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Attorneys for State of Utah

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

This Document Relates to:
United States v. Volkswagen AG et al.,
Case No. 16-cv-295 (N.D. Cal.)

MDL No. 2762 CRB (JSC)

**RESUBMISSION OF NOTICE OF FILING
OF CERTIFICATION FOR
BENEFICIARY STATUS UNDER THE
ENVIRONMENTAL MITIGATION
TRUST AGREEMENT FOR THE STATE
OF UTAH**

The Honorable Charles R. Breyer

On October 25, 2017, the State of Utah filed *Submission of Notice of Filing of Certification for Beneficiary Status Under the Environmental Mitigation Trust Agreement for the State of Utah*. Upon advice from the Trustee of the Environmental Mitigation Trust appointed in this matter – Wilmington Trust, N.A., the State of Utah, through its undersigned counsel, hereby re-files the attached Notice of Filing of Certification for Beneficiary Status Under the

**RESUBMISSION OF NOTICE OF FILING OF CERTIFICATION FOR BENEFICIARY STATUS UNDER THE
ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR THE STATE OF UTAH
MDL No. 2762 CRB (JSC)**

Environmental Mitigation Trust Agreement for the State of Utah (Appendix D-3, Order Granting the United States' Motion to Enter Proposed Amended Consent Decree, filed October 25, 2016; Environmental Mitigation Trust Agreement for State Beneficiaries filed September 6, 2017). The Resubmission is filed absent the Waiver of Claims for Injunctive Relief which was originally provided as Addendum A for clarification. Addendum B, Publicly Available Information, is now attached as Addendum A.

This Court approved the Environmental Mitigation Trust Agreement for State Beneficiaries on September 19, 2017. *Order Approving Trust Agreements and Establishing Trust* (Dkt. No. 49 in Case No. 16-cv-00295). The Trustee and Settling Defendants filed the fully executed Trust Agreement on October 2, 2017 (Trust Effective Date) (Dkt. No. 51 in Case No. 16-cv-00295).

Dated this 20th day of November 2017.

/s/ Craig W. Anderson

Craig W. Anderson (PHV)
Connie S. Nakahara (CA-218558)
Assistant Attorneys General
Utah Attorney General's Office
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195 North 1950 West, Second Floor
Salt Lake City, Utah 84114-0873
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Attorneys for State of Utah

CERTIFICATE OF SERVICE

I hereby certify that, on November 20, 2017, I caused to be served true copies of the **RESUBMISSION OF NOTICE OF FILING OF CERTIFICATION FOR BENEFICIARY STATUS UNDER THE ENVIRONMENTAL MITIGATION TRUST AGREEMENT FOR THE STATE OF UTAH** by electronic means by filing such documents with the Clerk of the Court for the United States District Court, Northern District of California by using the Northern District CM/ECF system. Parties not served through the CM/ECF system will be served by U.S. mail or as indicated.

/s/ Craig W. Anderson
Craig W. Anderson

State Trust or Trustee:

Volkswagen Diesel Emissions Environmental Mitigation Trust for State Beneficiaries,
Puerto Rico, and the District of Columbia
c/o Wilmington Trust, N.A. as Trustee
Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Attn: Capital Markets & Agency Services
Wilmington, DE 19890

EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
William J. Clinton South Building
MC 2242A
Washington, DC 20460
E-mail: VW_settlement@epa.gov

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MDL No. 2762 CRB (JSC)

U.S. Department of Justice:

Chief, Environmental Enforcement Section
Re: DJ # 90-5-2-1-11386
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
E-mail: eescdcopy.enrd@usdoj.gov

As to Volkswagen AG by mail:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Company Secretary

With copies to the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel (as to Volkswagen AG)

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

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 (as to Audi AG)

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Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel (as to Audi AG)

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 (as to Volkswagen Group of America, Inc.)

