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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 (San Francisco Division)

11 IN RE: VOLKSWAGEN "CLEAN DIESEL"
12 MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

Case No. MDL No. 2672 CRB (JSC)

13 Relates to:

**NEVADA'S NOTICE OF FILING
CERTIFICATION FOR BENEFICIARY
STATUS UNDER ENVIRONMENTAL
MITIGATION TRUST AGREEMENT**

14 *People of the State of California v. Volkswagen*
15 *AG, et al.*, No. 16-cv-3620 (N.D. Cal.)

Judge: Hon. Charles R. Breyer

16 *United States v. Volkswagen AG, et al.*, No. 16-
17 cv-295 (N.D. Cal.)

18 PLEASE TAKE NOTICE THAT, the State of Nevada, through its undersigned attorneys, hereby
19 files the attached Certification for Beneficiary Status under the Environmental Mitigation Trust Agreement
20 (Appendix D-3) and required attachments thereto.

21 DATED this 16th day of November, 2017.

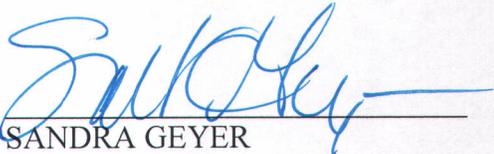
22 Respectfully submitted,

23 ADAM PAUL LAXALT
24 Nevada Attorney General

25 By: *Belinda A. Suwe*
26 BELINDA A. SUWE
27 Deputy Attorney General
28 *Attorneys for State of Nevada*

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 17th day of November, 2017, I filed of the foregoing, NEVADA’S NOTICE OF FILING CERTIFICATION FOR BENEFICIARY STATUS UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT, with the U.S. District Court CM/ECF Electronic Filing, parties who are registered with this Court:


SANDRA GEYER
Supervising Legal Secretary
Office of the Nevada Attorney General

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APPENDIX D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

APPENDIX D-3

**CERTIFICATION FOR BENEFICIARY STATUS
UNDER ENVIRONMENTAL MITIGATION TRUST AGREEMENT**

1. Identity of Lead Agency

The State of Nevada ("Beneficiary"), by and through the Office of the Governor (or, if not a State, the analogous Chief Executive) of the Appendix D-1 and Appendix D-1A entity on whose behalf the Certification Form is submitted: (i) hereby identifies The Nevada Division of Environmental Protection ("Lead Agency") as the Lead Agency for purposes of the Beneficiary's participation in the Environmental Mitigation Trust ("Trust") as a Beneficiary; and (ii) hereby certifies that the Lead Agency has the delegated authority to act on behalf of and legally bind the Beneficiary for purposes of the Trust.

BENEFICIARY'S LEAD AGENCY CONTACT INFORMATION:

Contact:	Danilo Dragoni - Chief of the Bureau of Air Quality Planning
Address:	Nevada Division of Environmental Protection - 901 S. Stewart Street, Suite 4001 - Carson City, Nevada 89701
Phone:	(775) 687-9340
Fax:	(775) 687-5856
Email:	ddragon@ndep.nv.gov

2. Submission to Jurisdiction

The Beneficiary expressly consents to the jurisdiction of the U.S. District Court for the Northern District of California for all matters concerning the interpretation or performance of, or any disputes arising under, the Trust and the Environmental Mitigation Trust Agreement ("Trust Agreement"). The Beneficiary's agreement to federal jurisdiction for this purpose shall not be construed as consent to federal court jurisdiction for any other purpose.

3. Agreement to be Bound by the Trust Agreement and Consent to Trustee Authority

The Beneficiary agrees, without limitation, to be bound by the terms of the Trust Agreement, including the allocations of the Trust Assets set forth in Appendix D-1 and Appendix D-1A to the Trust Agreement, as such allocation may be adjusted in accordance with the Trust Agreement. The Beneficiary further agrees that the Trustee has the authorities set forth in the Trust Agreement, including, but not limited to, the authority: (i) to approve, deny, request modifications, or request further information related to any request for funds pursuant to the Trust Agreement; and (ii) to implement the Trust Agreement in accordance with its terms.

