

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

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

MDL No. 2672 CRB (JSC)

**PRETRIAL ORDER NO. 12:
STIPULATED PROTECTIVE ORDER**

7 This Document Relates To:

Judge Charles R. Breyer

8 ALL ACTIONS (except securities actions)

9 1. PURPOSES AND SCOPE

10 1.1 Disclosure and discovery activity in this Action are likely to involve production of
11 confidential, proprietary, or private information for which special protection from public
12 disclosure and from use for any purpose other than prosecuting this Action may be warranted.
13 Accordingly, the Parties hereby stipulate to and petition the United States District Court for the
14 Northern District of California (the “Court”) to enter the following Stipulated Protective Order
15 (the “Order”).

16 1.2 The purpose of this Order is to facilitate the production of discovery material,
17 facilitate the prompt resolution of disputes over confidentiality and privilege, protect material to be
18 kept confidential and/or privileged, and ensure that protection is afforded only to material entitled
19 to such treatment, pursuant to the Court’s inherent authority, its authority under Fed. R. Civ. P. 16
20 and 26, the judicial opinions interpreting such Rules, and any other applicable law. Except as
21 otherwise stated in this Order, a Party shall produce, in response to a valid discovery request,
22 otherwise discoverable information in its possession, custody or control that is Confidential or
23 Highly Confidential, and such information shall be handled in accordance with the procedures set
24 forth herein.

25 1.3 This Order shall govern the practice and procedure in those actions transferred to
26 this Court by the Judicial Panel on Multidistrict Litigation (the “Panel”) pursuant to its Transfer
27 Order of December 8, 2015 (Dkt. No. 1), any “tag-along” actions transferred to this Court by the
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1 Panel pursuant to the Panel’s Rules of Procedure, and all related actions that have been or will be
2 originally filed in, transferred to, or removed to this Court and assigned thereto.

3 1.4 This Order and all subsequent Protective Orders shall be binding on all Parties and
4 their counsel in all cases currently pending or subsequently transferred to *In re Volkswagen*
5 “*Clean Diesel*” Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672
6 CRB (JSC), and any other persons or entities who become bound by this Order by signifying their
7 assent through execution of the “Acknowledgment and Agreement to Be Bound” attached as
8 Exhibit A hereto, and shall govern each case in this MDL proceeding unless the Order explicitly
9 states that it does not apply to specific cases or that it applies only to specific cases.

10 1.5 The Parties acknowledge that this Order does not confer blanket protections on all
11 disclosures or responses to discovery and that the protection it affords from public disclosure and
12 use extends only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles. The Parties further acknowledge, as set forth in Section 13.3
14 below, that this Order does not entitle them to file confidential information under seal; Civil Local
15 Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
16 when a Party seeks permission from the Court to file material under seal.

17 2. DEFINITIONS

18 The following definitions apply for purposes of this Order:

19 2.1 Action: any and all cases that have been or will be consolidated into the *In re*
20 *Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL
21 No. 2672 CRB (JSC), for pre-trial proceedings, including any “tag-along” actions transferred to
22 this Court by the Panel pursuant to the Panel’s Rules of Procedure, and all related actions that
23 have been or will be originally filed in, transferred to, or removed to this Court and assigned
24 thereto.

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

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1 2.3 Confidential Information: Discovery Material (regardless of how it is generated,
2 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
3 Procedure 26(c).

4 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as their
5 employees and support staff).

6 2.5 Designating Party: a Party or Non-Party that designates documents, information or
7 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL.”

9 2.6 Discovery Material: all items or information, regardless of the medium or manner
10 in which it is generated, stored, or maintained (including, among other things, testimony,
11 transcripts, answers to interrogatories, documents, responses to requests for admissions, tangible
12 things, and informal exchanges of information), that are produced or generated in connection with
13 any discovery in this Action, whether formally or informally.

14 2.7 Expert: a person retained by a Party or its Counsel to serve as an expert witness or
15 consultant or technical advisor in this Action (as well as his or her employees and support staff).

16 2.8 Foreign Private Data: any information that a Party believes in good faith to be
17 subject to foreign data protection laws or other privacy obligations. Foreign Private Data
18 constitutes Highly Confidential Information under the terms of this Order.

