

1 BETHANY ENGEL (MA-660840)  
2 ANNA GRACE (MA-686070)

3 U.S. Department of Justice  
4 P.O. Box 7611  
5 Washington, D.C. 20044-7611  
6 Telephone: (202) 514-6892  
7 Facsimile: (202) 514-0097  
8 Email: Bethany.Engel@usdoj.gov

9 *Attorneys for Plaintiff United States of America*

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 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

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

15 ANNA GRACE  
16 BETHANY ENGEL  
17 Environmental Enforcement Section  
18 Environment and Natural Resources Division  
19 United States Department of Justice  
20 P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 514-6892  
Facsimile: (202) 514-0097

21 *Counsel for the United States*  
22  
23  
24  
25  
26  
27  
28

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

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



---

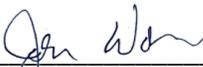
12 ANNA GRACE  
13 BETHANY ENGEL  
14 Environmental Enforcement Section  
15 Environment and Natural Resources Division  
16 United States Department of Justice  
17 P.O. Box 7611  
18 Washington, D.C. 20044-7611  
19 Telephone: (202) 514-6892  
20 Facsimile: (202) 514-0097

*Counsel for the United States*

1 FOR THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through XAVIER BECERRA,  
2 ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, and the CALIFORNIA AIR  
3 RESOURCES BOARD:

4 XAVIER BECERRA  
5 Attorney General of California  
6 NICKLAS A. AKERS  
7 Senior Assistant Attorney General  
8 JUDITH A. FIORENTINI  
9 JON F. WORM  
10 Supervising Deputy Attorneys General  
11 LAUREL M. CARNES  
12 Deputy Attorneys General

13 Date: August 11, 2020

14   
15 \_\_\_\_\_  
16 Jon F. Worm  
17 Supervising Deputy Attorney General

18 *Attorney for the*  
19 *People of the State of California*

1 FOR THE CALIFORNIA AIR RESOURCES BOARD:

2  
3 Date: September 2, 2020

4 

5 MARY D. NICHOLS  
6 Chair  
7 California Air Resources Board  
8 1001 I Street  
9 Sacramento CA 95814

10 Date: September 2, 2020

11 

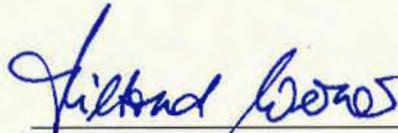
12 RICHARD W. COREY  
13 Executive Officer  
14 California Air Resources Board  
15 1001 I Street  
16 Sacramento CA 95814

17 

18 ELLEN M. PETER  
19 Chief Counsel  
20 D. ARON LIVINGSTON  
21 Assistant Chief Counsel  
22 DIANE KIYOTA  
23 ALEXANDRA KAMEL  
24 Attorneys, Legal Office  
25 California Air Resources Board  
26 1001 I Street  
27  
28

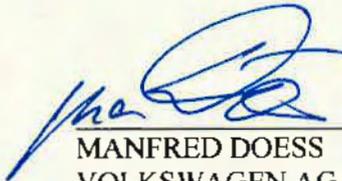
1 FOR VOLKSWAGEN AG:

2  
3 Date:



4 HILTRUD WERNER  
5 VOLKSWAGEN AG  
6 P.O. Box 1849  
7 D-38436 Wolfsburg, Germany

8  
9 Date:



10 MANFRED DOESS  
11 VOLKSWAGEN AG  
12 P.O. Box 1849  
13 D-38436 Wolfsburg, Germany

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 FOR AUDI AG:

2 Date: 08/25/2020

  
\_\_\_\_\_  
OLIVER HOFFMANN  
AUDI AG  
Auto-Union-Straße 1  
85045 Ingolstadt, Germany

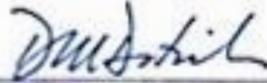
3  
4  
5  
6  
7  
8 Date: 08/27/2020

  
\_\_\_\_\_  
UTA KLAWITTER  
General Counsel  
AUDI AG  
Auto-Union-Straße 1  
85045 Ingolstadt, Germany

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

2 Date: August 25, 2020

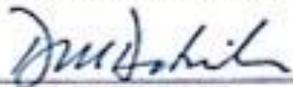


3  
4 DAVID DETWEILER  
VOLKSWAGEN GROUP OF AMERICA, INC.  
2200 Ferdinand Porsche Drive  
5 Herndon, Virginia 20171  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS, LLC:

Date: August, 25, 2020

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

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

3 

4 August 27, 2020

5 Date

6 ROBERT J. GIUFFRA, JR.  
7 SHARON L. NELLES  
8 WILLIAM B. MONAHAN  
9 Sullivan & Cromwell LLP  
10 125 Broad Street  
11 New York, New York 10004  
12 Telephone: (212) 558-4000  
13 Facsimile: (212) 558-3358  
14 giuffrar@sullcrom.com  
15 nelless@sullcrom.com  
16 monahanw@sullcrom.com  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 FOR DR. ING. h.c. F. PORSCHE AG:

2 Date: 25.08.2020

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



---

DR. MICHAEL STEINER  
Member of the Executive Board –  
Research and Development  
DR. ING. h.c. F. PORSCHE  
AKTIENGESELLSCHAFT  
Porschestrasse 911  
71287 Weissach, Germany



Date: 25.08.2020

---

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

1 FOR PORSCHE CARS NORTH AMERICA, INC.:

*George Feygin*

2 Date: 08/24/2020

3 \_\_\_\_\_  
4 GEORGE FEYGIN  
5 Vice President, General Counsel and Secretary  
6 PORSCHE CARS NORTH AMERICA, INC.  
7 1 Porsche Drive  
8 Atlanta, GA 30354

9 Date: 8/24/20

*Glenn Garde*

10 \_\_\_\_\_  
11 GLENN GARDE  
12 Vice President, After Sales  
13 PORSCHE CARS NORTH AMERICA, INC.  
14 1 Porsche Drive  
15 Atlanta, GA 30354

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

2

3

4

Date: 08/24/2020



---

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

5

6

7

8

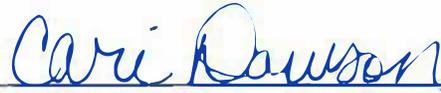
9

10

11

12

Date: 8-24-2020



---

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

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT 2

Modifications to Second Partial Consent Decree

## APPENDIX A

### **BUYBACK, LEASE TERMINATION, VEHICLE MODIFICATION, AND EMISSIONS COMPLIANT RECALL PROGRAM**

#### **XI. OTHER PROVISIONS**

**11.1 No Prohibition on Other Incentives.** Nothing in this Appendix A is intended to prohibit Defendants from offering an Eligible Owner or Eligible Lessee any further incentives or trade-in options in addition to those provided herein; however, Defendants may not offer Eligible Owners or Eligible Lessees other incentives or trade-in options *in lieu* of the options contained herein, in whole or in part, or any incentive not to participate in those options.

#### **11.2 Disposition of Vehicles.**

11.2.1 Vehicles Rendered Inoperable. All Eligible Vehicles returned to Defendants through the Recall Program shall be rendered inoperable by removing the vehicle's Engine Control Unit ("ECU") and may be, to the extent possible, recycled to the extent permitted by law. No Eligible Vehicle that is rendered inoperable may subsequently be rendered operable except as allowed by and in compliance with Sub-Paragraph 11.2.3 below and Appendix B of this Consent Decree.

11.2.2 Limitation on Scrapping of Vehicles. Returned Eligible Vehicles and 3.0 Liter Subject Vehicles may be salvaged for parts, and such parts may be sold in the United States or exported, provided, however, that in no event may the ECU, diesel oxidation catalyst, or diesel particulate filter be salvaged, resold, or exported.

11.2.3 Sale or Re-Sale of Returned Vehicles. Notwithstanding the requirements of Sub-Paragraphs 11.2.1 and 11.2.2 above, Defendants may elect to resell or sell any returned Eligible Vehicle or any 3.0 Liter Subject Vehicle in the United States, provided, however, that Defendants meet the following requirements:

11.2.3.1 *Generation 1.x Vehicles.* For Generation 1.x 3.0 Liter Subject Vehicles, Defendants must first modify the particular vehicle in accordance with the applicable Approved Emissions Modification, label such vehicle, and provide the Approved Emissions Modification Disclosure, Warranty, and Warranty Remedies as provided in Section IX above to prospective purchasers, and meet the other requirements for resale of returned vehicles set forth in Appendix B.

