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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 Attorney General”), and the California Air Resources Board (“CARB”) (collectively
2 “California”), filed a complaint (the “California Complaint”) in this action on June 27, 2016,
3 against Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America
4 Chattanooga Operations LLC, and Audi AG (collectively, “Volkswagen” or the “Volkswagen
5 Parties”), and Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (together
6 “Porsche” or the “Porsche Parties”) (Volkswagen and Porsche together, “Defendants”), alleging
7 in relevant part that Volkswagen and Porsche violated California Health and Safety Code sections
8 43016, 43017, 43151, 43152, 43153, 43205, 43211, and 43212; California Code of Regulations
9 Title 13, sections 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and the 40 C.F.R sections
10 incorporated therein by reference; California Business and Professions Code sections 17200,
11 17500, and 17580.5; California Civil Code section 3494; and 12 USC § 5536 *et seq.* in
12 connection with the certification, marketing, distribution and sale of approximately 85,285
13 Volkswagen, Audi and Porsche diesel vehicles in California (the “California Claims”);

14 **WHEREAS**, the California Claims have been partially resolved through the Court’s entry
15 of: (1) the partial consent decree between the California Attorney General and Defendants (the
16 “First California Partial Consent Decree”) on September 1, 2016 (Dkt. #1801 in 15-MD-2672);
17 and (2) the partial consent decree among the United States, California, and the Volkswagen
18 Parties (the “First Partial Consent Decree”), concerning 2.0 Liter Subject Vehicles, on October
19 25, 2016 (Dkt. #2103 in 15-MD-2672);

20 **WHEREAS**, it is anticipated that additional California Claims related to 3.0 Liter Subject
21 Vehicles will be partially resolved through the Court’s entry of: (1) the proposed partial consent
22 decree among the United States, California, and Defendants lodged with the Court by the United
23 States on December 20, 2016 (Dkt. #2520 in 15-MD-2672) (the “Second Partial Consent
24 Decree”), which provides relief to California in the form of environmental mitigation trust funds,
25 and which addresses other environmental issues including vehicle recall; and (2) the proposed
26 partial consent decree between California and Defendants filed concurrently on December 20,
27 2016 (Dkt. #2519 in 15-MD-2672) (“Second California Partial Consent Decree”), which provides
28 further Zero Emission Vehicle (“ZEV”) relief in California that is intended to address the adverse

1 environmental impacts that California alleges results from Defendants’ conduct;

2 **WHEREAS**, The First Partial Consent Decree, Second Partial Consent Decree, First
3 California Partial Consent Decree, and Second California Partial Consent Decree include
4 provisions that, as described in further detail therein, collectively require the Volkswagen Parties,
5 and/or the Porsche Parties, to pay \$422,636,320 into a trust that will be used by CARB to mitigate
6 environmental harm in California, to pay \$25,000,000 to CARB to support ZEV vehicle
7 replacement programs, to sell ZEVs in California, to make \$800,000,000 in ZEV-related
8 investments in California, to pay \$86,000,000 to the California Attorney General, and to make
9 additional mitigation payments if they fail to modify or buy back 85% of the subject vehicles in
10 California;

11 **WHEREAS**, Defendants and the People (together the “Parties”) have agreed to resolve
12 remaining aspects of the California Claims related to 2.0 and 3.0 Liter Subject Vehicles without
13 the need for litigation through this additional partial consent decree (“Third California Partial
14 Consent Decree”);

15 **WHEREAS**, Defendants admit that software in the 2.0 and 3.0 Liter Subject Vehicles
16 enables the vehicles’ engine control modules to detect when the vehicles are being driven on the
17 road, rather than undergoing California or federal test procedures, and that this software renders
18 certain emission control systems in the vehicles inoperative when the engine control module
19 detects the vehicles are not undergoing California or federal test procedures, resulting in
20 emissions that exceed permitted levels under California and federal law when the vehicles are
21 driven on the road;

22 **WHEREAS**, Defendants admit that this software was not disclosed in the applications for
23 Executive Orders submitted to CARB for the 2.0 and 3.0 Liter Subject Vehicles, and, as a result,
24 the design specifications of the 2.0 and 3.0 Liter Subject Vehicles, as manufactured, differ
25 materially from the design specifications described in the applications for Executive Orders;

26 **WHEREAS**, this Third California Partial Consent Decree (which is also referred to herein
27 as the “Consent Decree”), is one of several coordinated resolutions of various state and federal
28

1 claims related to the conduct alleged in the Complaint, set forth in other agreements;

2 **WHEREAS**, except as expressly provided in this Third California Partial Consent
3 Decree, nothing in this Consent Decree shall constitute an admission of any fact or law by any
4 Party, including as to any factual or legal assertion set forth in the California Complaint, except
5 for the purpose of enforcing the terms or conditions set forth herein;

6 **WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds,
7 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
8 among the Parties regarding the California Claims, and that this Consent Decree is fair,
9 reasonable, and in the public interest; and

10 **WHEREAS**, various settlement documents have been filed in this Multidistrict Litigation
11 (“MDL”) proceeding, including the Second Partial Consent Decree and the Second California
12 Partial Consent Decree, a second proposed consumer class action settlement agreement and
13 release concerning 3.0 Liter Subject Diesel Vehicles by the Plaintiffs’ Steering Committee, and a
14 second proposed partial stipulated order for permanent injunction and monetary judgment by the
15 Federal Trade Commission, and that, as set forth herein, portions of this California Partial
16 Consent Decree shall not become effective unless and until certain other settlement documents
17 are approved and/or entered by the Court, as applicable.

18 **NOW, THEREFORE**, before the taking of any testimony, without the adjudication of
19 any issue of fact or law, and with the consent of the Parties, **IT IS HEREBY ADJUDGED,**
20 **ORDERED, AND DECREED** as follows:

21 **I. JURISDICTION AND VENUE**

22 1. The Court has jurisdiction over the subject matter of this action, pursuant to 28
23 U.S.C. §§ 1331 and 1355, and over the Parties to the extent limited by this paragraph. Venue lies
24 in this District pursuant to 28 U.S.C. § 1407 and the MDL Panel’s Transfer Order, dated
25 December 8, 2015, and filed in this MDL action as Dkt. # 1. The Court has supplemental
26 jurisdiction over California’s state law claims pursuant to 28 U.S.C. § 1367. For purposes of this
27 Decree, Defendants consent to the Court’s jurisdiction over entry of this Consent Decree and over
28

1 any action to enforce this Consent Decree, and consent to venue in this judicial district for such
2 purposes. Defendants reserve the right to challenge and oppose any claims to jurisdiction by
3 California that do not arise from the Court's jurisdiction over this Consent Decree or an action to
4 enforce this Consent Decree.