19 2.9 Highly Confidential Information: Discovery Material that (a) is Foreign Private
20 Data, or (b) meets the definition of “Confidential Information” and which the Designating Party
21 reasonably believes to be (i) information reflecting product design or development, non-public
22 technical research, pricing and business strategy documents concerning a particular product or line
23 of products, financial statements reflecting sales data, product margin data, cost and expense data,
24 and/or profit and loss data, sales information relating to specific customers or classes of
25 customers, non-public scientific research; (ii) as to any governmental Parties, information the
26 disclosure of which absent the protections afforded herein to Highly Confidential Information may
27 harm the United States or any state or foreign government’s ability to investigate and/or enforce
28 applicable laws; or (iii) information the disclosure of which absent the protections afforded herein

1 to Highly Confidential Information could create a substantial risk of serious harm that could not be
2 avoided by less restrictive means. Nothing herein precludes any Party from seeking additional
3 protections not currently contemplated by this Order to be applied to any particular document or
4 category of documents, including Highly Confidential Information.

5 2.10 In-House Counsel: attorneys who are employees of a Party to this Action. In-
6 House Counsel does not include Outside Counsel of Record or any other outside counsel.

7 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
8 entity not named as a Party to this Action, and their counsel.

9 2.12 Outside Counsel of Record: attorneys who are not employees of a Party to this
10 Action but have been retained to represent or advise a Party to this Action and have appeared in
11 this Action on behalf of that Party or are affiliated with a law firm or governmental agency which
12 has appeared on behalf of that Party.

13 2.13 Party: any party to this Action.

14 2.14 Prior Document Productions: the documents referenced in Pretrial Order No. 9 as
15 the “U.S. Prior Productions” and the “Non-U.S. Prior Productions.”

16 2.15 Privileged Material: Discovery Material protected from disclosure under the
17 attorney-client privilege, work product doctrine, or any other privilege or protection afforded or
18 recognized by Rule 26 of the Federal Rules of Civil Procedure or Rule 501 of the Federal Rules of
19 Evidence, including any such privilege or protection under applicable U.S. or foreign law,
20 regulation or statute.

21 2.16 Producing Party: a Party or Non-Party that produces Discovery Material in this
22 Action.

23 2.17 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, graphic support services, coding, translating, preparing exhibits
25 or demonstrations, document review, and organizing, storing, or retrieving data in any form or
26 medium) and their employees and subcontractors.

27 2.18 Protected Material: any Discovery Material that is designated as
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

1 2.19 Receiving Party: a Party that receives Discovery Material from a Producing Party.

2 2.20 Submitting Entity: any entity or individual that has submitted information to the
3 United States which the entity or individual claims is protected from public disclosure, or which
4 the United States has informed the entity or individual would be protected from public disclosure
5 by applicable federal law.

6 3. SCOPE

7 3.1 The protections conferred by this Order apply to Protected Material (as defined
8 above) and also (1) any information copied or extracted from Protected Material; (2) all copies,
9 excerpts, summaries, translations, or compilations of Protected Material; and (3) any oral, written,
10 or electronic communications, testimony or presentations, including for purposes of settlement, by
11 Parties or their Counsel that might reveal Protected Material. However, the protections conferred
12 by this Order do not cover information that is in the public domain at the time of disclosure to a
13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
14 result of publication not involving a violation of this Order.

15 3.2 This Order and its protections apply for pre-trial purposes only. The Parties will
16 meet and confer at the appropriate time regarding any use of Protected Material at trial, which use
17 shall be governed by a separate agreement or order.

18 4. DURATION

19 4.1 Even after final disposition of this Action, the confidentiality obligations imposed
20 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
21 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
22 claims and defenses in this action, with or without prejudice; or (2) final judgment herein after the
23 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of time pursuant to
25 applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Manner and Timing of Designations. Except as otherwise provided in this Order
28 (see, e.g., Section 5.2.4 below), or as otherwise stipulated or ordered, Discovery Material that

1 qualifies for protection under this Order must be clearly so designated at the time the material is
2 disclosed or produced. The Parties shall make Confidential and Highly Confidential designations
3 in good faith to ensure that only those documents or testimony that merit Confidential or Highly
4 Confidential treatments are so designated. Either designation may be withdrawn by the
5 Designating Party. If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, the Designating Party must promptly notify
7 all other Parties that it is withdrawing the mistaken designation.