4. Certification of Legal Authority

The Beneficiary certifies that: (i) it has the authority to sign and be bound by this Certification Form; (ii) the Beneficiary's laws do not prohibit it from being a Trust Beneficiary; (iii) either (a)

the Beneficiary's laws do not prohibit it from receiving or directing payment of funds from the Trust, or (b) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust, then prior to requesting any funds from the Trust, the Beneficiary shall obtain full legal authority to receive and/or direct payments of such funds within two years of submitting this Certification Form; and (iv) if the Beneficiary does not have the authority to receive or direct payment of funds from the Trust and fails to demonstrate that it has obtained such legal authority within two years of submitting this Certification Form, it shall become an Excluded Entity under the Trust Agreement and its initial allocation shall be redistributed among the Beneficiaries pursuant to subparagraph 5.0.1 of the Trust Agreement.

5. Certification of Legal Compliance and Disposition of Unused Funds

The Beneficiary certifies and agrees that, in connection with all actions related to the Trust and the Trust Agreement, the Beneficiary has followed and will follow all applicable law and will assume full responsibility for its decisions in that regard. The Beneficiary further certifies that all funds received on account of any Eligible Mitigation Action request that are not used for the Eligible Mitigation Action shall be returned to the Trust for credit to the Beneficiary's allocation.

6. Waiver of Claims for Injunctive Relief under Environmental or Common Laws

Upon becoming a Beneficiary, the Beneficiary, on behalf of itself and all of its agencies, departments, offices, and divisions, hereby expressly waives, in favor of the parties (including the Settling Defendants) to the Partial Consent Decree (Dkt. No. 2103-1) and the parties (including the Defendants) to the Second Partial Consent Decree (Dkt. No. 3228-1), all claims for injunctive relief to redress environmental injury caused by the 2.0 Liter Subject Vehicles and the 3.0 Liter Subject Vehicles (jointly, "Subject Vehicles"), whether based on the environmental or common law within its jurisdiction. This waiver is binding on all agencies, departments, offices, and divisions of the Beneficiary asserting, purporting to assert, or capable of asserting such claims. This waiver does not waive, and the Beneficiary expressly reserves, its rights, if any, to seek fines or penalties.

7. Publicly Available Information

The Beneficiary certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period. Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information.

8. Notice of Availability of Mitigation Action Funds

The Beneficiary certifies that, not later than 30 Days after being deemed a Beneficiary pursuant to the Trust Agreement, the Beneficiary will provide a copy of the Trust Agreement with Attachments to the U.S. Department of the Interior, the U.S. Department of Agriculture, and any other Federal agency that has custody, control or management of land within or contiguous to the territorial boundaries of the Beneficiary and has by then notified the Beneficiary of its interest hereunder, explaining that the Beneficiary may request Eligible Mitigation Action funds for use on lands within that Federal agency's custody, control or management (including, but not limited to, Clean Air Act Class I and II areas), and setting forth the procedures by which the Beneficiary will review, consider, and make a written determination upon each such request.

9. Registration of Subject Vehicles

The Beneficiary certifies, for the benefit of the Parties (including the Settling Defendants) to the Partial Consent Decree and the Parties to the Second Partial Consent Decree (including the Defendants) and the owners from time-to-time of Subject Vehicles, that upon becoming a Beneficiary, the Beneficiary:

- (a) Shall not deny registration to any Subject Vehicle based solely on:
 - i. The presence of a defeat device or AECD covered by the resolution of claims in the Partial Consent Decree or in the Second Partial Consent Decree; or
 - ii. Emissions resulting from such a defeat device or AECD; or
 - iii. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (b) Shall not deny registration to any Subject Vehicle that has been modified in accordance with an Approved Emissions Modification or an Emissions Compliant Recall based solely on:
 - i. The fact that the vehicle has been modified in accordance with the Approved Emissions Modification or the Emissions Compliant Recall; or
 - ii. Emissions resulting from the modification (including, but not limited to, the anticipated emissions described in Appendix B to the Partial Consent Decree and Appendix B to the Second Partial Consent Decree); or
 - iii. Other emissions-related vehicle characteristics that result from the modification; or

iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.

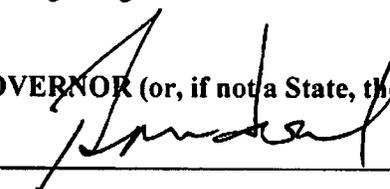
(c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the Emissions Compliant Recall on the basis of VIN-specific information provided to the Beneficiary by the Defendants.