5 2. Solely for purposes of this Consent Decree, and without prejudice to their ability
6 to contest the legal sufficiency or merits of a complaint in any other proceeding, Defendants do
7 not contest that the California Complaint states claims upon which relief may be granted pursuant
8 to: California Health and Safety Code sections 43016, 43017, 43151, 43152, 43153, 43205,
9 43211, and 43212; California Code of Regulations Title 13, sections 1903, 1961, 1961.2, 1965,
10 1968.2, and 2037, and the 40 C.F.R. provisions incorporated therein by reference; California
11 Business and Professions Code Sections 17200, 17500, and 17580.5; California Civil Code
12 section 3494; and 12 USC § 5536 *et seq.*

13 **II. APPLICABILITY**

14 3. The obligations of this Consent Decree apply to and are binding upon California,
15 and upon Volkswagen and Porsche, as applicable, and any of their respective successors, assigns,
16 or other entities or persons otherwise bound by law.

17 4. The Volkswagen Parties' obligations to comply with all requirements of this
18 Consent Decree are joint and several. The Porsche Parties' obligations to comply with the
19 Porsche Parties' other requirements of this Consent Decree are joint and several. Further, the
20 Volkswagen Parties shall be jointly liable with the Porsche Parties to implement the Porsche
21 Parties' requirements of this Consent Decree. In the event of the insolvency of any Volkswagen
22 Parties or the failure by any Volkswagen Parties to implement any requirement of this Consent
23 Decree, the remaining Volkswagen Parties shall complete all such requirements except as set
24 forth in this Paragraph. In the event of the insolvency of any Porsche Party or the failure by any
25 Porsche Party to implement any applicable requirement of this Consent Decree, the remaining
26 Porsche Party and the Volkswagen Parties shall complete all such requirements.

27 5. Any legal successor or assign of any Volkswagen Party or Porsche Party shall
28 remain jointly and severally liable for the payment and other performance obligations hereunder,

1 except as described in Paragraph 4, above. Defendants shall include an agreement to so remain
2 liable in the terms of any sale, acquisition, merger, or other transaction changing the ownership or
3 control of any of the Defendants, and no change in the ownership or control of any Defendant
4 shall affect the obligations hereunder of any Defendant without modification of the Decree in
5 accordance with Section XVII (Modification).

6 6. Defendants shall provide a copy of this Consent Decree to the members of their
7 respective Board of Management and/or Board of Directors and their executives whose duties
8 might reasonably include compliance with any provision of this Decree. Defendants shall
9 condition any contract providing for work required under this Consent Decree to be performed in
10 conformity with the terms thereof. Defendants shall also ensure that any contractors, agents, and
11 employees whose duties might reasonably include compliance with any provision of the Consent
12 Decree are made aware of those requirements of the Decree relevant to their performance.

13 7. In any action to enforce this Consent Decree, Defendants shall not raise as a
14 defense the failure by any of their officers, directors, employees, agents, contractors, or auditors
15 to take any actions necessary to comply with the provisions of this Consent Decree.

16 **III. DEFINITIONS**

17 8. Terms used in this Consent Decree that are defined under California law shall
18 have the meanings assigned to them under California law, unless otherwise provided in this
19 Decree. For purposes of this Consent Decree:

20 a. “2.0 Liter Subject Vehicles” has the meaning set forth in the
21 Second Partial Consent Decree;

22 b. “3.0 Liter Subject Vehicles” has the meaning set forth in the
23 Second Partial Consent Decree;

24 c. “CARB” means the California Air Resources Board;

25 d. “California” means Plaintiff the People of the State of California,
26 acting by and through Xavier Becerra, Attorney General of the State of California, and
27 the California Air Resources Board;

28 e. “California Complaint” means the complaint filed by California in

1 this action on June 27, 2016;

2 f. “Consent Decree,” “this Decree,” or “Third California Partial
3 Consent Decree” means this partial consent decree;

4 g. “Day” means a calendar day unless expressly stated to be a business
5 day. In computing any period of time under this Consent Decree, where the last day
6 would fall on a Saturday, Sunday, or federal or California state holiday, the period shall
7 run until the close of business of the next business day;

8 h. “Defendants” means Volkswagen AG, Volkswagen Group of
9 America, Inc., Volkswagen Group of America Chattanooga Operations LLC, Audi AG,
10 Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc.;

11 i. “Effective Date” has the meaning set forth in Section XV below.

12 j. “Electronic Emissions Control Module (“ECM”) Software” means
13 the electronic control unit(s), including the software and calibrations integrated in the
14 ECM hardware, which control the engine, transmission, powertrain, emissions control
15 system, and on-board diagnostic system functions in the vehicle;

16 k. “Environmental Management System” or “EMS” means the
17 management system established by the Volkswagen Parties to provide a structure to
18 carry out specific activities related to environmental protection and compliance with
19 United States environmental laws for vehicles marketed and sold by the Volkswagen
20 Parties in the United States;

21 l. “EPA” means the United States Environmental Protection Agency
22 and any of its successor departments or agencies;

23 m. “First California Partial Consent Decree” means the partial consent
24 decree between the California Attorney General and Defendants entered by the Court on
25 September 1, 2016 (Dkt. #1801 in 15-MD-2672);

26 n. “First Partial Consent Decree” means the partial consent decree
27 among the United States, California, and the Volkswagen Parties concerning 2.0 Liter
28 Subject Vehicles entered by the Court on October 25, 2016 (Dkt. #2103 in 15-MD-

1 2672);

