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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

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

17 Relates to: *People of the State of California v.
 Volkswagen AG, et al.*, No. 16-cv-3620 (N.D.
 18 Cal.)

Case No. MDL 2672 CRB (JSC)

**CALIFORNIA’S NOTICE OF NON-
 MATERIAL MODIFICATIONS TO
 THIRD CALIFORNIA PARTIAL
 19 CONSENT DECREE**

Judge: Hon. Charles R. Breyer

20 PLEASE TAKE NOTICE THAT pursuant to Paragraphs 94 and 95 of the Third California
 21 Partial Consent Decree, which was entered by the Court on July 21, 2017 (Dkt. No. 3487 in 15-
 22 MD-2672 at 52), the People of the State of California, by and through the California Air
 23 Resources Board (“CARB”), and by and through Xavier Becerra, Attorney General of the State of
 24 California (“CAAG”) (collectively, “California”), notify this Court that the attached non-material
 25 modifications to the Third California Partial Consent Decree have been agreed to in writing by all
 26 the Parties and do not need further approval by the Court. As required by Paragraph 95,
 27 California is hereby filing the modifications with the Court as Attachment A to this Notice.
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Dated: August 30, 2018

Respectfully submitted,

XAVIER BECERRA
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/s/ Jon F. Worm
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CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2018, I caused to be served true copies of the foregoing Notice of Non-Material Modifications to California Third Partial Consent Decree by electronic means by filing such documents through the Court’s Electronic Case Filing System.

/s/ Jon F. Worm
JON F. WORM
Deputy Attorney General
*Attorneys for the People
of the State of California*

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ATTACHMENT A
Modifications to Third California Partial Consent Decree

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13
 14 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 **THE PEOPLE OF THE STATE OF**
 17 **CALIFORNIA,**

18 Plaintiff,

19 v.

20 **VOLKSWAGEN AG; VOLKSWAGEN**
GROUP OF AMERICA, INC.;
 21 **VOLKSWAGEN GROUP OF AMERICA**
CHATTANOOGA OPERATIONS LLC;
 22 **AUDI AG; DR. ING. H.C. F. PORSCHE AG;**
 23 **and PORSCHE CARS NORTH AMERICA,**
INC.,

24 Defendants.

Case No. 3:16-CV-03620

**THIRD CALIFORNIA PARTIAL
 CONSENT DECREE**

25
 26 **WHEREAS**, Plaintiff the People of the State of California (“the People”), acting by and
 27 through Xavier Becerra, Acting Attorney General of the State of California (“the California
 28

1 w. “Second Partial Consent Decree” means the proposed partial
2 consent decree among the United States, California, and Defendants lodged with the
3 Court by the United States on December 20, 2016 (Dkt. #2520 in 15-MD-2672);

4 x. “Section” means any portion of this Consent Decree identified by a
5 Roman Numeral;

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

8 z. “US Third Partial Consent Decree” means the ~~proposed~~ partial
9 consent decree between the United States and Defendants originally lodged with the
10 Court by the United States on January 11, 2017 (Dkt. #2758 in 15-MD-2672), ~~and~~
11 entered by the Court on April 13, 2017 (Dkt. #3155 in 15-MD-2672), and any
12 subsequent modifications pursuant to paragraphs 105 and 106 of the US Third Partial
13 Consent Decree; and

14 aa. “Volkswagen” or “Volkswagen Parties” means Volkswagen AG,
15 Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga
16 Operations LLC, and Audi AG.

17 **IV. MONETARY TERMS**

18 9. Within 30 days after the earlier of the date upon which this Consent Decree is
19 entered by the Court or a motion to enter the Consent Decree is granted (the “Entry Date”),
20 Volkswagen shall pay directly to CARB the sum of \$93,813,500 as a civil penalty. These funds
21 shall be deposited into the Air Pollution Control Fund.

22 10. Volkswagen shall also pay directly to CARB a total aggregate amount of
23 \$60,000,000 in consideration for CARB’s past and future costs associated with the First Partial
24 Consent Decree and Second Partial Consent Decree. This amount shall be payable in equal
25 annual installments over a period of six years from the Entry Date, or, alternatively, at
26 Volkswagen’s election, may be paid in full within 30 days of Entry Date. If not paid in full,
27 Volkswagen shall make the first payment of \$10,000,000 within 30 days of the Entry Date; each
28 of the five subsequent annual payments of \$10,000,000 shall be due within one calendar year of

1 and control access to certification vehicles.