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

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 (as to Volkswagen Group of America Chattanooga Operations, LLC)

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)

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

As to one or more Defendants by mail:

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

As to one or more Defendants by email:

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

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Cari Dawson
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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 Utah _____ (“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 Utah Department of Environmental Quality _____ (“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:	Director of the Division of Air Quality, Department of Environmental Quality
Address:	P. O. Box 144820, 195 North 1950 West, Salt Lake City, Utah 84116
Phone:	801-536-4000
Fax:	801-536-4099
Email:	Bbird@utah.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

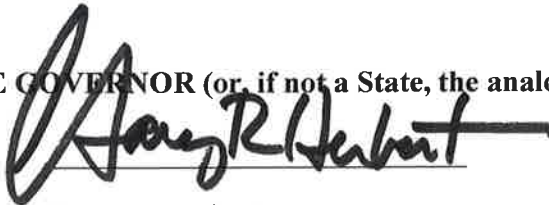
- iv. The availability of an Approved Emissions Modification, an Emissions Compliant Recall or the Buyback, Lease Termination, and Owner/Lessee Payment Program.
- (c) May identify Subject Vehicles as having been modified, or not modified, in accordance with the Approved Emissions Modification or the 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: Gary R. Herbert

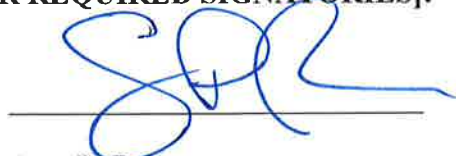
Title: Governor of the State of Utah

Date: October 10, 2017

Location: Salt Lake City, UT

[FOR OTHER REQUIRED SIGNATORIES]:

Signature:



Name: Sean D. Reyes

Title: Attorney General of the State of Utah

Date: September 26, 2017

Location: Salt Lake City, UT

Addendum A – Publicly Available Information
Appendix D-3
Certification for Beneficiary Status
Under Environmental Mitigation Trust Agreement

I. Background - Utah Government Record Access Laws.

The promulgation of Utah record access laws considered both “the public’s right of access to information concerning the conduct of the public’s business” and the public policy interest in restricting access to certain records for the public good.¹ Accordingly, Utah law provides the public access to all government records unless an individual record is determined to be a private record, private employee information, a controlled record, a protected record, a security measure or restricted by federal statute or a federal or state court.² Utah statutory provisions allow records classified as protected to include trade secrets or commercial information that could reasonably result in unfair competitive injury, interfere with a planned governmental transaction or cause substantial financial injury to the governmental entity or the state economy.³ Protected records may also include documents subject to attorney client privilege or classified as attorney work product.⁴ Pursuant to Utah law, a private, controlled or protected record may, however, be disclosed if there is a determination that “there is no interest in restricting access to the record” or “the interests favoring access are greater than or equal to the interest favoring restriction of access.”⁵

¹ UTAH CODE ANN. § 63G-2-102.

² UTAH CODE ANN. §§ 63G-2-106 to -107, 63G-2-201, 63G-2-302 to-305.

³ UTAH CODE ANN. § 63G-2-305 (protected records may also relate to the valuation of real or personal property, safety, security, enforcement, audits, parole considerations, legislative deliberative communication and other records unlikely to be generated by the Beneficiary’s participation in the Environmental Mitigation Trust).

⁴ UTAH CODE ANN. § 63G-2-305(17) – (18).

⁵ UTAH CODE ANN. § 63G-2-201(5)(b).

Prior to parties entering into a contract, invitations for bids, request for proposals or request for quotes may be classified as protected records if disclosure would “impair [] procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity.”⁶ Nevertheless, once the contract is signed the request for proposal becomes a public record.

Public records are available for review at the record holder’s office. Many public records are available to the public on various public facing websites managed by State of Utah agencies. Copies of public records may also be obtained upon written request.

