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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 _____) MDL No. 2672 CRB (JSC)
16 IN RE: VOLKSWAGEN "CLEAN DIESEL")
17 MARKETING, SALES PRACTICES, AND) **UNITED STATES' NOTICE OF NON-**
18 PRODUCTS LIABILITY LITIGATION) **MATERIAL MODIFICATIONS TO**
19) **PARTIAL CONSENT DECREE**
20) **AND SECOND PARTIAL CONSENT**
21) **DECREE**
22)
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1 Pursuant to Paragraphs 91 and 92 of the Partial Consent Decree, entered by the Court on October
2 25, 2016, Dkt. No. 2103-1, and Paragraphs 90 and 91 of the Second Partial Consent Decree, entered by
3 the Court on May 17, 2017, Dkt. No. 3228-1, the United States notifies the Court that the attached non-
4 material modifications to the Partial and Second Partial Consent Decrees have been agreed to in writing
5 by all the Parties and do not need further approval by the Court. As required by Paragraph 92 of the Partial
6 Consent Decree and Paragraph 91 of the Second Partial Consent Decree, the United States is hereby filing
7 the modifications with the Court as Exhibit 1 and Exhibit 2 to this Notice.

8 Dated: September 8, 2020

9 Respectfully submitted,

10
11 For the United States of America

12 KAREN DWORKIN
13 DEPUTY CHIEF

14 By: /s/ Anna Grace
Anna Grace

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

)
) MDL No. 2672 CRB (JSC)
)
) **AGREEMENT TO MODIFY PARTIAL**
) **CONSENT DECREE AND**
) **SECOND PARTIAL CONSENT DECREE**
)
)
)

1 The undersigned parties hereby agree to the modifications shown in Exhibit 1 and Exhibit 2 hereto
2 to the Partial Consent Decree, entered by the Court on October 25, 2016, Dkt. No. 2103-1, and the Second
3 Partial Consent Decree, entered by the Court on May 17, 2017, Dkt. No. 3228-1. Except as modified in
4 Exhibits 1 and 2, the Partial Consent Decree and the Second Partial Consent Decree, as previously
5 modified by other non-material modifications filed with this Court, remain in full force and effect.
6

7
8 FOR THE UNITED STATES OF AMERICA:

9 Dated: September 8, 2020

KAREN DWORKIN
DEPUTY CHIEF



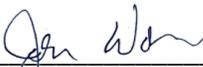
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3 RESOURCES BOARD:

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13 Date: August 11, 2020

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1 FOR THE CALIFORNIA AIR RESOURCES BOARD:

2
3 Date: September 2, 2020



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10 Date: September 2, 2020



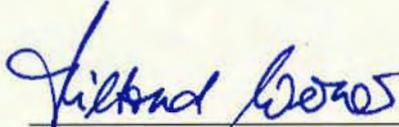
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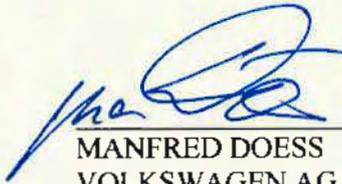
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2 Date: 08/25/2020



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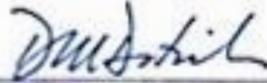


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1 FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

2 Date: August 25, 2020

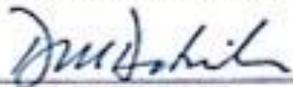


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FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: August, 25, 2020



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4 August 27, 2020

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George Feygin

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9 Date: 8/24/20

Glenn Garde

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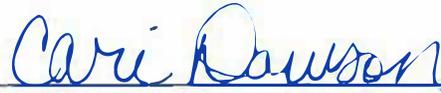
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EXHIBIT 1

Modifications to Partial Consent Decree

APPENDIX B

VEHICLE RECALL AND EMISSIONS MODIFICATION PROGRAM

VII. ADDITIONAL REQUIREMENTS

7.1 In implementing any Approved Emissions Modification, Settling Defendants must comply with the following additional requirements.

7.2 For all Generations, Settling Defendants may not sell or cause to be sold, resell or cause to be resold, or lease or cause to be leased, any 2.0 Liter Subject Vehicle in Settling Defendants' possession, or obtained by Settling Defendants as a trade-in or through the Buyback or Lease Termination Program under Appendix A until:

7.2.1. Settling Defendants complete at least 75% Full Useful Life durability testing on an official emissions durability vehicle aged on the SRC cycle (a representative vehicle, as approved by EPA/CARB, is acceptable for this purpose) and Settling Defendants provide all data to EPA and CARB.

7.2.2. Settling Defendants complete the Critical OBD Demonstration Testing on a vehicle aged to at least 75% Full Useful Life on the SRC cycle executed with an Engineering Durability Vehicle and Settling Defendants provide all data to EPA/CARB;

7.2.3. Settling Defendants remedy any and all OBD noncompliances that are not provided for under this Appendix B and that are known at the time the OBD demonstration required under subparagraph 7.2.2 is completed;

7.2.4. Settling Defendants perform an applicable Approved Emissions Modification on any such vehicle and comply with all other requirements applicable to such vehicle under Appendix B;

7.2.5. Settling Defendants execute all emission-related service actions and repairs required to bring the vehicle into compliance with Appendix B, apply any and all other recalls concerning the vehicle, and execute any other required service actions, provided that, to fulfill this requirement for Generation 3 vehicles, Settling Defendants need not execute the Subsequent Service Action described in subparagraph 3.4.3;

7.2.6. Settling Defendants submit a Proposed Plan for Sale and Lease of Modified Vehicles, including the materials set forth below.