(d) Notwithstanding the foregoing, the Beneficiary may deny registration to any Subject Vehicle on the basis that the Subject Vehicle fails to meet EPA's or the Beneficiary's failure criteria for the onboard diagnostic ("OBD") inspection; or on other grounds authorized or required under applicable federal regulations (including an approved State Implementation Plan) or under Section 209 or 177 of the Clean Air Act and not explicitly excluded in subparagraphs 9(a)-(b).

10. Reliance on Certification

The Beneficiary acknowledges that the Trustee is entitled to rely conclusively on, without further duty of inquiry, and shall be protected in relying upon, this Appendix D-3 Certification, or a subsequent communication from the Lead Agency designating new or additional authorized individuals, as setting forth the Lead Agency and the authorized individuals who may direct the Trustee with respect to all of the Beneficiary's rights and duties under the Trust Agreement. The Beneficiary and its delegated Lead Agency, including all authorized individuals, agree to comply with all security procedures, standard payment and signatory authorization protocols, as well as procedures for designating new or additional authorized individuals, as set forth by the Trustee.

FOR THE GOVERNOR (or, if not a State, the analogous Chief Executive):

Signature: 

Name: Brian Sandoval

Title: Governor State of Nevada

Date: 11/08/2017 4:40pm

Location: Carson City, Nevada

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____

Name: _____

Title: _____

Date: _____

Location: _____

[FOR OTHER REQUIRED SIGNATORIES]:

Signature: _____
Name: _____
Title: _____
Date: _____
Location: _____

Attachment to the Appendix D-3 - Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement.

This attachment complies with Paragraph 7 of the Appendix D-3, *Publicly Available Information*. Paragraph 7 requires that the Beneficiary:

"[...] certifies that it will maintain and make publicly available all documentation and records: (i) submitted by it in support of each funding request; and (ii) supporting all expenditures of Trust Funds by the Beneficiary, each until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement, unless the laws of the Beneficiary require a longer record retention period."

And

" Together herewith, the Beneficiary attaches an explanation of: (i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public; (ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered; and (iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information."

(i) the procedures by which the records may be accessed, which shall be designed to support access and limit burden for the general public;

The state of Nevada will maintain and make publicly available all documentation and public records submitted by it in support of each funding request and all documentation and public records supporting all expenditures of Trust Funds by the state of Nevada until the Termination Date of the Trust pursuant to Paragraph 6.8 of the Trust Agreement. The state of Nevada general records retention and disposition schedule also requires that records of contracts be retained for six fiscal years from the date of termination, completion, or cancelation. If necessary, the Nevada Division of Environmental Protection (NDEP) will modify its retention schedule for any documentation specified in Paragraph 7 of the Appendix D-3 to ensure their retention until the Termination Date of the Trust or longer.

The public will be able to view these records on the Nevada Division of Environmental Protection's (NDEP) website (<https://ndep.nv.gov>). The NDEP will maintain these records on a Volkswagen (VW) Environmental Mitigation Trust Fund specific webpage that will be designed to support public access and limit burden for the general public. The NDEP's VW specific webpage can currently be found at <https://ndep.nv.gov/air/vw-settlement>.

The NDEP has created an electronic listserv, open to the public, used to communicate news, events, and information related the Environmental Mitigation Trust Fund (Mitigation Fund). The listserv,

NevadaVWFund, is advertised through the NDEP website and at every public event related to the Mitigation Fund, and currently has 103¹ subscribers.

The Senate Committee on Finance and the Assembly Committee on Ways and Means of the Nevada Legislature has requested² “that the Division of Environmental Protection provide semiannual reports to the Interim Finance Committee regarding the status of the Volkswagen settlement and the Mitigation Fund, including recommendations by established working groups for the proposed activities to be supported by the settlement funds, and the process established to distribute settlement funds in accordance with the settlement terms.”. The meetings of the Interim Finance Committee follow the Nevada Open Meeting Law (Nevada Revised Statutes Chapter 241)

(ii) for the Beneficiary Mitigation Plan required under Paragraph 4.1 of the Trust Agreement, the procedures by which public input will be solicited and considered;

When the NDEP was designated as the Lead Agency by Governor Sandoval, it was also determined that the Nevada *Advisory Committee on the Control of Emissions from Motor Vehicles*³ (Inspection and Maintenance Committee or, I/M Committee) would serve in an advisory capacity in establishing program goals and objectives that meet air quality needs, consider public input, and are acceptable to the court-appointed trustee for the fund. Created in Nevada statute, the primary mission of the I/M Committee is to develop goals and objectives for the program for control of emissions from motor vehicles (the state’s motor vehicle smog check program), to identify areas where funding should be made available, and to make recommendations concerning applicable smog check program regulations.