2 13. Establishment of Volkswagen Parties' Project Management Office(s). Within 90
3 Days after the Effective Date, the Volkswagen Parties shall establish and maintain one or more
4 Project Management Office(s) for monitoring and complying with current and future U.S. laws,
5 including California laws, regarding vehicle certification and vehicle emissions. The Volkswagen
6 Parties shall establish rules of procedure for the Project Management Office(s) and shall define its
7 tasks, authorities, and responsibilities, which shall include: (1) to document significant current
8 U.S. laws, regulations, and legislation (including California laws, regulations, and legislation)
9 related to vehicle certification and automotive emissions, and track future developments in U.S.
10 law (including California law) related to vehicle certification and automotive emissions; (2) to
11 monitor and assist the Volkswagen Parties' compliance with U.S. requirements, including
12 California requirements, regarding exhaust emission standards and technology; and (3) to
13 establish internal procedures and controls for the Volkswagen Parties in order to achieve
14 compliance with U.S. requirements, including California requirements, regarding exhaust
15 emission standards and technology.

16 14. PEMS Testing by the Volkswagen Parties. The testing required by this paragraph
17 is the same testing required by paragraph 15 of the US Third Partial Consent Decree, subject to
18 certain additional terms applicable to the Volkswagen Parties and CARB.

19 a. The Volkswagen Parties (under the supervision of the Certification
20 Group) shall test certain model year 2017, 2018, and 2019 light-duty motor vehicles
21 using portable emissions measurement system ("PEMS") testing. For each model year,
22 the Volkswagen Parties shall perform PEMS testing on 33% of Volkswagen Parties'
23 EPA-certified test groups within that model year ("Volkswagen Test Groups"). For
24 purposes of determining the number of Volkswagen Test Groups composing 33%, the
25 Volkswagen Parties shall round up or down to the nearest whole Volkswagen Test
26 Group number closest to 33%. Volkswagen shall test those Volkswagen Test Groups
27 selected by EPA pursuant to Paragraph 15(a) of the US Third Partial Consent Decree
28 ~~between Defendants and the United States, lodged with the Court on January 11, 2017~~

1 ~~(Dkt. #2758 in 15 MD 2672)~~ (the “~~US Third Partial Consent Decree~~”). If EPA does not
2 select the Volkswagen Test Groups pursuant to the schedule set forth in Paragraph 15(a)
3 of the US Third Partial Consent Decree, CARB will attempt to confer with EPA in an
4 effort to arrive at a common list of test groups to be tested by the Volkswagen
5 Defendants, and, if EPA fails to select the Volkswagen Test Groups for any given year
6 by the applicable deadline, CARB will have 10 business days following the applicable
7 EPA selection deadline to designate the Volkswagen Test Groups for that model year.
8 If CARB also fails to select the Volkswagen Test Groups for any given year by the
9 applicable deadline, Volkswagen will designate the Volkswagen Test Groups for that
10 model year. The Volkswagen Parties shall select the Volkswagen Test Groups for
11 model year 2017, model year 2018, and model year 2019 that will cover, in the
12 aggregate, the full range of configurations of emission control systems on their light-
13 duty vehicles for those model years, and shall not select a Volkswagen Test Group that
14 was certified using carryover emissions data from another Volkswagen Test Group that
15 has already been tested pursuant to this Paragraph (unless necessary to meet the 33%
16 requirement). All testing under this Paragraph 14.a for model year 2017 shall be
17 completed by December 31, 2017. All testing under Paragraph 14.a for model years
18 2018 and 2019 shall be completed by September 30 of the calendar year for which the
19 applicable model year is named, except that the Volkswagen Parties and EPA may
20 agree, under the US Third Partial Consent Decree, to a later date (but in no case later
21 than December 31 of the applicable model year) sufficient to enable the Volkswagen
22 Parties to complete PEMS testing of the selected model year. The Volkswagen Parties
23 may, but are not required to, use the Third-Party Emissions Tester required by
24 Paragraph 14.b to conduct the testing required by this Paragraph 14.a.

25 b. In addition to the requirements of Paragraph 14.a, the Volkswagen
26 Parties shall retain an independent third-party emissions tester (“Third-Party Emissions
27 Tester”). (The Volkswagen Parties and Porsche Parties may hire the same Third-Party
28 Emissions Tester.) No attorney-client relationship shall exist or be formed between any

Reports of Independent Compliance Auditor

26. The Volkswagen Parties shall comply with the obligations set forth in Paragraphs 27 through 29 (Independent Compliance Auditor) under the US Third Partial Consent Decree ~~between Defendants and the United States, lodged with the Court on January 11, 2017 (Dkt. #2758 in 15 MD 2672).~~ The Retention Date of the Independent Compliance Auditor is June 16, 2017 (“Retention Date”).