8 5.2 Designation in conformity with this Order requires the following:

9 5.2.1 *Marking.* All or any part of a document, discovery response, or pleading
10 disclosed, produced, or filed by a Producing Party may be designated Confidential or Highly
11 Confidential by marking the appropriate legend ("CONFIDENTIAL – MDL 2672" or "HIGHLY
12 CONFIDENTIAL – MDL 2672") on the face of the document and each page so designated. With
13 respect to tangible items, the appropriate legend shall be marked on the face of the tangible item, if
14 practicable, or by written notice to the Receiving Party at the time of disclosure, production or
15 filing that such tangible item is Confidential or Highly Confidential or contains such information.
16 With respect to documents produced in native format, the Electronically Stored Information
17 Protocol, or ESI Protocol, to be entered in this Action shall govern the form and method for
18 marking such documents as Confidential or Highly Confidential.

19 5.2.2 A Designating Party may request of a court reporter that transcript pages
20 containing Confidential or Highly Confidential Information be separately bound with the
21 appropriate legend ("CONFIDENTIAL – MDL 2672" or "HIGHLY CONFIDENTIAL – MDL
22 2672") affixed to the relevant pages. Any additional court reporter charges for this treatment of
23 the transcript shall be borne by the Designating Party.

24 5.2.3 A Receiving Party shall exercise good faith efforts to ensure that any
25 copies, print-outs of natively produced documents or data, translations, excerpts, summaries, or
26 compilations include a confidentiality legend that matches the confidentiality designation the
27 Designating Party applied to the document, discovery response, transcript, or pleading.
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1 5.2.4 *Timing.* Except as otherwise provided herein, documents and other objects
2 must be designated before disclosure or production. In the event that a Producing Party designates
3 some or all of a witness’s deposition or other pre-trial testimony (or related exhibits) Confidential
4 or Highly Confidential, such designation may be made on the record of the deposition or hearing
5 or within thirty (30) calendar days after receipt of the final transcript of such deposition or hearing.
6 The specific page and line designations over which confidentiality is claimed must be provided to
7 Plaintiffs’ Lead Counsel, Defendants’ Liaison Counsel, and Government Coordinating Counsel
8 (collectively, “Liaison Counsel”) within thirty (30) calendar days of receipt of the transcript in
9 final form from the court reporter, provided, however, that Liaison Counsel will consider
10 reasonable requests for an extension of the deadline. Deposition or pre-trial testimony shall be
11 treated as Highly Confidential pending the deadline or, if applicable, extended deadline for
12 designation. After the expiration of that period, the transcript shall be treated only as actually
13 designated.

14 5.2.5 For information produced in some form other than documentary and for any
15 other tangible items, the Producing Party shall affix in a prominent place on the exterior of the
16 container or containers in which the information or item is stored the legend “CONFIDENTIAL –
17 MDL 2672” or “HIGHLY CONFIDENTIAL – MDL 2672.” If the Protected Material is
18 produced in an electronic form with a load file, the Designating Party shall note that there is
19 Protected Material in the load file. If only a portion or portions of the information or item warrant
20 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. Accidental or inadvertent disclosure of
22 Protected Material—including Protected Material inadvertently disclosed by failure to redact as
23 set forth in Section 11—does not waive the confidential status of such information or any privilege
24 or other protection attached thereto. In the event that Protected Material is inadvertently disclosed
25 without appropriate designations, any Party or Non-Party may thereafter reasonably assert a claim
26 or designation of confidentiality, and the Producing Party shall promptly provide replacement
27 media. Thereafter, the Receiving Party must promptly return the original information and all
28 copies of the same to the Producing Party, or destroy the original information and all copies, and

1 make no use of such information. In the event that Protected Material is inadvertently disclosed to
2 any person and such disclosure is not permitted by the terms of this Order, the Party making the
3 inadvertent disclosure will make all reasonable efforts to ensure the original and all copies of
4 inadvertently disclosed information are not used and are promptly returned or destroyed.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. A challenge to a designation of confidentiality may be
7 made at any time. Unless a prompt challenge to a Designating Party's confidentiality designation
8 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
9 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
10 confidentiality designation by electing not to mount a challenge promptly after the confidentiality
11 designation is made.