The I/M Committee consists of 11 members with representatives from the Department of Motor Vehicles, the Division of Environmental Protection, the Department of Transportation, the Department of Agriculture, air pollution control officials from Clark and Washoe counties, and a nonvoting representative from the United States Environmental Protection Agency, Region IX. The I/M Committee, which meets on a quarterly basis, formed a Subcommittee (I/M Subcommittee) to develop recommendations for the Beneficiary Mitigation Plan and periodically report to the I/M Committee on its progress. All I/M Committee and Subcommittee meetings followed the Nevada Open Meeting Law (NRS Chapter 241), were publicly noticed, and members of the public regularly participated in the meetings. Additionally, the I/M Subcommittee accepted written comments regarding the Beneficiary Mitigation Plan throughout its development.⁴

During the drafting of the Mitigation Plan, the NDEP reached out to fleet owners, government officials, transportation organizations, and other potential beneficiaries for information and ideas about how

¹ As on October 24th, 2017

² Letter from state Senator Joyce Woodhouse, Chair of the Senate Committee on Finance - September 29, 2017

³ More information on the *Nevada Advisory Committee on the Control of Emissions from Motor Vehicles*, such as minutes from past meetings, can be found on the Committee’s webpage at <http://www.dmvnv.com/publicmeetings.htm#committee>.

⁴ Written comments regarding the Beneficiary Mitigation Plan can be found on NDEP’s VW specific webpage: <https://ndep.nv.gov/air/vw-settlement>

settlement funds should be spent from among the ten categories of Eligible Mitigation Actions. A final draft of the Mitigation Plan was approved by the I/M Committee on October 10, 2017. The current version of the draft is publicly available on the NDEP's VW specific webpage (<https://ndep.nv.gov/air/vw-settlement>).

In order to solicit further public input, the NDEP also plans to coordinate public outreach efforts in Clark and Washoe counties, the two Nevada counties that bear a disproportionate share of the air pollution burden in the state. The NDEP was present as exhibitors at the 2017 National Clean Energy Summit (held in Las Vegas, Nevada on October 13th, 2017); at this event, the NDEP distributed information and outreach materials focused exclusively on the VW Environmental Mitigation Trust fund and the draft of Nevada's Beneficiary Mitigation Plan.

The public may submit comments by calling our staff, by electronic mail, by U.S. postal, commercial or hand delivery. The Mitigation Plan may be modified in response to public comments received.

(iii) a description of whether and the extent to which the certification in this Paragraph 7 is subject to the Beneficiary's applicable laws governing the publication of confidential business information and personally identifiable information."

The certification in the Paragraph 7 of the *Certification for the Beneficiary Status Under Environmental Mitigation Trust Agreement* is subject to the following Nevada laws governing the publication of confidential business information and personally identifiable information.

Chapters 603A and 239B of the Nevada Revised Statutes (NRS) provide definitions and requirements for handling *personal information*.

NRS Section 603A.040 defines 'Personal Information' as

1. *"Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:*

- (a) Social security number.*
- (b) Driver's license number, driver authorization card number or identification card number.*
- (c) Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.*
- (d) A medical identification number or a health insurance identification number.*
- (e) A user name, unique identifier or electronic mail address in combination with a password, access code or security question and answer that would permit access to an online account.*

2. *The term does not include the last four digits of a social security number, the last four digits of a driver's license number, the last four digits of a driver authorization card number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public from federal, state or local governmental records.*

NRS Section 239B.030 – Recorded, filed or otherwise submitted documents - states that

1. *Except as otherwise provided in subsections 2 and 6, a person shall not include and a governmental agency shall not require a person to include any personal information about a person on any document that is recorded, filed or otherwise submitted to the governmental agency on or after January 1, 2007.*

2. *If personal information about a person is required to be included in a document that is recorded, filed or otherwise submitted to a governmental agency on or after January 1, 2007, pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant, a governmental agency shall ensure that the personal information is maintained in a confidential manner and may only disclose the personal information as required:*

(a) To carry out a specific state or federal law; or

(b) For the administration of a public program or an application for a federal or state grant.