27. Additionally, the Independent Compliance Auditor retained by the Volkswagen Parties pursuant to Paragraphs 27 through 29 (Independent Compliance Auditor) of the US Third Partial Consent Decree ~~between Defendants and the United States, lodged with the Court on January 11, 2017 (Dkt. #2758 in 15 MD 2672),~~ shall evaluate and report on the Volkswagen Parties’ compliance with Section V (Injunctive Relief for the Volkswagen Parties) of this Consent Decree.

28. Access Rights and Duties of the Independent Compliance Auditor. The Volkswagen Parties shall cooperate fully with the Independent Compliance Auditor in any and all matters relating to the Auditor’s duties as set forth in Paragraphs 26 through 29 of this Consent Decree.

a. The Volkswagen Parties shall cooperate fully with the Independent Compliance Auditor and shall provide the Independent Compliance Auditor with any information and documents that the Auditor requests or may reasonably need to fulfill the duties listed in this Paragraph. The Volkswagen Parties shall facilitate the Independent Compliance Auditor’s access to the Volkswagen Parties’ documents, databases, and facilities where certification or compliance testing of the Volkswagen Parties’ vehicles occur. The Volkswagen Parties shall use best efforts to make their employees or contractors available to answer questions or provide information that the Independent Compliance Auditor may need in the fulfillment of its duties. In the event that the Volkswagen Parties seek to withhold from the Auditor access to information, documents, records, facilities, or current or former employees or contractors of the Volkswagen Parties that may be subject to a claim of attorney-client privilege or to the

1 attorney work product doctrine, or where the Volkswagen Parties reasonably believe
 2 production or providing access would otherwise be inconsistent with applicable law, the
 3 Volkswagen Parties shall work cooperatively with the Independent Compliance Auditor
 4 to resolve the matter to the satisfaction of the Independent Compliance Auditor
 5 consistent with applicable law. If the Independent Compliance Auditor believes the
 6 Volkswagen Parties have violated the requirements of this Paragraph 28.a, the
 7 Independent Compliance Auditor shall promptly notify California, including a
 8 description of the alleged violations and supporting documentation as necessary.

9 b. Annual Reports of Independent Compliance Auditor. The
 10 Independent Compliance Auditor shall review documents and take such reasonable
 11 measures as may be necessary to verify the Volkswagen Parties' compliance with
 12 Section V (Injunctive Relief for the Volkswagen Parties) of this Consent Decree. For
 13 three years after the ~~Retention~~Effective Date, the Independent Compliance Auditor shall
 14 audit the Volkswagen Parties' compliance with their obligations under Section V
 15 (Injunctive Relief for the Volkswagen Parties) of this Consent Decree, and shall provide
 16 ~~an~~ draft annual report to California as follows:- ~~The~~ first draft annual report is due on
 17 May 18, 2018 (covering the time period from April 13, 2017 through April 13,
 18 2018);~~one year after the Effective Date,~~ the second draft annual report is due on May
 19 17, 2019 (covering the time period from April 14, 2018 through April 13, 2019);~~two~~
 20 years after the Effective Date, and the third draft annual report is due on March 31,
 21 2020 (covering the time period from April 14, 2019 through April 13, 2020, provided
 22 that the Independent Compliance Auditor will notify the Volkswagen Parties by April
 23 15, 2020 of any additional or different findings or recommendations that it identifies
 24 between providing its third draft annual report on March 31, 2020 and April 13, 2020
 25 that it intends to include in the final audit report)~~three years after the Effective Date.~~