12 6.2 Form of Challenges. The Challenging Party shall object to the propriety of the
13 designation of specific material as Confidential or Highly Confidential by providing written notice
14 to the Designating Party of each designation it is challenging and describing the basis for each
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
16 recite that the challenge to confidentiality is being made in accordance with this specific Section
17 of this Order. The Designating Party or its counsel shall thereafter, within fourteen (14) calendar
18 days, respond to such challenge in writing by either: (i) agreeing to remove the designation; or
19 (ii) stating the reasons for such designation. Counsel may agree to reasonable extensions.

20 6.3 Meet and Confer. If the Challenging Party continues to dispute the designation(s)
21 at issue, it shall notify the Designating Party in writing within seven (7) calendar days thereafter.
22 Counsel may agree to reasonable extensions. The Parties shall attempt to resolve each challenge
23 in good faith by conferring directly (in voice-to-voice dialogue; other forms of communication are
24 not sufficient). A Challenging Party may proceed to the next stage of the challenge process only if
25 it has engaged in this meet-and-confer process first or establishes that the Designating Party is
26 unwilling to participate in the meet-and-confer process in a timely manner.

27 6.4 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the Challenging Party may move the Court for an order withdrawing the designation

1 as to the specific designations on which the Challenging Party and the Designating Party could not
2 agree, within fourteen (14) calendar days of the Parties agreeing that the meet-and-confer process
3 will not resolve their dispute. Each such motion must be accompanied by a competent declaration
4 affirming that the movant has complied with the meet-and-confer requirements imposed in the
5 preceding Section.

6 6.5 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. While a challenge is pending, all Parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Designating Party's designation
9 until the Court orders otherwise.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in this Action only for prosecuting, defending, or
13 attempting to settle this Action, including any appeal(s), or in Coordinated Litigation as defined in
14 Section 7.2.11, so long as such use is permitted herein. Any Protected Material may be disclosed
15 only to the categories of persons and under the conditions described in this Order. After the final
16 disposition of the Action, a Receiving Party must comply with the provisions of Section 14 below
17 (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at
18 a location and in a secure manner that ensures that access is limited to the persons authorized under
19 this Order.

20 7.2 Restrictions on Use of Confidential Information. Unless otherwise ordered by the
21 Court or permitted in writing by the Designating Party, and except as specifically authorized by
22 Section 13.7, a Receiving Party may disclose any information or item designated

23 "CONFIDENTIAL – MDL 2672" only to:

24 7.2.1 the Receiving Party's Counsel;

25 7.2.2 the officers, directors, and employees of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action;

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1 7.2.3 Experts retained by the Receiving Party or the Receiving Party’s Counsel to
2 whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 7.2.4 the Court and its personnel, and any appellate court or other court (and their
5 personnel) before which the Parties appear in this Action;

6 7.2.5 special masters or discovery referees appointed by the Court;

7 7.2.6 mediators and their staff, provided such persons have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 7.2.7 court reporters and their staff, professional jury or trial consultants, mock
10 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 7.2.8 potential or actual witnesses in the Action to whom disclosure is reasonably
13 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
14 unless otherwise agreed by the Designating Party or ordered by the Court. If a potential or actual
15 witness refuses to sign Exhibit A, the witness shall be permitted to see Protected Material, but will
16 not be permitted to retain such material. Pages of transcribed deposition testimony or exhibits to
17 depositions that reveal Protected Material must be separately bound by the court reporter and may
18 not be disclosed to anyone except as permitted under this Order;

19 7.2.9 the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information;

21 7.2.10 any other person to whom the Designating Party, in writing, authorizes
22 disclosure; and

23 7.2.11 counsel (and their staff) for parties in other litigation asserting claims
24 relating to Volkswagen, Audi and Porsche diesel vehicles and that have agreed to coordinate with
25 Plaintiffs’ Lead Counsel (“Coordinated Litigation”), provided that (i) the proposed recipient
26 agrees to be bound by this Order and signs the certificate attached as Exhibit A; (ii) the proposed
27 recipient is only permitted to receive Protected Material that was produced by Producing Parties
28 that are also parties in the Coordinated Litigation involving the proposed recipient; (iii) Liaison

1 Counsel for the Party that supplies the Protected Material to such recipient maintains copies of the
2 certificates and a log identifying each such recipient and the Protected Material provided to such
3 recipient; and (iv) Liaison Counsel for the Party that supplies the Protected Material to such
4 recipient shall make that log available to Liaison Counsel for the other Parties at their request.
5 Upon a challenge that Confidential Information has been used in violation of this Order, Liaison
6 Counsel shall provide copies of the log and certificates to Counsel for the other Parties and the
7 Magistrate Judge for in camera review.