2 o. “Golden Rules Handbook” means the specific internal procedures
3 developed by the Volkswagen Parties on January 25, 2016 (Version 1.0), or subsequent
4 versions if any, to optimize the Volkswagen Parties’ operational internal control system,
5 which focuses on control unit software development, testing and monitoring procedures
6 for vehicle certification, and escalation management in the Product Safety Committee
7 (also referred to as “APS”);

8 p. “Materials” means Submissions and other documents,
9 certifications, plans, reports, notifications, data, or other information that is required to
10 be submitted pursuant to this Third California Partial Consent Decree;

11 q. “Paragraph” means a portion of this Third California Partial
12 Consent Decree;

13 r. “Parties” means California and Defendants;

14 s. “Porsche” or the “Porsche Parties” means Dr. Ing. h.c. F. Porsche
15 AG and Porsche Cars North America, Inc.;

16 t. “Product Development Process” means Defendants’ process to
17 manage the development of motor vehicles, including research and development,
18 quality assurance, and compliance with United States environmental laws for vehicles
19 marketed and sold by Defendants in the United States;

20 u. “Porsche Remediation Plan” means the plan approved by the
21 Executive Board of Dr. Ing. h.c. F. Porsche AG in December 2016, or subsequent
22 versions, if any, to develop and implement internal procedures for the development of
23 vehicles that include emissions control systems designed to comply with United States
24 environmental laws and regulations, and to ensure the segregation of duties relating to
25 emission testing and certification of such vehicles;

26 v. “Second California Partial Consent Decree” means the proposed
27 partial consent decree between California and Defendants filed on December 20, 2016
28 (Dkt. #2519 in 15-MD-2672);

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 lodged with the Court by the
10 United States on January 11, 2017 (Dkt. #2758 in 15-MD-2672) and entered by the
11 Court on April 13, 2017 (Dkt. #3155 in 15-MD-2672); and

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

15 **IV. MONETARY TERMS**

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

20 10. Volkswagen shall also pay directly to CARB a total aggregate amount of
21 \$60,000,000 in consideration for CARB’s past and future costs associated with the First Partial
22 Consent Decree and Second Partial Consent Decree. This amount shall be payable in equal
23 annual installments over a period of six years from the Entry Date, or, alternatively, at
24 Volkswagen’s election, may be paid in full within 30 days of Entry Date. If not paid in full,
25 Volkswagen shall make the first payment of \$10,000,000 within 30 days of the Entry Date; each
26 of the five subsequent annual payments of \$10,000,000 shall be due within one calendar year of
27 the due date for the prior year’s payment. These funds shall be deposited into the Air Pollution
28 Control Fund.

1 11. Payments required to be made pursuant this Consent Decree shall be made via
2 wire transfer to CARB pursuant to instructions to be provided by CARB.

3 **V. INJUNCTIVE RELIEF FOR THE VOLKSWAGEN PARTIES**

4 **Product Development Process**

5 12. Segregation of Duties between Product Development and Certification
6 Testing/Monitoring for the Volkswagen Parties. Within 180 Days after the Effective Date, the
7 Volkswagen Parties shall implement measures to ensure that employees involved in certification
8 testing and monitoring for purposes of vehicle certification under the Clean Air Act and
9 California law are organizationally separate from product development. The Volkswagen Parties
10 shall form and maintain an organizationally separate certification group (“Certification Group”)
11 to manage, supervise, and conduct certification testing and monitoring. The Certification Group
12 shall:

- 13 a. Ensure that the Volkswagen Parties have policies, procedures,
14 practices, or processes for vehicle development that include emission control systems
15 designed to comply with U.S. laws and regulations, including California laws and
16 regulations, related to vehicle certification and emission standards;
- 17 b. Conduct, or retain a qualified contractor to conduct, emissions
18 certification testing of both production and in-use vehicles;
- 19 c. Plan the testing program, obtain the vehicles, confirm that the
20 configuration of the test vehicles is representative of the production vehicles, and test or
21 retain a qualified contractor to test the certification vehicles consistent with EPA’s and
22 CARB’s regulations for certification and in-use performance testing. The Certification
23 Group may utilize testing facilities and technicians assigned to other units within the
24 Volkswagen Parties’ organization provided that the Certification Group controls the
25 certification testing; and
- 26 d. Supervise all certification personnel, provide appropriate training,
27 and control access to certification vehicles.

28 13. Establishment of Volkswagen Parties’ Project Management Office(s). Within 90

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

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

17 a. The Volkswagen Parties (under the supervision of the Certification
18 Group) shall test certain model year 2017, 2018, and 2019 light-duty motor vehicles
19 using portable emissions measurement system ("PEMS") testing. For each model year,
20 the Volkswagen Parties shall perform PEMS testing on 33% of Volkswagen Parties'
21 EPA-certified test groups within that model year ("Volkswagen Test Groups"). For
22 purposes of determining the number of Volkswagen Test Groups composing 33%, the
23 Volkswagen Parties shall round up or down to the nearest whole Volkswagen Test
24 Group number closest to 33%. Volkswagen shall test those Volkswagen Test Groups
25 selected by EPA pursuant to Paragraph 15(a) of the Third Partial Consent Decree
26 between Defendants and the United States, lodged with the Court on January 11, 2017
27 (Dkt. #2758 in 15-MD-2672) (the "US Third Partial Consent Decree"). If EPA does not
28 select the Volkswagen Test Groups pursuant to the schedule set forth in Paragraph 15(a)

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

23 b. In addition to the requirements of Paragraph 14.a, the Volkswagen
24 Parties shall retain an independent third-party emissions tester (“Third-Party Emissions
25 Tester”). (The Volkswagen Parties and Porsche Parties may hire the same Third-Party
26 Emissions Tester.) No attorney-client relationship shall exist or be formed between any
27 Volkswagen Party and the Third-Party Emissions Tester. For each of model year 2017,
28 2018, and 2019, the Volkswagen Parties shall ensure that the Third-Party Emissions

1 Tester conducts PEMS testing on a vehicle from each of two Volkswagen Test Groups.
2 Testing under this Paragraph 14.b does not count toward the testing required under
3 Paragraph 14.a. These Volkswagen Test Groups selected for testing under this
4 Paragraph 14.b shall be the Volkswagen Test Groups with the highest projected sales
5 for the model year at the time of certification, or if applicable those Volkswagen Test
6 Groups selected by EPA (or, if EPA fails to make a selection pursuant to Paragraph
7 15(a)) of the US Third Partial Consent Decree, those test groups selected by CARB) by
8 letter to the Volkswagen Parties, pursuant to Section XIV (Notices). Any such letters
9 shall be provided no later than June 30 of the year for which the model year is named.
10 All testing under this Paragraph 14.b shall be completed by December 31 of the
11 calendar year for which the applicable model year is named.

