Vehicles in order to remedy the violations alleged in the  
6 Complaints concerning the 3.0 Liter Subject Vehicles;

7 b. requiring Defendants to make payments to owners and lessees of  
8 the 3.0 Liter Subject Vehicles in order to remedy the violations alleged in the  
9 Complaints concerning the 3.0 Liter Subject Vehicles; and

10 c. requiring Defendants to mitigate the environmental harm  
11 associated with the violations alleged in the Complaints concerning the 3.0 Liter  
12 Subject Vehicles.

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

19 a. Further injunctive relief, including prohibitory and mandatory  
20 injunctive provisions intended to enjoin, prevent, and deter future violations of the  
21 Act of the types alleged in the U.S. Complaint related to the 3.0 Liter Subject  
22 Vehicles;

23 b. All rights to address noncompliance with Appendix B as set forth  
24 in Paragraph 8.1 of Appendix B;

25 c. All rights reserved by Paragraph 53;  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- d. Civil penalties with respect to the 3.0 Liter Subject Vehicles;
- e. Any and all civil claims related to any 2.0 Liter Subject Vehicles, but only to the extent not previously resolved under the First Partial Consent Decree, or to any other vehicle other than the 3.0 Liter Subject Vehicles;
- f. Any and all civil claims and administrative authorities for injunctive relief: (i) based on facts that were not disclosed by Defendants to EPA and CARB prior to October 24, 2016, related to any defeat devices or AECs installed on or in the 3.0 Liter Subject Vehicles; or (ii) related to any other failures by the 3.0 Liter Subject Vehicles to conform with the Act or its implementing regulations;
- g. Any criminal liability; and
- h. Any claim(s) of any agency of the United States, other than EPA, including but not limited to claims by the Federal Trade Commission.

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

- a. An order requiring Defendants to take all actions necessary to enjoin, prevent, and deter future violations of the Health and Safety Code and related regulations of the types alleged in the California Complaint related to the 3.0 Liter Subject Vehicles;
- b. Further injunctive relief, including prohibitory and mandatory injunctive provisions intended to enjoin, prevent, and deter future misconduct,

1 and/or incentivize its detection, disclosure, and/or prosecution; or to enjoin false  
2 advertising, violation of environmental laws, the making of false statements, or the  
3 use or employment of any practice that constitutes unfair competition;

4 c. All rights to address noncompliance with Appendix B as set forth  
5 in Appendix B, Paragraph 8.1;

6 d. All rights reserved by Paragraph 53;

7 e. Civil penalties with respect to the 3.0 Liter Subject Vehicles, but  
8 only to the extent not previously resolved in the First California Partial Consent  
9 Decree;

10 f. Any and all civil claims related to any 2.0 Liter Subject Vehicle,  
11 but only to the extent not previously resolved under the First Partial Consent  
12 Decree or First California Partial Consent Decree, or to any vehicle other than the  
13 3.0 Liter Subject Vehicles;

14 g. Any and all civil claims and administrative authorities for  
15 injunctive relief (i) based on facts that were not disclosed by Defendants to EPA  
16 and CARB prior to October 24, 2016, related to any defeat devices or AECDS  
17 installed on or in the 3.0 Liter Subject Vehicles; or (ii) related to any other failures  
18 by the 3.0 Liter Subject Vehicles to conform with the California Health and Safety  
19 Code or its implementing regulations;

20 h. Any criminal liability;

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

23 j. Costs and attorneys' fees, including investigative costs, incurred  
24  
25  
26  
27  
28

1 after the date of lodging;

2 k. Claims for relief to customers, including claims for restitution,  
3 refunds, rescission, damages, and disgorgement, but only to the extent not  
4 previously resolved under the First Partial Consent Decree or First California  
5 Partial Consent Decree; and  
6

7 l. Any other claim(s) of any officer or agency of the State of  
8 California, other than CARB or CA AG.