8 7.3 Restrictions on Use of Highly Confidential Information. Unless otherwise ordered
9 by the Court or permitted in writing by the Designating Party, and except as specifically
10 authorized by Section 13.7, a Receiving Party may disclose any information or item designated
11 “HIGHLY CONFIDENTIAL – MDL 2672” only to the persons identified in Section 7.2 in
12 accordance with the terms set forth therein, except that disclosure may not be made to the persons
13 identified in Section 7.2.2.

14 7.4 Restrictions on Disclosure to Plaintiffs in Securities Actions. Nothing herein
15 authorizes disclosure of Discovery Material to plaintiffs (or their Counsel) in the securities actions
16 consolidated in this Action for pre-trial proceedings. Any disclosure of Discovery Material with
17 respect to the securities actions will be addressed in a separate order at an appropriate time in the
18 future.

19 7.5 Restriction on Disclosure in Actions Outside the United States. Except as
20 specifically provided in Section 13.7, and except, with respect to governmental Parties, where
21 disclosure is otherwise authorized by United States law, treaty, convention, or international mutual
22 agreement, no Protected Material shall be disclosed, shared, distributed, or otherwise provided in
23 any manner to legal counsel in pending or threatened litigation against any of the Defendants
24 outside of the United States through any other provision of this Order, including but not limited to
25 Section 7.2.11, regardless of whether such legal counsel can be classified as a consultant or
26 affiliate of any U.S. attorney of record in any legal proceeding against any of the Defendants
27 within the United States.
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1 7.6 Exclusion of Individuals from Depositions. Counsel for any Designating Party
2 shall have the right to exclude from depositions any person who is not authorized by the Order to
3 receive Protected Material, but only during periods of examination or testimony directed to or
4 comprising Protected Material.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 8.1 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any Protected Material, that Party must:

9 8.1.1 promptly notify in writing the Designating Party unless prohibited by law
10 from doing so. Such notification shall include a copy of the subpoena or court order;

11 8.1.2 promptly notify in writing the party who caused the subpoena or order to
12 issue in the other litigation that some or all of the material covered by the subpoena or order is
13 subject to this Order. Such notification shall include a copy of this Order; and

14 8.1.3 cooperate with respect to all reasonable procedures sought to be pursued by
15 the Designating Party whose Protected Material may be affected.

16 8.2 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any Protected Material before a determination by the
18 court from which the subpoena or order issued, unless the Party has obtained the Designating
19 Party's permission. The Designating Party shall bear the burden and expense of seeking
20 protection of its Protected Material, and nothing in these provisions should be construed as
21 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from
22 another court.

23 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
24 ACTION

25 9.1 The terms of this Order are applicable to Protected Material produced by a Non-
26 Party in this Action. Such information produced by Non-Parties in connection with this Action is
27 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections. Any Party issuing a
subpoena to a Non-Party shall enclose a copy of this Order.

1 9.2 For a period of fourteen (14) calendar days following production by a Non-Party,
2 that production shall be deemed Highly Confidential Information even if not so designated by the
3 Non-Party, to provide the Parties an adequate opportunity to designate information as Confidential
4 or Highly Confidential Information. The inadvertent failure by any Party to designate information
5 produced by Non-Parties as “CONFIDENTIAL – MDL 2672” or “HIGHLY CONFIDENTIAL –
6 MDL 2672” within that fourteen (14) day period shall not waive a Party’s right to later so
7 designate such information with prospective effect, so long as the designation correction is made
8 in a timely fashion, consistent with Section 5.3 of this Order.