- i. A statement that the Modified Vehicles comply with the requirements in Appendix B;
- ii. If the Modified Vehicles do not comply with Appendix B, a statement of all actions to be undertaken to alter the Emissions Modification to ensure compliance with Appendix B;

- iii. As necessary, an updated list of OBD noncompliances that were identified during the testing required under subparagraph 7.2.2; and
- iv. Settling Defendants certify the Proposed Plan for Sale and Lease of Modified Vehicles in accordance with the certification requirements set forth in Paragraphs 33 and 34 of this Consent Decree.

7.2.7. EPA/CARB approve the Proposed Plan for Sale and Lease of Modified Vehicles. EPA/CARB will respond to the proposal within 14 Days of submittal.

7.2.8. For five years following entry of this Consent Decree, Settling Defendants must submit quarterly reports, certified in accordance with the certification requirements under Paragraphs 33 and 34 of this Consent Decree, to EPA/CARB to include the following information:

- i. Each vehicle, by VIN, that has been acquired by Settling Defendants, modified with an Approved Emissions Modification (including Modified Vehicles that have been returned to Eligible Owners and Lessors), sold, exported, or destroyed, including the dates of each occurrence;
- ii. By VIN, the repairs and alterations to each 2.0 Liter Subject Vehicle conducted to remedy OBD noncompliances and other defects in the relevant Approved Emissions Modification.

7.3 If the Final OBD Demonstration or the Full Useful Life Durability testing show that Modified Vehicles do not meet the OBD System or durability requirements of this Appendix B, or if a substantial number of Modified Vehicles exceed the Maximum Emissions Modification Limits in-use, the Approved Emissions Modification shall be suspended, during which time no relevant Emissions Modifications may be applied, and no sales, leases, or exports, of relevant Modified Vehicles will be permitted, until such time Settling Defendants correct the defects in the Approved Emissions Modification.

7.4 Settling Defendants must make all disclosures to vehicle owners as required by the Consent Decree and the FTC Order, and consistent with Appendix A. These requirements are meant to ensure owners are able to make an informed decision about participation in the Emissions Modification and the availability of the Extended Emissions Warranty.

7.5 Settling Defendants must also comply with any additional labeling, disclosure, and warranty requirements set forth in Appendix A.

7.6 As more fully described in Appendix A, Settling Defendants may not terminate the Emissions Modification Program.

7.7 **Approved Emissions Modification Corrections.** No later than 15 business days after Settling Defendants first reasonably believe there is a Technical Issue(s), as defined by Appendix B, Paragraph 2.4, that require an AEM Correction, they must notify EPA and CARB of such issues (“Notice of Technical Issue(s)”). No later than 30 Days before implementing an AEM Correction, Settling Defendants must describe to EPA and CARB the Technical Issue(s) that require an AEM Correction and the proposed technical solution, and provide the information required under 40 C.F.R.

§ 86.1842-01(b) and Cal. Code Regs. tit. 13, § 2114 (“Notice of AEM Correction”). Settling Defendants shall include “Notice of AEM Correction” in the title and subject line of all presentations and emails to EPA and CARB concerning each proposed correction.

7.7.1 Approved Emissions Modification Suspension. EPA and CARB may order Settling Defendants to, and Settling Defendants, if ordered, must make best efforts to immediately cease installation of an Approved Emissions Modification with Technical Issue(s) that require correction by, at a minimum, issuing within 72 hours of EPA and CARB’s order, dealer instructions notifying dealers that Settling Defendants have suspended the AEM and that installation of the suspended AEM is prohibited until further notice.

7.7.2 Additional Information. Within 30 Days of a request by EPA and CARB, Settling Defendants must submit additional information or testing concerning the Technical Issue(s) that require an AEM Correction and/or concerning the AEM Correction itself. EPA and CARB may extend the deadline for submitting information to EPA and CARB in response to such a request. If Settling Defendants fail to provide the required information or testing within 30 Days, or such time as set by EPA and CARB, they shall make best efforts to immediately cease installation of the AEM Correction by, at a minimum, issuing within 72 hours of the deadline for submitting the requested information or testing, dealer instructions notifying dealers that Settling Defendants have suspended the AEM Correction and that installation of the AEM Correction is prohibited until further notice, consistent with 40 C.F.R. § 86.1842-01(b)(2).