9 77. By entering into this Consent Decree, the United States and California are not  
10 enforcing the laws of other countries, including the emissions laws or regulations of any  
11 jurisdiction outside the United States. Nothing in this Consent Decree is intended to apply to, or  
12 affect, Defendants' obligations under the laws or regulations of any jurisdiction outside the  
13 United States. At the same time, the laws and regulations of other countries shall not affect the  
14 Defendants' obligations under this Consent Decree.  
15

16 78. This Consent Decree shall not be construed to limit the rights of the United States  
17 or California to obtain penalties or injunctive relief under the Act or implementing regulations,  
18 or under other federal or state laws, regulations, or permit conditions, except as specifically  
19 provided in Paragraph 74. The United States and California further reserve all legal and  
20 equitable remedies to address any imminent and substantial endangerment to the public health or  
21 welfare or the environment arising at any of Defendants' facilities, or posed by Defendants' 3.0  
22 Liter Subject Vehicles, whether related to the violations addressed in this Consent Decree or  
23 otherwise.  
24

25 79. In any subsequent administrative or judicial proceeding initiated by the United  
26 States or California for injunctive relief, civil penalties, or other appropriate relief relating to  
27  
28

1 Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim  
2 based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim  
3 preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by  
4 the United States or California in the subsequent proceeding were or should have been brought in  
5 the instant case, except with respect to the claims that have been specifically resolved pursuant to  
6 Paragraph 74.

8 80. This Consent Decree is not a permit, or a modification of any permit, under any  
9 federal, State, or local laws or regulations. Defendants are responsible for achieving and  
10 maintaining complete compliance with all applicable federal, State, and local laws, regulations,  
11 and permits; and Defendants' compliance with this Consent Decree shall be no defense to any  
12 action commenced pursuant to any such laws, regulations, or permits, except as set forth herein.

14 The United States and California do not, by their consent to the entry of this Consent Decree,  
15 warrant or aver in any manner that Defendants' compliance with any aspect of this Consent  
16 Decree will result in compliance with provisions of the Act, or with any other provisions of  
17 United States, State, or local laws, regulations, or permits.

19 81. This Consent Decree does not limit or affect the rights of Defendants or of the  
20 United States or California against any third parties, not party to this Consent Decree, nor does it  
21 limit the rights of third parties, not party to this Consent Decree, against Defendants, except as  
22 otherwise provided by law.

24 82. This Consent Decree shall not be construed to create rights in, or grant any cause  
25 of action to, any third party not party to this Consent Decree.

26 **XII. COSTS**

27 83. The Parties shall bear their own costs of this Consent Decree, including attorneys'  
28

1 fees, except that the United States and California shall be entitled to collect the costs and  
2 reasonable attorneys' fees incurred in any action necessary to collect any portion of the stipulated  
3 penalties due under this Consent Decree but not paid by Defendants.

4  
5 **XIII. NOTICES**

6 84. Except as specified elsewhere in this Decree, whenever any Materials are required  
7 to be submitted pursuant to this Consent Decree, or whenever any communication is required in  
8 any action or proceeding related to or bearing upon this Consent Decree or the rights or  
9 obligations thereunder, they shall be submitted with a cover letter or otherwise be made in  
10 writing (except that if any attachment is voluminous, it shall be provided on a disk, hard drive, or  
11 other equivalent successor technology), and shall be addressed as follows:  
12

13  
14 As to the United States: DOJ at the email or mail addresses below,  
15 with a preference for email unless otherwise  
16 specified  
17 and  
18 EPA at the email and mail addresses below

19 As to DOJ by mail: EES Case Management Unit  
20 Environment and Natural Resources  
21 Division  
22 U.S. Department of Justice  
23 P.O. Box 7611  
24 Washington, D.C. 20044-7611  
25 Re: DJ # 90-5-2-1-11386

26 As to DOJ by overnight mail: Chief  
27 Environmental Enforcement Section  
28 Environment and Natural Resources  
Division  
U.S. Department of Justice  
601 D St. NW  
Washington, D.C. 20004

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

As to EPA:	<u>By mail and email to:</u> Director, Air Enforcement Division 1200 Pennsylvania Avenue NW William J Clinton South Building MC 2242A Washington, DC 20460 VW_settlement@epa.gov
As to California:	CARB and CA AG at the email or mail addresses below, as applicable
As to CARB by email (including for Paragraphs 32, 55):	Alexandra.Kamel@arb.ca.gov
As to CARB by mail:	Chief Counsel California Air Resources Board Legal Office 1001 I Street Sacramento, California 95814
As to CA AG by email:	nicklas.akers@doj.ca.gov judith.fiorentini@doj.ca.gov david.zonana@doj.ca.gov
As to CA AG by mail:	Senior Assistant Attorney General Consumer Law Section California Department of Justice 455 Golden Gate Ave., Suite 11000 San Francisco, CA 94102-7004
	Senior Assistant Attorney General Environment Section Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550
As to Volkswagen AG by mail:	Volkswagen AG Berliner Ring 2 38440 Wolfsburg, Germany Attention: Company Secretary