12 c. The Volkswagen Parties shall satisfy the testing required by
13 Paragraph 14.a as follows, and shall ensure that the Third-Party Emissions Tester
14 satisfies the testing required by Paragraph 14.a and b as follows:

15 i. Test a Volkswagen Test Group by testing one sample
16 vehicle procured at random from the series production vehicles from that
17 selected Volkswagen Test Group;

18 ii. Perform the required third-party PEMS testing on public
19 roads in the United States, and perform all PEMS testing under real-world
20 driving conditions over a range of ambient temperatures and pressures
21 (including conditions not represented on the Federal Test Procedure or any
22 other test procedure designated by CARB) to measure emissions that are
23 detectable on a serial vehicle via PEMS of the vehicle's regulated criteria air
24 pollutants and CO₂; and

25 iii. Conduct the required PEMS testing according to test
26 methods recorded before the testing commences. The Third-Party Emissions
27 Tester shall use test methods independently from the Volkswagen Parties. The
28 Volkswagen Parties and Third-Party Emissions Testers will make best efforts

1 to provide 10 days written notice to CARB before commencing testing.

2 d. Within 120 Days after the Effective Date, the Volkswagen Parties
3 shall submit to CARB for review (and for CARB approval, if EPA fails to approve or
4 disapprove a plan for PEMS testing submitted by the Volkswagen Parties to EPA) in
5 accordance with Section VII (Approval of Submissions) a plan for PEMS testing under
6 this Paragraph. Such plan shall include:

7 i. A list of those test groups the Volkswagen Parties will test
8 for model year 2017;

9 ii. A written statement of qualifications for the proposed Third-
10 Party Emissions Tester including its name, affiliation, and address, its
11 experience in conducting PEMS testing, and a description of previous contracts
12 or financial relationships of the proposed Third-Party Emissions Tester with
13 the Volkswagen Parties;

14 iii. A list of all emissions and vehicle and engine parameters the
15 Volkswagen Parties will measure and record during each PEMS test they
16 perform under this Paragraph 14;

17 iv. A description of the test methods the Volkswagen Parties
18 propose to use including the routes and ambient conditions over which the
19 vehicles shall be tested;

20 v. A template for the Volkswagen Parties' summary report as
21 described below; and

22 vi. A description of how the Volkswagen Parties intend to
23 satisfy all requirements of this Paragraph 14.

24 e. For each model year, for the PEMS testing required by Paragraph
25 14.a, the Volkswagen Parties shall provide the test data, a detailed statement of all test
26 methods used, and an executive summary of the data and methods (that includes the
27 measured emissions of the vehicle's regulated criteria air pollutants and CO₂) for all
28 tests the Volkswagen Parties performed under this Paragraph for that model year

1 (“Volkswagen Defendants’ Summary Report”) to CARB as specified in Section XIV
2 (Notices). The Volkswagen Parties’ Summary Report for model year 2017 shall be due
3 no later than March 1, 2018. The Volkswagen Parties’ Summary Report for model
4 years 2018 and 2019 shall be due no later than November 30 of the calendar year for
5 which the model year is named, unless the Volkswagen Parties and EPA agree to a later
6 date that is no later than January 15 of the following calendar year, unless also agreed to
7 by CARB. Within 21 Days following submission of the Volkswagen Parties’ Summary
8 Report to CARB, the Volkswagen Parties shall post their Summary Report (redacted of
9 any Confidential Business Information (“CBI”) or personal information the disclosure
10 of which is restricted by applicable law; however no emissions test methods and results
11 may be claimed as CBI) in English and German at the public website required by
12 Paragraph 50.

13 f. For each model year, for the PEMS testing required by Paragraph
14 14.b, the Volkswagen Parties shall ensure that the Third-Party Emissions Tester
15 prepares one or more “Third-Party Emissions Tester Summary Report” including the
16 test data, a detailed statement of all test methods used, and an executive summary of the
17 data and methods (that includes the measured emissions of the vehicle’s regulated
18 criteria air pollutants and CO₂) for all testing the Third-Party Emissions Tester
19 performed under this Paragraph for that model year. The Volkswagen Parties shall
20 provide the Third-Party Emissions Tester Summary Report to CARB as specified in
21 Section XIV (Notices) by no later than March 1 of the calendar year immediately after
22 the calendar year for which the model year is named. Within 30 Days following
23 submission of the Third-Party Emissions Tester Summary Report to CARB, the
24 Volkswagen Parties shall post the Third-Party Emissions Tester Summary Report
25 (redacted of any CBI or personal information the disclosure of which is restricted by
26 applicable law; however no emissions test methods and results may be claimed as CBI)
27 in English and German at the public website required by Paragraph 50.

28 g. If any of the PEMS data produced pursuant to the testing in

1 Paragraph 14.a or Paragraph 14.b suggest the potential presence of an undisclosed
2 AECD or defeat device, or are otherwise anomalous or inconsistent with the
3 certification application for the Volkswagen Test Groups being tested, the Volkswagen
4 Parties shall, upon CARB's reasonable written request: meet and confer with CARB to
5 discuss the PEMS data; work collaboratively with CARB to determine why the PEMS
6 data suggest the potential presence of an undisclosed AECD or defeat device, or are
7 otherwise anomalous or inconsistent with the certification application for the
8 Volkswagen Test Groups being tested; provide relevant information and documents to
9 CARB; and provide CARB with vehicles and vehicle components (including without
10 limitation hardware and software) for PEMS or other testing by CARB.

11 h. The Parties agree and acknowledge that neither U.S. law nor
12 California law set forth a standard by which PEMS testing can be used to determine
13 compliance for purposes of certification under California law.