9 9.3 In the event that a Party is required, by a valid discovery request, to produce a Non-
10 Party’s Protected Material in the Party’s possession, and the Party is subject to an agreement with
11 the Non-Party not to produce such information, then the Party shall:

12 9.3.1 promptly notify in writing the Party requesting the Protected Material that
13 some or all of the information requested is subject to a confidentiality agreement with a Non-
14 Party;

15 9.3.2 promptly provide the Non-Party with a copy of this Order, the relevant
16 discovery request(s), and a reasonably specific description of the information requested; and

17 9.3.3 make the information requested available for inspection by the
18 Non-Party.

19 9.4 If the Non-Party fails to object or seek a protective order from the appropriate court
20 within fourteen (14) calendar days of receiving a notice and accompanying information pursuant
21 to Section 9.3, the Receiving Party may produce the Non-Party’s Protected Material responsive to
22 the discovery request, and such information shall be produced with the same designation as the
23 one made by the Non-Party. If the Non-Party timely seeks a protective order, the Receiving Party
24 shall not produce any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in an appropriate
27 court of its Protected Material.
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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures; (b) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (c) make all reasonable efforts to retrieve all unauthorized copies of the Protected Material.

11. REDACTIONS ALLOWED

11.1 Any Producing Party may redact from Discovery Material matter that the Producing Party claims is (i) Privileged Material; or (ii) sensitive personal Foreign Private Data. The Producing Party shall mark each redaction with a legend stating "REDACTED," and specify the basis for the redaction as appropriate, or a comparable notice. Where a document consists of more than one page, at least each page on which information has been redacted shall be so marked. If counsel for the Producing Party agrees or if the Court orders that Discovery Material initially redacted shall not be subject to redaction or shall receive alternative treatment, and the Discovery Material is subsequently produced in unredacted form, then that unredacted Discovery Material shall continue to receive the protections and treatment afforded to documents bearing the confidentiality designation assigned to it by the Producing Party.

11.2 Subject to any Party's right to seek modification, jointly or otherwise, of this Section 11.2 after the conclusion of the meet-and-confer regarding discovery of documents maintained in Germany, as required by Pretrial Order No. 9, in addition to the foregoing, the following shall apply to redactions of Foreign Private Data:

11.2.1 Any Party may redact Foreign Private Data that it claims, in good faith, requires protections under the terms of this Order. Foreign Private Data, however, shall not be redacted from Discovery Material to the extent it directly relates to or identifies an individual named as a Party.

11.2.2 Foreign Private Data shall be redacted from any public filing not filed under seal.

1 11.3 The right to challenge and process for challenging the designation of redactions
2 shall be the same as the right to challenge and process for challenging the designation of
3 Confidential Information and Highly Confidential Information as set forth in Section 6.

4 11.4 Nothing herein precludes any Party from seeking the other Parties' consent or an
5 order allowing the Party to redact nonresponsive matter from otherwise responsive documents on
6 a case-by-case basis.

7 12. PROTECTION OF CERTAIN CONFIDENTIAL AND HIGHLY CONFIDENTIAL
8 GOVERNMENT INFORMATION

9 12.1 If a Party requests otherwise discoverable information from the United States,
10 which a Submitting Entity has claimed is protected from public disclosure, the United States shall,
11 based upon the claimed grounds of confidentiality, designate such information as
12 "CONFIDENTIAL – MDL 2672" or "HIGHLY CONFIDENTIAL – MDL 2672," as appropriate.

13 12.2 If, pursuant to a valid discovery request, the United States produces otherwise
14 discoverable information and designates such information as "CONFIDENTIAL – MDL 2672" or
15 "HIGHLY CONFIDENTIAL – MDL 2672" because a Submitting Entity claims that it is protected
16 from public disclosure or because the United States has informed the Submitting Entity that it
17 would be protected from public disclosure by applicable federal law, and a Challenging Party
18 raises an objection pursuant to Section 6, the United States shall, within fourteen (14) calendar
19 days, send notice to the Submitting Entity. The United States shall not be required to respond to
20 the objection until fourteen (14) calendar days after such notice has been sent to the Submitting
21 Entity. The Submitting Entity shall be permitted to intervene to defend the designation pursuant
22 to the procedures and standards set forth in Section 6.