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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 Dr. Ing. h.c. F. Porsche AG by mail:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft  
Porscheplatz 1, D-70435 Stuttgart  
Attention:  
GR/ Rechtsabteilung/ General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.  
1 Porsche Dr.  
Atlanta, GA 30354  
Attention: Secretary  
With copy by email to [offsecy@porsche.us](mailto:offsecy@porsche.us)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

As to one or more of the Defendants by email:

Robert J. Giuffra, Jr.  
Sharon L. Nelles  
Granta Nakayama  
Cari Dawson

giuffrar@sullcrom.com  
nelless@sullcrom.com  
gnakayama@kslaw.com  
cari.dawson@alston.com

As to one or more of the Defendants by mail:

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

Granta Nakayama  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006

Cari Dawson  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

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

86. Communications submitted pursuant to this Section shall be deemed submitted upon (1) mailing or emailing as required and where Defendants have a choice, or (2) where both email and mail are required, when both methods have been accomplished, except as provided elsewhere in this Consent Decree or by mutual agreement of the Parties in writing.

87. 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

1 approved as a non-material modification to the Decree in accordance with Paragraphs 90-91.

2 **XIV. EFFECTIVE DATE**

3 88. The Effective Date of this Consent Decree shall be the date upon which this  
4 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,  
5 whichever occurs first, as recorded on the Court's docket.  
6

7 **XV. RETENTION OF JURISDICTION**

8 89. The Court shall retain jurisdiction over this case until termination of this Consent  
9 Decree, for the purpose of resolving disputes arising under this Decree or entering orders  
10 modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance  
11 with the terms of this Decree.  
12

13 **XVI. MODIFICATION**

14 90. Except as otherwise provided herein or in the attached Appendices, the terms of  
15 this Consent Decree, including any attached Appendices, may be modified only by a subsequent  
16 written agreement signed by all the Parties. Where the modification constitutes a material  
17 change to this Decree, it shall be effective only upon approval by the Court.  
18

19 91. The United States or California, as applicable, will file any non-material  
20 modifications with the Court. Once the non-material modification has been filed, Defendants  
21 shall post the filed version (with ECF stamp) on the website required by Paragraph 33.  
22

23 92. Any disputes concerning modification of this Decree shall be resolved pursuant to  
24 Section IX (Dispute Resolution), provided, however, that instead of the burden of proof provided  
25 by Paragraph 65, the Party seeking the modification bears the burden of demonstrating that it is  
26 entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).  
27  
28

**XVII. TERMINATION**

1  
2 93. After Defendants have completed the requirements of Section IV (Partial  
3 Injunctive Relief), except for Appendix A, Paragraphs 5.2, 6.2, 8.2 (No End Dates) and  
4 associated requirements, have complied with all other requirements of this Consent Decree, and  
5 have paid any accrued stipulated penalties as required by this Consent Decree, Defendants may  
6 serve upon the United States and California a Request for Termination, stating that Defendants  
7 have satisfied those requirements, together with all necessary supporting documentation.  
8

9 94. Following receipt by the United States and California of Defendants' Request for  
10 Termination, the Parties shall confer informally concerning the Request and any disagreement  
11 that the Parties may have as to whether Defendants have satisfactorily complied with the  
12 requirements for termination of this Consent Decree. If the United States, after consultation with  
13 California, agrees that the Decree may be terminated, the United States will file a motion to  
14 terminate the Decree, provided, however, that the provisions associated with effectuating and  
15 enforcing Appendix A, Paragraph 5.2, 6.2, 8.2 (No End Dates) shall continue in full force and  
16 effect indefinitely.  
17  
18

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

**XVIII. PUBLIC PARTICIPATION**

24 96. This Consent Decree shall be lodged with the Court for a period of not less than 30  
25 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States  
26 reserves the right to withdraw or withhold its consent if the comments regarding the Consent  
27  
28

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

8 **XIX. SIGNATORIES/SERVICE**

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

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

19 **XX. INTEGRATION**

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

1 Decree.

2 **XXI. FINAL JUDGMENT**

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

8 **XXII. APPENDICES**

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

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

13 “Appendix B” is the Vehicle Recall and Emissions Modification Program for 3.0 Liter Subject  
14 Vehicles.