14 15. Business Units within the Product Development Process. Within 180 Days after
15 the Effective Date, the Volkswagen Parties shall implement the internal procedures set out in the
16 Golden Rules Handbook by establishing internal controls and rules of procedure, and by defining
17 the tasks, authorities, and responsibilities for the business units, committees, and boards involved
18 in the Product Development Process, including, but not limited to, the Product Safety Committee
19 (also known as "APS"), the Change Control Board, and the Type Approval, Recyclability and
20 Functional Safety Department (also known as "EGDT"); provided however, that implementation
21 of software and information technology may extend beyond 180 Days after the Effective Date,
22 and that these additional Days shall not count in determining the three-year period set forth in
23 Paragraph 25. The Golden Rules Handbook and the internal controls and internal rules of
24 procedure developed by the Volkswagen Parties may be subject to reasonable modification, in
25 consultation with the Department of Justice and California. The Volkswagen Parties shall
26 conduct regular employee training regarding the internal procedures, and shall monitor
27 implementation of these procedures through the Volkswagen Parties' Governance, Risk, and
28 Compliance ("GRC") process.

1 16. Definition of Managers' Responsibilities. Within 120 Days after the Effective
2 Date, the Volkswagen Parties shall define the tasks, authorities, and responsibilities of the
3 managers involved in the Product Development Process with respect to compliance with
4 California environmental laws and regulations.

5 17. Internal Audit. Within one year after the Effective Date, the Volkswagen Parties
6 shall conduct and complete an internal audit to track the implementation of the internal
7 procedures in the Golden Rules Handbook relating to vehicle approval procedures with respect to
8 California environmental laws and regulations, ECM Software development in the Product
9 Development Process, and escalation management in the Product Safety Committee ("APS"). The
10 audit shall assess the effectiveness of those internal procedures and propose any corrective actions
11 to improve their effectiveness.

12 18. Reporting on Injunctive Relief Measures. The first annual report provided to
13 California pursuant to Paragraph VIII.46 shall include the information required by Paragraphs 17,
14 20, 21, 22. In the second and third annual reports provided to California pursuant to Paragraph
15 46, the Volkswagen Parties shall describe the measures that they have implemented to promote
16 compliance with the requirements of Paragraphs 12, 13, 14, 15, 16, 20, 21, and 22 of this Section
17 V (Injunctive Relief for Volkswagen Parties), together with an assessment of the effectiveness of
18 those measures in promoting compliance with U.S. environmental law, including California law,
19 and any corrective actions the Volkswagen Parties have undertaken to improve their effectiveness
20 in promoting compliance with U.S. environmental law, including California law. In the second
21 and third annual reports provided to the California pursuant to this Paragraph, the Volkswagen
22 Parties shall also address: (1) all risks assessed and recorded as part of the annual GRC process
23 relating to either compliance with California environmental laws and regulations or risks of rule
24 violations in the Product Development Process; (2) countermeasures taken by the Volkswagen
25 Parties' business units in response to those risks; and (3) management controls implemented by
26 the Volkswagen Parties' business units relating to those risks. The information required to be
27 provided in the annual reports pursuant to this Paragraph 18 shall be certified in accordance with
28 Paragraph 51. The Volkswagen Parties may elect to fulfill their reporting obligations under this

1 Paragraph 18 by submitting the required information in a single joint report to the Department of
2 Justice and California.

3 **Whistleblower System**

4 19. Implementation of Whistleblower System. Within 180 Days of the Effective Date,
5 the Volkswagen Parties shall implement and maintain the Volkswagen Group whistleblower
6 system that was approved by the Board in September 2016. The Volkswagen Parties shall retain
7 professionally educated and trained employees to administer the system. Any whistleblower
8 policy that applies to individuals whose work the Volkswagen Parties reasonably anticipate may
9 involve or relate to vehicles to be certified for sale in California shall designate violations of U.S.
10 environmental laws or regulations, including California laws or regulations, as “serious
11 violations” within the meaning of the policy.

12 20. Report on case tracking. In each annual report provided to CARB pursuant to
13 Paragraph VIII.46, the Volkswagen Parties shall submit a report, with a certification in
14 accordance with Paragraph 51 of this Consent Decree, regarding case tracking under the
15 Volkswagen Group whistleblower system of all whistleblower alerts relating to violations of U.S.
16 environmental protection laws or regulations, including California laws or regulations.

17 **Employee Survey and Code of Compliance**

18 21. Annual Employee Survey. Within 90 Days after the Effective Date, the
19 Volkswagen Parties shall create for inclusion in their annual employee survey a question to
20 monitor the progress of the Volkswagen Parties’ integrity campaign as introduced on June 16,
21 2016, and, for teams whose work includes matters related to compliance with U.S. environmental
22 laws, including California laws, questions in appropriate managers’ guides to the annual
23 employee survey to gauge compliance with U.S. laws or regulations (including California laws or
24 regulations) relating to environmental compliance. The Volkswagen Parties shall establish a
25 centralized process to monitor and address employee survey responses relating to the integrity
26 campaign. In each annual report to CARB pursuant to Paragraph 46, the Volkswagen Parties
27 shall provide a summary of survey results relating to the integrity campaign.

28 22. Code of Conduct. Within 180 Days after the Effective Date, the Volkswagen

1 Parties shall ensure that the Volkswagen Parties' corporate Code of Conduct includes provisions
2 regarding (1) environmental protection and (2) responsibility for compliance. The Volkswagen
3 Parties shall require all new employees to attend training regarding the Code of Conduct. In each
4 annual report to CARB pursuant to Paragraph 46, the Volkswagen Parties shall provide a
5 summary of training provided to employees regarding the Code of Conduct.

6 **Environmental Management System ("EMS") Audit**

7 23. EMS Audit. Within 90 Days after the Effective Date, the Volkswagen Parties
8 shall contract with and retain an independent third party to conduct an EMS audit pursuant to an
9 industry-recognized standard for product development processes for vehicles to be certified for
10 sale in the United States for each year for calendar years 2017, 2018, and 2019. Beginning with
11 the EMS audit covering calendar year 2017, the EMS audit shall include: (1) an assessment of the
12 Volkswagen Parties' processes to comply with U.S. environmental laws and regulations
13 (including California laws and regulations); and (2) a recommendation for corrective actions.