11.2.3.2 *Generation 2.x Vehicles.* For Generation 2.x 3.0 Liter Subject Vehicles, Defendants must first perform the applicable Emissions Compliant Recall or Reduced Emissions Modification on the particular vehicle as approved by EPA/CARB, label such vehicle, and provide the applicable Emissions Compliant Recall or Reduced Emissions Modification Disclosure, Warranty, and Warranty Remedies as provided in Section IX above to prospective purchasers, and meet the other requirements for resale of returned vehicles as set forth in Appendix B.

11.2.4 Export of 3.0 Liter Subject Vehicles. Except as otherwise provided in Appendix B, Defendants may not export or arrange for the export of 3.0 Liter Subject

Vehicles, unless such vehicle has been modified in accordance with the applicable Approved Emissions Modification, Reduced Emissions Modification, or Emissions Compliant Recall pursuant to the terms of Appendix B of this Consent Decree.

11.2.5 Disposition of Vehicles without an Approved Emissions Modification or Emissions Compliant Recall. In the event that there is no Approved Emissions Modification, Reduced Emissions Modification, or Emissions Compliant Recall for a particular Test Group or Test Groups of 3.0 Liter Subject Vehicles (either because the proposed submission was disapproved by EPA/CARB, or because Defendants withdrew or failed to timely submit an application for an Approved Emissions Modification or Emissions Compliant Recall), such vehicles may only be disposed of consistent with the requirements of Sub-Paragraphs 11.2.1 and 11.2.2 above.

**11.3 Reporting.** Defendants shall provide EPA, CARB, and the CA AG with status reports on the Buyback, Lease Termination, Vehicle Modification, and Emissions Compliant- Recall Program. Such status reports shall be certified in accordance with the requirements of Paragraph 34 of the Consent Decree and shall include, at a minimum, the following elements:

11.3.1 A review of Defendants' progress toward reaching the Recall Rate targets required by Section X of this Appendix A;

11.3.2 Each Eligible Vehicle, listed by VIN, model and year, reacquired by Defendants and the date of such reacquisition;

11.3.3 Each Eligible Vehicle, listed by VIN, model and year, that has been resold, exported, rendered inoperable, or destroyed and the date of such resale, export, rendering, or destruction;

11.3.4 Each Eligible Vehicle, listed by VIN, model and year, that has received an Approved Emissions Modification or that has been modified in accordance with an Emissions Compliant Recall or Reduced Emissions Modification and the date of such modification;

11.3.5 A compilation of all notices widely distributed to Eligible Owners or Eligible Lessees since the last report submitted by Defendants under this Paragraph, including email notices and any updates to the claims administration website;

11.3.6 Each 3.0 Liter Subject Vehicle, listed by VIN, model and year, that is not an Eligible Vehicle and that has been removed from commerce and/or has received an Approved Emissions Modification, Reduced Emissions Modification, or an Emissions Compliant Recall;

11.3.7 A summary or copy of all bulletins, notices, or other similar communications sent to authorized Dealerships regarding the Recall Program, including information regarding Warranties and Warranty Remedies provided to dealerships.

11.3.8 The first report shall be due by the end of the month following the end of the quarter in which the Consent Decree is entered by the Court (i.e., January 31st, April 30th, July 31st, and October 31st, as applicable). Thereafter each subsequent report shall be due at the end of the month following the end of each quarter, with the final report due ~~May 31/June 30, 2020, or the end of all Buyback and Lease Termination programs required by this Decree, whichever is later.~~ After one year following the beginning of the Recall Program, Defendants may submit such reports on a semiannual basis together with any other reports required by this Consent Decree. Additionally, Defendants shall provide the EPA, CARB, and the CA

AG with any documents, accounting, or other information related to Volkswagen's compliance within 30 Days of the request by the agencies, or longer with the requesting party's agreement.

11.3.9 Defendants' obligation to submit reports under this Paragraph 11.3 and its Sub-Paragraphs shall not continue beyond May 31, 2020, or the end of all Buyback and Lease Termination programs required by this Decree, whichever is later, provided however, that nothing in this Sub-Paragraph 11.3.9 alters or affects Defendants' obligation to submit reports pursuant to Paragraph 6.1 of Appendix B for five (5) years following the Effective Date of the Consent Decree.

**11.4 No Attorneys' Fees or Costs.** To the extent Defendants elect to pay private attorneys' fees or costs, Defendants will not receive credit for such payments against obligations to Eligible Owners or Eligible Lessees required under this Consent Decree or its Appendices.