15 “Initial 3.0 Liter Mitigation Allocation Appendix” (“Mitigation Appendix”) is the initial  
16 allocation of Mitigation Trust funds for the 3.0 Liter Subject Vehicles.  
17

18  
19  
20  
21 Dated and entered this \_\_\_ day of \_\_\_\_\_, 2017,  
22

23  
24  
25 \_\_\_\_\_  
26 CHARLES R. BREYER  
27 UNITED STATES DISTRICT JUDGE  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FOR THE UNITED STATES OF AMERICA:

December 20, 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  
DANICA GLASER  
RUBEN GOMEZ  
ANNA GRACE  
SHEILA McANANEY  
ROBERT MULLANEY  
RICHIE KHANH NGUYEN  
ERIKA WELLS  
IVA ZIZA  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 514-5474  
Facsimile: (202) 514-0097  
josh.van.eaton@usdoj.gov  
bethany.engel@usdoj.gov

*Counsel for the United States*

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

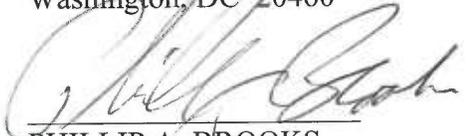
12/7/16  
Date



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 Dec. 7, 2016

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 ROBERT W. BYRNE

16 SALLY MAGNANI

17 Senior Assistant Attorneys General

18 JUDITH A. FIORENTINI

19 GAVIN G. McCABE

20 DAVID A. ZONANA

21 Supervising Deputy Attorneys General

22 AMOS E. HARTSTON

23 LAUREL M. CARNES

24 WILLIAM R. PLETCHER

25 ELIZABETH B. RUMSEY

26 JOHN S. SASAKI

27 JON F. WORM

28 Deputy Attorneys General

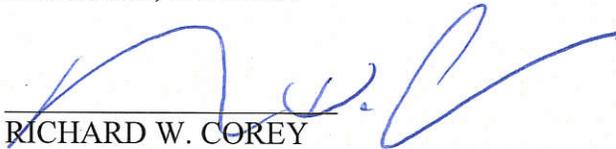
*Attorneys for the People of the State of California*

1 FOR THE CALIFORNIA AIR RESOURCES BOARD:

2  
3 December 7, 2016



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



RICHARD W. COREY  
Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814



ELLEN M. PETER  
Chief Counsel  
D. ARON LIVINGSTON  
Assistant Chief Counsel  
DIANE KIYOTA  
ALEXANDRA KAMEL  
Attorneys, Legal Office  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

28

FOR VOLKSWAGEN AG:

Date: Dec. 6, 2016



---

FRANCISCO JAVIER GARCIA SANZ  
VOLKSWAGEN AG  
P.O. Box 1849  
D-38436 Wolfsburg, Germany

Date: Dec. 6, 2016



---

MANFRED DOESS  
VOLKSWAGEN AG  
P.O. Box 1849  
D-38436 Wolfsburg, Germany

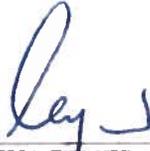
FOR AUDI AG:

Date: Dec. 6, 2016



BERND MARTENS  
AUDI AG  
Auto-Union-Straße 1  
85045 Ingolstadt, Germany

Date: Dec. 6, 2016



MARTIN WAGENER  
AUDI AG  
Auto-Union-Straße 1  
85045 Ingolstadt, Germany

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Date: Dec. 6, 2016



---

DAVID DETWEILER  
VOLKSWAGEN GROUP OF AMERICA, INC.  
2200 Ferdinand Porsche Drive  
Herndon, Virginia 20171

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: Dec. 6, 2016



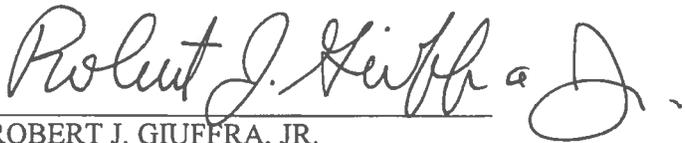
---

DAVID DETWEILER  
VOLKSWAGEN GROUP OF AMERICA, INC.  
2200 Ferdinand Porsche Drive  
Herndon, Virginia 20171

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

COUNSEL FOR VOLKSWAGEN AG, AUDI AG, VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC

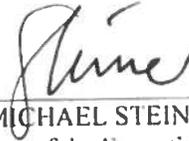
Dec. 6, 2016  
Date

  
ROBERT J. GIUFFRA, JR.  
SHARON L. NELLES  
WILLIAM B. MONAHAN  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3358  
giuffrar@sullcrom.com  
nelles@sullcrom.com  
monahanw@sullcrom.com

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

FOR DR. ING. H.C. F. PORSCHE AG:

Date: Dec. 6, 2016



---

DR. MICHAEL STEINER  
Member of the Executive Board  
-Research and Development-

DR. ING. h.c. F. PORSCHE  
AKTIENGESELLSCHAFT  
Porschestrasse 911  
71287 Weissach, Germany

Date: Dec. 6, 2016



---

ANGELA KREITZ  
General Counsel & Chief Compliance Officer  
DR. ING. h.c. F. PORSCHE  
AKTIENGESELLSCHAFT  
Porscheplatz 1  
70435 Stuttgart-Zuffenhausen, Germany

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

FOR PORSCHE CARS NORTH AMERICA, INC.:

Date: Dec. 6, 2016

  
\_\_\_\_\_  
JOSEPH S. FOLZ  
Vice President, General Counsel and Secretary  
PORSCHE CARS NORTH AMERICA, INC.  
1 Porsche Drive  
Atlanta, GA 30354

Date: Dec. 6, 2016

  
\_\_\_\_\_  
TIM QUINN  
Vice President, After Sales  
PORSCHE CARS NORTH AMERICA, INC.  
1 Porsche Drive  
Atlanta, GA 30354

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA,  
INC.:

Date: Dec. 6, 2016

  
\_\_\_\_\_  
GRANT NAKAYAMA  
JOSEPH A. EISERT  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006  
gnakayama@kslaw.com  
jeisert@kslaw.com

Date:

\_\_\_\_\_  
CARI DAWSON  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
cari.dawson@alston.com

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

COUNSEL FOR DR. ING. h.c. F. PORSCHE AG and PORSCHE CARS NORTH AMERICA,  
INC.:

Date:

---

GRANTA NAKAYAMA  
JOSEPH A. EISERT  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006  
gnakayama@kslaw.com  
jeisert@kslaw.com

Date: Dec. 6, 2016



---

CARI DAWSON  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
cari.dawson@alston.com

SECOND PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

1 JOHN C. CRUDEN  
Assistant Attorney General  
2 Environment and Natural Resources Division

3 JOSHUA H. VAN EATON (WA-39871)  
4 BETHANY ENGEL (MA-660840)  
Trial Attorneys  
5 Environmental Enforcement Section

6 U.S. Department of Justice  
7 P.O. Box 7611  
8 Washington DC 20044-7611  
9 Telephone: (202) 514-5474  
10 Facsimile: (202) 514-0097  
11 Email: Josh.Van.Eaton@usdoj.gov

*Attorneys for Plaintiff United States of America*

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

15 \_\_\_\_\_ )  
IN RE: VOLKSWAGEN “CLEAN )  
16 DIESEL” MARKETING, SALES )  
PRACTICES, AND PRODUCTS )  
17 LIABILITY LITIGATION )

Case No: MDL No. 2672 CRB (JSC)

**NOTICE OF LODGING OF SECOND  
PARTIAL CONSENT DECREE**

Hon. Charles R. Breyer

18 )  
19 )  
20 )  
21 \_\_\_\_\_ )  
22 Consistent with the requirements of 28 C.F.R. § 50.7, a proposed Second Partial Consent  
23 Decree is being lodged with the Court in this Civil Action, after having been concurred to and  
24 signed by all relevant parties in this matter. After the requisite Federal Register Notice is  
25 published, the time period for comments has run, and the comments, if any, have been evaluated,  
26 the Court will be further advised as to any action that may be required by the Court at that time.  
27  
28

NOTICE OF LODGING OF SECOND  
PARTIAL CONSENT DECREE  
MDL No. 2672 CRB (JSC)

1 During the pendency of the Federal Register Notice comment period, no action is required of the  
2 Court.

3 Dated: December 20, 2016

Respectfully submitted,

4  
5 JOHN C. CRUDEN  
6 Assistant Attorney General  
7 Environment and Natural Resources Division  
8 U.S. Department of Justice

9 By: */s/ Bethany Engel*

JOSHUA H. VAN EATON

BETHANY ENGEL

GABRIEL ALLEN

LESLIE ALLEN

PATRICK BRYAN

NIGEL COONEY

RUBEN GOMEZ

ANNA GRACE

SHEILA McANANEY

ROBERT MULLANEY

RICHIE KHANH NGUYEN

ERIKA WELLS

IVA ZIZA

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

Telephone: (202) 514-5474

Facsimile: (202) 514-0097

josh.van.eaton@usdoj.gov

bethany.engel@usdoj.gov

*Counsel for the United States*