7.7.3 Noncompliance. The AEM Correction must not result in any noncompliance with Appendix B, including any noncompliance with the applicable regulations listed in Paragraph 3.7. If EPA and CARB determine that the AEM Correction results in any such noncompliance, EPA and CARB will notify Settling Defendants and may order Settling Defendants not to commence or to immediately cease the AEM Correction. In that event, Settling Defendants shall make best efforts to immediately cease the AEM Correction by, at a minimum, issuing within 72 hours of EPA and CARB’s notice, dealer instructions notifying dealers that Settling Defendants have suspended the AEM Correction and that installation of the AEM Correction is prohibited until further notice. Settling Defendants may submit a revised Notice of AEM Correction, including a revised technical solution, subject to the written approval of EPA and CARB.

7.7.4 Consumer Notice. The Notice of AEM Correction shall include a draft consumer disclosure notice containing information about the AEM Correction of the type required under Appendix B, subparagraph 4.3.8, including a revised warranty statement, as applicable. The consumer disclosure notice must describe the Technical Issue(s) that require the AEM Correction and any and all impacts resulting from the Technical Issue(s) that require the AEM Correction. The notice must also describe any and all reasonably predictable changes resulting from the AEM Correction itself, including all changes to vehicle attributes that may reasonably be important to vehicle owners. The Notice of AEM Correction shall also include a draft dealer instruction that instructs dealers to provide the consumer notice to vehicles owners when the AEM Correction is installed. The draft consumer disclosure notices and the draft dealer instruction described in this paragraph must concurrently be provided to the PSC and FTC.

- i. Settling Defendants must issue the consumer notice to affected consumers no sooner than 15 Days after submitting the Notice of AEM Correction to EPA and CARB and at least 15 Days before Settling Defendants commence installing an AEM Correction.
- ii. Additionally, Settling Defendants must issue the consumer notice to affected consumers no later than 30 Days after submitting the Notice of AEM Correction to EPA and CARB, regardless of when Settling Defendants commence the AEM Correction. If no AEM Correction is available within 30 Days after submittal of the Notice of Technical Issue(s) to EPA and CARB, EPA and CARB may order Settling Defendants to, and Settling Defendants, if ordered, must issue to consumers a notice describing the Technical Issue(s), including the information required under Paragraph 7.7.4, no later than 15 Days after EPA and CARB's order.
- iii. EPA and CARB may extend the deadlines for issuing the notice(s) to consumers.
- iv. If EPA and CARB determine a notice is misleading, inaccurate, incomplete, or inconsistent with the requirements of Appendix B, subparagraph 7.7.4(ii), EPA and CARB may order, and Settling Defendants, if ordered, must revise the notice, not commence the AEM Correction and/or make best efforts to cease installing the AEM Correction by, at a minimum, issuing within 72 hours of EPA and CARB's order, dealer instructions notifying dealers that Settling Defendants have suspended the AEM Correction and that installation of the AEM Correction is prohibited until further notice.

7.7.5 Consumer Election. Settling Defendants shall not apply an AEM Correction without the express authorization of the vehicle owner.

7.7.6 Loaner Vehicle. Settling Defendants shall provide a loaner vehicle for all AEM Corrections lasting longer than 3 hours.

7.7.7 Consent to Recall. Settling Defendants agree that if they elect to implement an AEM Correction through this process, in the event EPA and CARB determine the AEM Correction results in noncompliance described in subparagraph 7.7.3, Settling Defendants consent to recall all vehicles that have received the AEM Correction and to remedy such nonconformity in accordance with the recall regulations, 40 C.F.R. Part 85, Subpart S, and Cal. Code Reg., tit. 13, § 2111, et seq., including obtaining approval of a recall plan as described in the regulations, provided, however, that any disputes concerning a recall under this Paragraph 7.7 shall be governed by the dispute resolution procedures of the Consent Decree rather than the procedures described in 40 C.F.R. §§ 85.1801 and 85.1807.

7.7.8 Certification. Settling Defendants must certify all submissions under the certification requirements of the Consent Decree, Paragraphs 33 and 34.

7.7.9 Liability for Approved Emissions Modification Defects. Correction of any Technical Issue(s), as defined by Appendix B, Paragraph 2.4, that require an AEM Correction

under this Paragraph 7.7 shall be no defense to any liability of Settling Defendants for noncompliance with Appendix B or the applicable laws and regulations.

7.8 As provided in Paragraph 12 of the Consent Decree, Settling Defendants shall not modify or cause to be modified any software that affects the emission control system on any 2.0 Liter Subject Vehicle, except in compliance with Appendices A and B. Subject to prior written authorization by EPA and CARB, Settling Defendants may modify the emissions control system software on 2.0 Liter Subject Vehicles for testing and/or analysis purposes only. Prior to modifying any such 2.0 Liter Subject Vehicle, Settling Defendants shall submit to EPA and CARB a written request for approval to modify the emissions control system software. Settling Defendants shall include in the request a description of the modification, including the purpose of the testing and/or analysis, and the configuration, VIN number, and mileage of any 2.0 Liter Subject Vehicle they may test or analyze. EPA/CARB may approve or disapprove the request. Settling Defendants shall not sell or cause to be sold, or lease or cause to be leased, or transfer title or cause the title transfer of any 2.0 Liter Subject Vehicle modified for testing and/or analysis purposes under this Paragraph or use any such Subject Vehicle for any purpose other than testing and/or analysis, unless and until it has received the applicable Approved Emissions Modification.