1 The Independent Compliance Auditor shall concurrently provide a ~~draft~~ copy of its draft
2 annual report to ~~California and~~ the Volkswagen Parties. Within 30 Days after receipt of
3 ~~the each~~ draft annual report, the Volkswagen Parties shall provide their comments, if
4 any, to the Independent Compliance Auditor. The Independent Compliance Auditor
5 may consider and reflect the Volkswagen Parties' comments in its final annual report to
6 the extent that the Independent Compliance Auditor deems appropriate in the exercise
7 of its independent judgment. In the annual report, the Independent Compliance Auditor
8 shall include, as applicable, findings that identify any noncompliance by the
9 Volkswagen Parties with the requirements of Section V (Injunctive Relief for the
10 Volkswagen Parties) of this Consent Decree, and shall recommend, as applicable,
11 actions for the Volkswagen Parties to take to achieve compliance. The Independent
12 Compliance Auditor shall also monitor the Volkswagen Parties' implementation of any
13 action plan submitted pursuant to Paragraph 29, and shall indicate in the second and
14 third annual reports the status of any corrective action. The Independent Compliance
15 Auditor shall provide final annual reports to California and the Volkswagen Parties as
16 follows: the first final annual report is due on August 17, 2018; the second final annual
17 report is due on August 16, 2019; and the third final annual report is due on June 16,
18 2020. The Independent Compliance Auditor may exercise discretion to report events
19 occurring outside of each of the designated time periods related to each annual report
20 provided that the events occur prior to the submission of the third final annual report on
21 June 16, 2020. To the extent the Independent Compliance Auditor makes material
22 changes to the findings or recommendations after providing the Volkswagen Parties a
23 draft report, the Independent Compliance Auditor will provide the Volkswagen Parties
24 advanced notice and a reasonable opportunity to comment on the additions or changes
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1 comment on the additions or changes before it issues each final annual report. All final
 2 annual reports from the Independent Compliance Auditor (redacted of any CBI or
 3 personal information the disclosure of which is restricted by applicable law; however no
 4 emissions test methods and results may be claimed as CBI) shall be posted by the
 5 Parties on the public website required by Paragraph 50 in both English and German
 6 within 21 Days after issuance. The Independent Compliance Auditor may elect to
 7 fulfill the reporting obligations under this Paragraph by submitting a single joint report
 8 to the Department of Justice and California.
 9

10 c. Copies of Final Annual Reports Submitted to United States. If the
 11 Independent Compliance Auditor does not elect to submit a single joint report to the
 12 Department of Justice and California, within 5 business days of submission to the
 13 United States, the Independent Compliance Auditor shall provide California a copy of
 14 the final annual reports submitted pursuant to Paragraph 28.c of the US Third Partial
 15 Consent Decree ~~between Defendants and the United States, lodged with the Court on~~
 16 ~~January 11, 2017 (Dkt. #2758 in 15-MD-2672).~~
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18 d. Compensation of the Independent Compliance Auditor. The
 19 Volkswagen Parties shall be responsible for compensating the Independent Compliance
 20 Auditor for the performance of its duties in accordance with the terms agreed upon by
 21 the Volkswagen Parties and the selected Independent Compliance Auditor. Such terms
 22 of agreement shall clarify that the Independent Compliance Auditor is not an employee
 23 or an agent of the Volkswagen Parties, and the Independent Compliance Auditor's work
 24 is not subject to the Volkswagen Parties' assertion of attorney-client or work product
 25 privileges.

26 29. Volkswagen Parties' Response to Independent Compliance Auditor's Report.

27 a. Action Plan. Within 60 Days after receiving any final annual
 28 report ~~from the~~ Independent Compliance Auditor's ~~final report~~ containing a finding

1 of noncompliance, the Volkswagen Parties shall submit to California a response to the
 2 Independent Compliance Auditor’s findings and recommendations for corrective action.
 3 The Volkswagen Parties’ response shall include, as applicable, an action plan to
 4 implement corrective measures as expeditiously as practicable, or an explanation of
 5 why corrective measures are not being implemented. After the Volkswagen Parties
 6 have completed implementation of the corrective measures, if any, the Volkswagen
 7 Parties shall provide a report to California with a certification, in accordance with
 8 Paragraph 51 of the Consent Decree, that the work has been completed.

9 b. Annual Meeting. Within 90 Days after receiving each final annual
 10 report from the~~an~~ Independent Compliance Auditor’s ~~final report~~, the Volkswagen
 11 Parties shall meet with California to discuss the Independent Compliance Auditor’s
 12 final annual report and any suggestions, comments, or improvements that the
 13 Volkswagen Parties may wish to discuss with California.

14 VI. INJUNCTIVE RELIEF FOR THE PORSCHE PARTIES

15 30. Segregation of Duties between Product Development and Certification
 16 Testing/Monitoring. Within 90 Days after the Effective Date, the Porsche Parties shall implement
 17 measures to ensure that employees involved in certification testing and monitoring are
 18 organizationally separate from those involved in product development. Consistent with the
 19 Porsche Remediation Plan, the Porsche Parties shall, as set forth in Paragraph 31 below, improve
 20 policies, procedures, practices, or processes for the development of vehicles that include emission
 21 control systems designed to comply with U.S. laws and regulations, including California laws and
 22 regulations, related to emissions standards and certifications, and to ensure that emissions
 23 certification testing of such vehicles is not performed by the organizational units responsible for
 24 product development.

25 31. Organization and Processes.