14 24. Annual EMS Audit Report. Upon completion of each annual EMS audit report,
15 the Volkswagen Parties shall provide to CARB a copy of their annual EMS audit report covering
16 calendar years 2017, 2018, and 2019. To the extent that any such report contains CBI, the
17 Volkswagen Parties shall simultaneously submit to CARB for its review a summary version that
18 can be made publicly available. Within 21 Days after a copy is provided to CARB, the
19 Volkswagen Parties shall post a copy of the annual EMS audit report (redacted of any CBI or
20 personal information the disclosure of which is restricted by applicable law; however no
21 emissions test methods and results may be claimed as CBI) in English and German on the public
22 website required by Paragraph 50.

23 **Implementation Timeframe**

24 25. The Volkswagen Parties shall continue to implement the ongoing requirements of
25 this Consent Decree, other than Section VI (Injunctive Relief for the Porsche Defendants), for a
26 three-year period after the implementation of the requirements of Paragraph 15.

27 **Reports of Independent Compliance Auditor**

28 26. The Volkswagen Parties shall comply with the obligations set forth in Paragraphs

1 27 through 29 (Independent Compliance Auditor) under the US Third Partial Consent Decree
2 between Defendants and the United States, lodged with the Court on January 11, 2017 (Dkt.
3 #2758 in 15-MD-2672).

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

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

14 a. The Volkswagen Parties shall cooperate fully with the Independent
15 Compliance Auditor and shall provide the Independent Compliance Auditor with any
16 information and documents that the Auditor requests or may reasonably need to fulfill
17 the duties listed in this Paragraph. The Volkswagen Parties shall facilitate the
18 Independent Compliance Auditor's access to the Volkswagen Parties' documents,
19 databases, and facilities where certification or compliance testing of the Volkswagen
20 Parties' vehicles occur. The Volkswagen Parties shall use best efforts to make their
21 employees or contractors available to answer questions or provide information that the
22 Independent Compliance Auditor may need in the fulfillment of its duties. In the event
23 that the Volkswagen Parties seek to withhold from the Auditor access to information,
24 documents, records, facilities, or current or former employees or contractors of the
25 Volkswagen Parties that may be subject to a claim of attorney-client privilege or to the
26 attorney work product doctrine, or where the Volkswagen Parties reasonably believe
27 production or providing access would otherwise be inconsistent with applicable law, the
28 Volkswagen Parties shall work cooperatively with the Independent Compliance Auditor

1 to resolve the matter to the satisfaction of the Independent Compliance Auditor
2 consistent with applicable law. If the Independent Compliance Auditor believes the
3 Volkswagen Parties have violated the requirements of this Paragraph 28.a, the
4 Independent Compliance Auditor shall promptly notify California, including a
5 description of the alleged violations and supporting documentation as necessary.

6 b. Annual Reports of Independent Compliance Auditor. The
7 Independent Compliance Auditor shall review documents and take such reasonable
8 measures as may be necessary to verify the Volkswagen Parties' compliance with
9 Section V (Injunctive Relief for the Volkswagen Parties) of this Consent Decree. For
10 three years after the Effective Date, the Independent Compliance Auditor shall audit the
11 Volkswagen Parties' compliance with their obligations under Section V (Injunctive
12 Relief for the Volkswagen Parties) of this Consent Decree, and shall provide an annual
13 report to California. The first annual report is due one year after the Effective Date, the
14 second annual report is due two years after the Effective Date, and the third annual
15 report is due three years after the Effective Date. The Independent Compliance Auditor
16 shall concurrently provide a draft copy of its annual report to California and the
17 Volkswagen Parties. Within 30 Days after receipt of the draft report, the Volkswagen
18 Parties shall provide their comments, if any, to the Independent Compliance Auditor.
19 The Independent Compliance Auditor may consider and reflect the Volkswagen Parties'
20 comments in its final report to the extent that the Independent Compliance Auditor
21 deems appropriate in the exercise of its independent judgment. In the annual report, the
22 Independent Compliance Auditor shall include, as applicable, findings that identify any
23 noncompliance by the Volkswagen Parties with the requirements of Section V
24 (Injunctive Relief for the Volkswagen Parties) of this Consent Decree, and shall
25 recommend, as applicable, actions for the Volkswagen Parties to take to achieve
26 compliance. The Independent Compliance Auditor shall also monitor the Volkswagen
27 Parties' implementation of any action plan submitted pursuant to Paragraph 29, and
28 shall indicate in the annual report the status of any corrective action. All final annual

1 reports from the Independent Compliance Auditor (redacted of any CBI or personal
2 information the disclosure of which is restricted by applicable law; however no
3 emissions test methods and results may be claimed as CBI) shall be posted by the
4 Parties on the public website required by Paragraph 50 in both English and German
5 within 21 Days after issuance. The Independent Compliance Auditor may elect to
6 fulfill the reporting obligations under this Paragraph by submitting a single joint report
7 to the Department of Justice and California.

8 c. Copies of Final Annual Reports Submitted to United States. If the
9 Independent Compliance Auditor does not elect to submit a single joint report to the
10 Department of Justice and California, within 5 business days of submission to the
11 United States, the Independent Compliance Auditor shall provide California a copy of
12 the final annual reports submitted pursuant to Paragraph 28.c of the Third Partial
13 Consent Decree between Defendants and the United States, lodged with the Court on
14 January 11, 2017 (Dkt. #2758 in 15-MD-2672).

15 d. Compensation of the Independent Compliance Auditor. The
16 Volkswagen Parties shall be responsible for compensating the Independent Compliance
17 Auditor for the performance of its duties in accordance with the terms agreed upon by
18 the Volkswagen Parties and the selected Independent Compliance Auditor. Such terms
19 of agreement shall clarify that the Independent Compliance Auditor is not an employee
20 or an agent of the Volkswagen Parties, and the Independent Compliance Auditor's work
21 is not subject to the Volkswagen Parties' assertion of attorney-client or work product
22 privileges.