23 12.3 This Order constitutes a court order within the meaning of 40 C.F.R. § 2.209(d), the
24 Privacy Act, 5 U.S.C. § 552a(b)(11), and the Health Insurance Portability and Affordability Act of
25 1996 (HIPAA) implementing regulations, 45 C.F.R. § 164.512(a), (e)(1)(i). Nothing in this Order
26 shall be construed to compel the United States to produce information that, under law or
27 agreement, it is prohibited from producing, including, *inter alia*, information protected from
28 compelled disclosure by a Certificate of Confidentiality or an Assurance of Confidentiality issued

1 pursuant to the Public Health Service Act, 42 U.S.C. §§ 241(d), 242m(d), and/or the Confidential
2 Information Protection and Statistical Efficiency Act, 44 U.S.C. § 101; confidential substance
3 abuse information protected by 42 U.S.C. §§ 290aa(n) or 290dd-2; visa application material
4 protected by 8 U.S.C. § 1202(f); or information protected by Federal Rule of Criminal Procedure
5 6(e). This Section does not preclude any Party from challenging that any Discovery Material
6 meets these criteria.

7 12.4 With respect to governmental plaintiffs, Protected Material, including documents or
8 communications produced to a Party prior to filing this Action and those prepared for settlement
9 purposes that could reveal Protected Material, shall not be released or disclosed under the
10 Freedom of Information Act, 5 U.S.C. § 552 *et seq.*

11 12.5 Otherwise discoverable information that is protected by the HIPAA implementing
12 regulations shall, in response to a valid discovery request, be designated as “Confidential
13 Information” pursuant to this Order. Notwithstanding Sections 7.2 and 7.3, all such HIPAA-
14 protected records must be destroyed or returned to the United States pursuant to Section 14 and 45
15 C.F.R. § 164.512(e)(1)(v) and may not be used in any related proceeding absent a separate
16 protective order authorizing their disclosure in such proceeding. This Section does not preclude
17 any Party from challenging that any Discovery Material meets these criteria.

18 12.6 This Order shall not govern the production or designation of classified information,
19 sensitive security information, information on classified computer systems, or enforcement-
20 sensitive government documents and information relating to ongoing criminal investigations. This
21 Section does not preclude any Party from challenging that any Discovery Material meets these
22 criteria.

23 12.7 Notwithstanding any federal statute or regulation, no agency, officer, employee or
24 attorney of the United States shall be subject to any civil or criminal penalty or sanction relating to
25 the disclosure of non-public information, provided that such disclosure is made pursuant to the
26 terms of this Order.

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13. MISCELLANEOUS

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2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future. Any Party, entity or person covered by this Order
4 may at any time apply to the Court for relief from any provision of this Order. Subject to the
5 agreement of the Parties or an order of the Court, other entities or persons may be included in this
6 Order by acceding to its provisions in a writing served upon Plaintiffs' Lead Counsel, Defendants'
7 Liaison Counsel, and Government Coordinating Counsel, with such writings to be filed with the
8 Court if so directed.

9 13.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party
10 waives any right it otherwise would have to object to disclosing or producing any information or
11 item on any ground not addressed in this Order. Similarly, no Party waives any right to object on
12 any ground to use as evidence any of the material covered by this Order.

13 13.3 Filing Protected Material. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this Action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
17 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
18 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
19 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
20 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
21 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the
22 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
23 unless otherwise instructed by the Court.

24 13.4 Hearings and Appeals

25 13.4.1 In the event that a Receiving Party intends to utilize Protected Material
26 during a pre-trial hearing, such Receiving Party shall provide written notice no less than five (5)
27 calendar days prior to the hearing, to the Producing Party and/or the Designating Party and to the
28 Court, except that shorter notice may be provided if the Receiving Party could not reasonably

1 anticipate the need to use the document at the hearing five (5) calendar days in advance, in which
2 event notice shall be given immediately upon identification of that need. The use of such
3 Protected Material during the pre-trial hearing shall be determined by agreement of the relevant
4 Parties or by Order of the Court.

5 13.4.2 In the event that any Protected Material is used in any court proceeding in
6 this Action or any appeal in connection with this Action, except for the use of Protected Material
7 during trial, the manner of which shall be determined pursuant to Section 3.2, such Protected
8 Material shall not lose its protected status through such use. Counsel shall comply with all
9 applicable local rules and shall confer on such procedures that are necessary to protect the
10 confidentiality of any documents, information, and transcripts used in the course of any court
11 proceedings, including petitioning the Court to close the courtroom.