26 a. The Porsche Parties shall implement cross-departmental
 27 segregation of duties by establishing a new organizational unit, the “Technical
 28 Conformity” unit, which shall have primary responsibility for: (1) developing and

1 Conformity Group) shall test certain model year 2017, 2018, and 2019 light-duty motor
2 vehicles using PEMS testing. For each model year, the Porsche Parties shall perform
3 PEMS testing on 33% of the Porsche Parties' EPA-certified test groups within that
4 model year ("Porsche Test Groups"). For purposes of determining the number of
5 Porsche Test Groups composing 33%, the Porsche Parties shall round up or down to the
6 nearest whole Porsche Test Group number closest to 33%. Porsche shall test those
7 Porsche Test Groups selected by EPA pursuant to Paragraph 33(a) of the US Third
8 Partial Consent Decree ~~between Defendants and the United States, lodged with the~~
9 ~~Court on January 11, 2017 (Dkt. #2758 in 15 MD 2672) (the "US Third Partial Consent~~
10 ~~Decree")~~. If EPA does not select the Porsche Test Groups pursuant to the schedule set
11 forth in Paragraph 33(a) of the US Third Partial Consent Decree, CARB will attempt to
12 confer with EPA in an effort to arrive at a common list of test groups to be tested by the
13 Porsche Parties, and, if EPA fails to select the Porsche Test Groups for any given year
14 by the applicable deadline, CARB will have 10 business days following the applicable
15 EPA selection deadline to designate the Porsche Test Groups for that model year. If
16 CARB also fails to select the Porsche Test Groups for any given year by the applicable
17 deadline, Porsche will designate the Porsche Test Groups for that model year. The
18 Porsche Parties shall select Porsche Test Groups for model year 2017, model year 2018,
19 and model year 2019 that will cover, in the aggregate, the full range of configurations of
20 emission control systems on their light-duty vehicles for those model years, and shall
21 not select a Porsche Test Group that was certified using carry-over emissions data from
22 another Porsche Test Group that has already been tested pursuant to this Paragraph 33. a
23 (unless necessary to meet the 33% requirement). All testing under this Paragraph 33.a
24 for model year 2017 must be completed by December 31, 2017. All testing under this
25 Paragraph 33.a for model years 2018 and 2019 must be completed by September 30 of
26 the calendar year for which the applicable model year is named, except that the Porsche
27 Parties and EPA may agree, pursuant to the US Third Partial Consent Decree, to a later
28 date (but in no case later than December 31 of the applicable model year) sufficient to

1 other time as the Parties agree to in writing, correct all deficiencies and resubmit the Submission,
 2 or disapproved portion thereof, for approval, in accordance with Paragraphs 41 to 42. If the
 3 resubmission is approved in whole or in part, the Volkswagen Parties or the Porsche Parties, as
 4 applicable, shall proceed in accordance with Paragraph 42.

5 44. If a resubmitted Submission, or portion thereof, is disapproved in whole or in
 6 part, CARB and EPA may again require the Volkswagen Parties or the Porsche Parties, as
 7 applicable, to correct any deficiencies, in accordance with Paragraphs 42 and 43, or CARB and
 8 EPA may themselves correct any deficiencies.

9 45. Defendants may elect to invoke the dispute resolution procedures set forth in
 10 Section X (Dispute Resolution) concerning any decision of CARB and EPA to disapprove,
 11 approve on specified conditions, modify, or correct a Submission. If one or more Defendants
 12 elect to invoke dispute resolution, they shall do so within 30 Days (or such other time as the
 13 Parties agree to in writing) after receipt of the applicable decision.

14 **VIII. REPORTING AND CERTIFICATION REQUIREMENTS**

15 46. Timing of Reports. The Volkswagen Parties shall submit to California an
 16 annual report incorporating information required by Paragraphs 18, 20, 21, and 22, and 28.
 17 The first annual report is due on May 18, 2018 (covering the time period from April 13, 2017
 18 through April 13, 2018); the second annual report is due on May 17, 2019 (covering the time
 19 period from April 14, 2018 through April 13, 2019); and the third annual report is due on May
 20 18, 2020 (covering the time period from April 14, 2019 through April 13, 2020)one year after
 21 the Effective Date; the second annual report is due two years after the Effective Date, and the
 22 third annual report is due three years after the Effective Date. The reports required by
 23 Paragraphs 14, 17, 24, and 48.b shall be due as set forth in those Paragraphs. The Volkswagen
 24 Parties may elect to fulfill their reporting obligations under this Paragraph 46 by submitting the
 25 required information in a single joint report to the Department of Justice and California.
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28 47. Defendants may assert that information submitted under this Consent Decree is