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

24 a. Action Plan. Within 60 Days after receiving an Independent
25 Compliance Auditor's final report containing a finding of noncompliance, the
26 Volkswagen Parties shall submit to California a response to the Independent
27 Compliance Auditor's findings and recommendations for corrective action. The
28 Volkswagen Parties' response shall include, as applicable, an action plan to implement

1 corrective measures as expeditiously as practicable, or an explanation of why corrective
2 measures are not being implemented. After the Volkswagen Parties have completed
3 implementation of the corrective measures, if any, the Volkswagen Parties shall provide
4 a report to California with a certification, in accordance with Paragraph 51 of the
5 Consent Decree, that the work has been completed.

6 b. Annual Meeting. Within 90 Days after receiving an Independent
7 Compliance Auditor's final report, the Volkswagen Parties shall meet with California to
8 discuss the Independent Compliance Audit and any suggestions, comments, or
9 improvements that the Volkswagen Parties may wish to discuss with California.

10 VI. INJUNCTIVE RELIEF FOR THE PORSCHE PARTIES

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

21 31. Organization and Processes.

22 a. The Porsche Parties shall implement cross-departmental
23 segregation of duties by establishing a new organizational unit, the "Technical
24 Conformity" unit, which shall have primary responsibility for: (1) developing and
25 implementing the certification testing program; (2) coordinating a central list of
26 auxiliary emission control devices ("AECDS") in vehicles; (3) interpreting technical
27 provisions related to certification; and (4) communicating with government agencies
28 regarding the certification of vehicles.

1 b. For vehicles that the Porsche Parties will certify for sale in
2 California, the Technical Conformity organizational unit shall: (1) develop and
3 implement the certification testing program, obtain and manage the certification test
4 vehicles, confirm that the configuration of the test vehicles is representative of the
5 production vehicles, and test the certification vehicles consistent with California laws
6 and regulations for certification; and (2) supervise all certification personnel, provide
7 training for certification personnel, and control access to certification vehicles during
8 certification emissions testing.

9 c. In order to optimize internal processes regarding the interpretation
10 of technical provisions relating to certification of vehicles, the Porsche Defendants shall
11 centralize the responsibility for such interpretation in the Technical Conformity
12 organizational unit.

13 d. The Porsche Parties shall restructure the Powertrain Change
14 Control Board (“CCB”) and the Product Safety Committee (“PSK”) in accordance with
15 the Porsche Remediation Plan. The CCB, which is the central approval and escalation
16 committee for ECM Software changes, shall be subject to internal procedures requiring
17 increased standards for establishment of ECM Software change requests, stricter
18 requirements for documentations of decisions, and expansion of the participants
19 required for a CCB decision. The PSK shall be restructured to improve conformity with
20 U.S. environmental laws and regulations, including California laws and regulations, for
21 vehicles sold in California.

22 e. The Porsche Parties shall establish rules of procedure for the
23 approval of ECM Software development.

24 f. The Porsche Parties shall establish additional approval criteria for
25 technical conformity in product development processes related to emissions control.

26 g. The Porsche Parties shall transfer responsibility for the conformity
27 of production process from the Research and Development Division (“E”) to the
28 Corporate Quality Department (“GQ”). GQ shall establish rules of procedure for

1 conformity of production to determine compliance of vehicles with U.S. environmental
2 laws and regulations, including California laws and regulations.

3 h. For vehicles certified for sale in California, GQ shall supervise the
4 in-use performance testing of vehicles, which testing must be performed in accordance
5 with California law.

6 32. Establishment of the Porsche Defendants' Project Management Office for the
7 Porsche Remediation Plan. Within 90 Days after the Effective Date, the Porsche Parties shall
8 establish and maintain a Project Management Office ("PMO") for the Porsche Remediation Plan.
9 The PMO shall ensure that an adequate organizational structure for monitoring and complying
10 with current and future U.S. laws, including California laws, regarding vehicle certification and
11 vehicle emissions is established. Consistent with the Porsche Remediation Plan, the PMO shall
12 establish rules of procedure and set out tasks, authorities, and responsibilities for specific Porsche
13 Parties' organizations: (1) to document significant current U.S. laws, regulations, and legislation
14 (including California laws, regulations, and legislation) related to vehicle certification and
15 automotive emissions, and track future developments in U.S. law, including California law,
16 related to vehicle certification and automotive emissions; (2) to monitor and assist the Porsche
17 Parties' compliance with U.S. requirements (including California requirements) regarding exhaust
18 emission standards and technology; and (3) to establish internal procedures and controls for the
19 Porsche Parties in order to achieve compliance with U.S. requirements (including California
20 requirements) regarding exhaust emission standards and technology.

21 33. PEMS Testing by the Porsche Parties. The testing required by this paragraph is
22 the same testing required by Paragraph 33 of the US Third Partial Consent Decree, subject to
23 certain additional terms applicable to the Porsche Parties and CARB.

24 a. The Porsche Parties (under the supervision of the Technical
25 Conformity Group) shall test certain model year 2017, 2018, and 2019 light-duty motor
26 vehicles using PEMS testing. For each model year, the Porsche Parties shall perform
27 PEMS testing on 33% of the Porsche Parties' EPA-certified test groups within that
28 model year ("Porsche Test Groups"). For purposes of determining the number of

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

28 b. In addition to the requirements of Paragraph 33.a, the Porsche

1 Parties shall retain an independent Third-Party Emissions Tester. (The Volkswagen
2 Parties and Porsche Parties may hire the same Third-Party Emissions Tester.) No
3 attorney-client relationship shall exist or be formed between any Porsche Party and the
4 Third-Party Emissions Tester. For each of model years 2017, 2018, and 2019, the
5 Porsche Parties shall ensure that the Third-Party Emissions Tester conducts PEMS
6 testing on one vehicle from one Porsche Test Group. Testing under this Paragraph 33.b
7 does not count toward the testing required under Paragraph 33.a. The Porsche Test
8 Group selected for testing under this Paragraph 33.b shall be the Porsche Test Group
9 with the highest projected sales for the model year at the time of certification or, if
10 applicable, the Porsche Test Group selected by EPA (or, if EPA fails to make a
11 selection pursuant to Paragraph 33(a) of the US Third Partial Consent Decree, the test
12 group selected by CARB,) by letter to the Porsche Parties pursuant to Section XIV
13 (Notices). Any such letters shall be provided no later than June 30 of the year for which
14 the model year is named. All testing under this Paragraph 33.b shall be completed by
15 December 31 of the calendar year for which the applicable model year is named.