12 13.5 Reservations. Entering into, agreeing to or complying with the provisions of this
13 Order shall not: (1) operate as admission that any particular material contains Protected Material;
14 or (2) prejudice any right to seek a determination by the Court (a) whether particular material
15 should be produced, or (b) if produced, whether such material should be subject to the provisions
16 of this Order.

17 13.6 Rights to Inspect Certificates (Exhibit A). Unless otherwise provided herein,
18 except in the event of a good-faith claim of violation of this Order, the Parties agree not to request
19 copies of the certificates (attached hereto in their unexecuted form as Exhibit A) or to determine
20 the identities of the persons signing them.

21 13.7 The Parties agree that Discovery Material may be shared by the United States with
22 any state or federal law enforcement or regulatory agency with jurisdiction over matters related to
23 this Action without limitation, provided that (a) such agency signs the “Agency’s Agreement To
24 Be Bound by Stipulated Protective Order” (Exhibit B) with respect to the particular Discovery
25 Material that may be shared, (b) the United States provides the Producing Party with a copy of
26 such Exhibit B at least 24 hours in advance of sharing the Discovery Material with the agency, and
27 (c) upon request of the Producing Party, the United States provides the Producing Party with
28 information sufficient for the Producing Party to identify the Discovery Material that was provided

1 to each such state or federal law enforcement or regulatory agency. This Section has no
2 applicability to materials provided to the United States outside of this MDL proceeding. Nothing
3 in this Section precludes any state or federal law enforcement or regulatory agency that receives
4 Discovery Material pursuant to this Section from using that material in accordance with the
5 agency's applicable statutes, rules and regulations, or from seeking materials or information
6 outside of this MDL proceeding pursuant to applicable law.

7 14. FINAL DISPOSITION

8 14.1 Within ninety (90) calendar days after the final disposition of this Action, as
9 defined in Section 4, each Receiving Party, including its employees, attorneys, consultants and
10 experts, must use commercially reasonable efforts to destroy or return to the Producing Party all
11 Protected Material, except (1) backup tapes or other disaster recovery systems that are routinely
12 deleted or written over in accordance with an established routine system maintenance practice, or
13 (2) documents that must be preserved as federal records or in compliance with other statutory,
14 regulatory or legal authorities. As used in this Section, "all Protected Material" includes all
15 originals, copies, abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
17 upon request of the Producing Party, the Receiving Party must submit a written certification to the
18 Producing Party (and, if not the same person or entity, to the Designating Party) by the 90-day
19 deadline that (1) states that commercially reasonable efforts have been made to assure that all
20 Protected Material has been returned or destroyed, and (2) affirms that the Receiving Party has not
21 retained any originals, copies, abstracts, compilations, summaries or any other format reproducing
22 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
24 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
25 product (including all emails attaching or referring to Protected Materials), and consultant and
26 expert work product, even if such materials contain Protected Material. Any such archival copies
27 that contain or constitute Protected Material remain subject to this Order as set forth in Section 4
28 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: _____ */s/ Elizabeth J. Cabraser*

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Lead Counsel for Plaintiffs

DATED: _____ */s/ Joshua H. Van Eaton*

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Coordinating Counsel for the United States

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Liaison Counsel for Porsche Cars North America, Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 25, 2016



United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court for
6 the Northern District of California on _____ [date] in the case *In re: Volkswagen "Clean*
7 *Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB
8 (JSC). I agree to comply with and to be bound by all the terms of this Stipulated Protective
9 Order, and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to any person
12 or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this Action.

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17
18 Date: _____

19 City and State where sworn and signed: _____

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21 Printed name: _____

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23 Signature: _____

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EXHIBIT B

AGENCY'S AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER

The United States may share Discovery Material produced or provided by

_____ [print or type name of Producing Party] with

_____ [print or type name of agency].

In the event the United States does so, _____ [print or type
name of agency] agrees to be bound by the terms of the Stipulated Protective Order that was
issued by the United States District Court for the Northern District of California on _____
[date] in the case *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products
Liability Litigation*, MDL No. 2672 CRB (JSC), to the fullest extent permitted by law.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

On Behalf of: _____