↪ *Any action taken by a governmental agency pursuant to this subsection must not be construed as affecting the legality of the document.*

3. *A governmental agency shall take necessary measures to ensure that notice of the provisions of this section is provided to persons with whom it conducts business. Such notice may include, without limitation, posting notice in a conspicuous place in each of its offices.*

4. *A governmental agency may require a person who records, files or otherwise submits any document to the governmental agency to provide an affirmation that the document does not contain personal information about any person or, if the document contains any such personal information, identification of the specific law, public program or grant that requires the inclusion of the personal information. A governmental agency may refuse to record, file or otherwise accept a document which does not contain such an affirmation when required or any document which contains personal information about a person that is not required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant.*

5. *Each governmental agency may ensure that any personal information contained in a document that has been recorded, filed or otherwise submitted to the governmental agency before January 1, 2007, which the governmental agency continues to hold is:*

(a) Maintained in a confidential manner if the personal information is required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant; or

(b) Obliterated or otherwise removed from the document, by any method, including, without limitation, through the use of computer software, if the personal information is not required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant.

↪ *Any action taken by a governmental agency pursuant to this subsection must not be construed as affecting the legality of the document.*

6. *A person may request that a governmental agency obliterate or otherwise remove from any document submitted by the person to the governmental agency before January 1, 2007, any personal information about the person contained in the document that is not required to be included in the document pursuant to a specific state or federal law, for the administration of a public program or for an application for a federal or state grant or, if the personal information is so required to be included in the document, the person may request that the governmental agency maintain the personal information in a confidential manner. If any documents that have been recorded, filed or otherwise submitted to a governmental agency:*

(a) Are maintained in an electronic format that allows the governmental agency to retrieve components of personal information through the use of computer software, a request pursuant to this subsection must identify the components of personal information to be retrieved. The provisions of this paragraph do not require a governmental agency to purchase computer software to perform the service requested pursuant to this subsection.

(b) Are not maintained in an electronic format or not maintained in an electronic format in the manner described in paragraph (a), a request pursuant to this subsection must describe the document with sufficient specificity to enable the governmental agency to identify the document.

→ The governmental agency shall not charge any fee to perform the service requested pursuant to this subsection.

7. *As used in this section:*

(a) "Governmental agency" means an officer, board, commission, department, division, bureau, district or any other unit of government of the State or a local government.

(b) "Personal information" has the meaning ascribed to it in NRS 603A.040.

Chapter 239 of the NRS provides general principles for the definition and the handling of public records.

In particular, subsection 239.010.3 states that

A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate the confidential information from the information included in the public book or record that is not otherwise confidential.

Chapter 445B of the NRS (Air Controls) specifically provides further directions on what is confidential information and how such information must be handle in the context of the Air Program of the NDEP. In particular section 445B.570 – Confidentiality and use of information obtained by Department⁵; penalty – states that (footnotes added for clarity)

1. Any information which the Department obtains in the course of the performance of its duties pursuant to the provisions of this chapter is public information unless otherwise designated as confidential information pursuant to the provisions of this section.

2. The emission of an air contaminant which has an ambient air quality standard or emission standard or has been designated as a hazardous air pollutant by regulation of the Commission cannot be certified as being confidential.

3. Any confidential information received by the Commission⁶, the Director⁷ or any local control authority which is certified in writing to the recipient as confidential by the owner or operator disclosing the information and verified and approved in writing as confidential by the recipient must, unless the owner expressly agrees to its publication or availability to the public, be used only:

(a) In the administration or formulation of air pollution controls;

(b) In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator or reveal any confidential information; or

⁵ Nevada Department of Conservation and Natural Resources (DCNR)

⁶ Nevada State Environmental Commission

⁷ Director of the Department of Conservation and Natural Resources

(c) In complying with federal statutes, rules and regulations.

4. This section does not prohibit the use of confidential information in a prosecution for the violation of any statute, ordinance or regulation for the control of air pollution.

5. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor, and is liable in tort for any damages which may result from such disclosure or use.

6. As used in this section, "confidential information" means information or records which:

(a) Relate to dollar amounts of production or sales;

(b) Relate to processes or production unique to the owner or operator; or

(c) If disclosed, would tend to affect adversely the competitive position of the owner or operator.