II. Publicly Available Mitigation Fund Records.

Pursuant to the preceding Certification for Beneficiary Status, Governor Gary Herbert certifies that the lead agency, the Utah Department of Environmental Quality (“DEQ”), shall maintain and make publicly available all documentation and records in support of each funding request and supporting all expenditures. The procedures described below are intentionally designed to support access to mitigation records and limit the burden to the general public:

a. Beneficiary Mitigation Plan.

The DEQ intends to prepare and submit a Beneficiary Mitigation Plan in accordance with the approved *Environmental Mitigation Trust Agreement for State Beneficiaries* (“*Approved Trust Agreement*”), ¶ 4.1.⁷ To provide the public continual access to information regarding the Mitigation Trust, the DEQ shall post on a public

⁶ UTAH CODE ANN. § 63G-2-305(6).

⁷ *Environmental Mitigation Trust Agreement for State Beneficiaries*, Attachment A to *United States’ Notice of and Memorandum in Support of its Unopposed Motion for Court Approval of Finalized Trust Agreements*, MDL No. 2672 CRB (JSC) (September 6, 2017); see also *Order Approving Trust Agreements and Establishing Trusts*, MDL No. 2672 CRB (JSC) (September 19, 2017).

facing website (referred to as the "Utah Mitigation Website"): (1) general information regarding the Partial Consent Decree and the Second Partial Consent Decree; and (2) the Mitigation Plan, including any changes to the plan. The Mitigation Plan and any changes to the plan shall also be available for review at the office of the Utah Division of Air Quality, a division within the DEQ, during regular office hours. Individuals may obtain a copy of the Mitigation Plan, and any changes to the plan, upon written request in accordance with existing Utah records access laws.

i. Public Input.

The DEQ shall post public notices on the Utah Mitigation Website, other social media venues and through press releases describing the opportunity and time period in which the public may submit comments on the Mitigation Plan. The public may submit comments directly on the Utah Mitigation Website, by electronic mail or by U.S. postal, commercial or hand delivery. The DEQ shall summarize all comments received within the specified time period to allow effective consideration of public comments when preparing all eligible mitigation funding requests. The Mitigation Plan may be modified in response to public comments received.

b. Mitigation Funding Requests and Supporting Expenditure Records.

DEQ shall submit each mitigation funding request in accordance with the Approved Trust Agreement, ¶ 5.2. Unless classified as a private, protected or controlled record or subject to federal or court protection, the DEQ shall post on the Utah Mitigation Website: (1) all supporting mitigation funding request documentation and records submitted by Utah to the Trustee; and (2) all supporting trust fund

expenditure documentation until the Termination Date.⁸ Following submittal to the Trustee, upon written request, individuals may directly review funding request documentation during office hours at the Utah Division of Air Quality in accordance with existing state law.⁹ A copy may be provided upon written request within 10 business days. The public may submit requests electronically, by U.S. postal or commercial delivery, or in person.

Public funding requests and expenditure documentation shall be continually available on the Utah Mitigation Website. Utah expects to post on the website any funding requests, including public documents supporting each request. Utah shall further update the Utah Mitigation Website regarding the Trustee's decision for each request. Utah further expects to post documentation supporting expenditures for all ongoing eligible mitigation actions funded in accordance with Approved Trust Agreement ¶¶ 5.2, 5.3.

Funding requests greater than \$25,000 must include detailed costs from potential vendors. However, if the DEQ determines that a specific vendor's commercial information could reasonably result in an unfair competitive injury in accordance with Utah records access laws, then the detailed costs may be classified as a protected record unavailable to the public.

Utah shall submit to the Trustee semiannual reports in accordance with Approved Trust Agreement, ¶ 5.3. Utah intends to post on the Utah Mitigation Website the initial report and subsequent semiannual reports. Following submittal of the

⁸ Termination Date is the date the Trust is terminated. Approved Trust Agreement at ¶ 6.8.

⁹ UTAH CODE ANN. § 63G-2-201.

semiannual reports to the Trustee, the reports are available for review, including any copies, directly from the Utah Division of Air Quality upon written request in accordance with Utah public access laws.