16 c. The Porsche Parties shall satisfy the testing required by Paragraph
17 33.a as follows, and shall ensure that the Third-Party Emissions Tester satisfies the
18 testing required by Paragraph 33.a and Paragraph 33.b as follows:

19 i. Test a Porsche Test Group by testing one sample vehicle
20 procured at random from the series production vehicles from that selected
21 Porsche Test Group;

22 ii. Perform the required third-party PEMS testing on public
23 roads in the United States, and perform all PEMS testing under real-world
24 driving conditions over a range of ambient temperatures and pressures
25 (including conditions not represented on the Federal Test Procedure or any
26 other test procedure designated by California) to measure emissions that are
27 detectable on a serial vehicle via PEMS of the vehicle's regulated criteria air
28 pollutants and CO₂; and,

1 measured emissions of the vehicle's regulated criteria air pollutants and CO₂) for all
2 tests the Porsche Parties performed under this Paragraph 33 for that model year
3 ("Porsche Parties' Summary Report") to CARB as specified in Section XIV (Notices).
4 The Porsche Parties' Summary Report for model year 2017 shall be due no later than
5 March 1, 2018. The Porsche Parties' Summary Report for model years 2018 and 2019
6 shall be due no later than November 30 of the calendar year for which the model year is
7 named, unless the Porsche Parties and EPA agree to a later date that is no later than
8 January 15 of the following calendar year, unless also agreed to by CARB. Within 21
9 Days after submitting the Porsche Parties' Summary Report to CARB, the Porsche
10 Parties shall post their Summary Report (redacted of any CBI or personal information
11 the disclosure of which is restricted by applicable law; however no emissions test
12 methods and results may be claimed as CBI) in English and German at the public
13 website required by Paragraph 50.

14 f. For each model year, for the PEMS testing required by Paragraph
15 33.b, the Porsche Parties shall ensure that the Third-Party Emissions Tester prepares a
16 Third-Party Emissions Tester Summary Report including the test data, a detailed
17 statement of all test methods used, and an executive summary of the data and methods
18 (that includes the measured emissions of the vehicle's regulated criteria air pollutants
19 and CO₂) for all testing the Third-Party Emissions Tester performed under this
20 Paragraph 33 for that model year. The Porsche Parties shall provide the Third-Party
21 Emissions Tester Summary Report to CARB as specified in Section XIV (Notices) by no
22 later than March 1 of the calendar year immediately after the calendar year for which the
23 model year is named. Within 30 Days after submitting the Third-Party Emissions Tester
24 Summary Report to CARB, the Porsche Parties shall post the Third-Party Emissions
25 Tester Summary Report (redacted of any CBI or personal information the disclosure of
26 which is restricted by applicable law; however no emissions test methods and results
27 may be claimed as CBI) in English and German at the public website required by
28 Paragraph 50.

1 g. If any of the PEMS data produced pursuant to the testing in
2 Paragraph 33.a or Paragraph 33.b suggest the potential presence of an undisclosed
3 AECD or defeat device, or are otherwise anomalous or inconsistent with the
4 certification application for the Porsche Test Groups being tested, the Porsche Parties
5 shall, upon CARB's reasonable written request: meet and confer with CARB to discuss
6 the PEMS data; work collaboratively with CARB to determine why the PEMS data
7 suggest the potential presence of an undisclosed AECD or defeat device, or are
8 otherwise anomalous or inconsistent with the certification application for the Porsche
9 Test Groups being tested; provide relevant information and documents to CARB; and
10 provide CARB with vehicles and vehicle components (including without limitation
11 hardware and software) for PEMS or other testing by CARB.

12
13
14 h. The Parties agree and acknowledge that neither U.S. nor California
15 law sets forth a standard by which PEMS testing can be used to determine compliance
16 for purposes of certification under California law.

17
18 34. Business Units within Product Development Process. Within 18 months after the
19 Effective Date, the Porsche Parties shall implement the Porsche Remediation Plan by establishing
20 internal controls and rules of procedure, and by defining the tasks, authorities, and responsibilities
21 for the business units, committees, and boards involved in the Product Development Process,
22 including, but not limited to, the PSK, the CCB, the Technical Conformity organizational unit,
23 and the Product Safety & Compliance Department, as described in the Remediation Plan. The
24 internal controls and internal rules of procedure developed by the Porsche Parties may be subject
25 to reasonable modification, in consultation with the Department of Justice and California. The
26 Porsche Parties shall monitor implementation of these procedures through the Porsche Parties'
27 Internal Audit Department.

28 35. Supplier Contracts. The Porsche Parties shall adjust or modify supplier contracts

1 to include standardized requirements pertaining to conformity with U.S. legal requirements
2 (including California requirements) for vehicle emissions, certification, and information
3 reporting.

4 36. Definition of Managers' Responsibilities. Within 90 Days after the Effective
5 Date, the Porsche Parties shall define the tasks, authorities, and responsibilities of the managers
6 involved in the Product Development Process, including with respect to compliance with U.S.
7 environmental laws and regulations, including California laws and regulations.

8 37. Whistleblower System. Upon the Effective Date, the Porsche Parties shall
9 maintain the whistleblower/employee reporting system for the Porsche Parties' employees, which
10 ensures that the identity and anonymity of whistleblowers is protected. The Porsche Parties shall
11 retain a minimum of two external, independent, and experienced professionals to act as
12 ombudsmen; the ombudsmen shall be obliged to maintain professional confidentiality. The
13 Porsche Parties shall conduct periodic training events to publicize the availability of reporting
14 options for employees and to explain the procedures and protections of the whistleblower system.
15 Violations of the U.S. environmental laws and regulations (including California laws and
16 regulations) shall be treated as serious violations within the Porsche Parties' whistleblower
17 system. In each semi-annual report provided to California, the Porsche Parties shall submit a
18 report of all whistleblower alerts relating to violations of U.S. environmental laws or regulations,
19 including California laws or regulations.

20 38. Compliance Awareness – Employee Training.

21 a. Consistent with Paragraph 38.a of the US Third Partial Consent
22 Decree, the Porsche Parties shall revise, if not already revised, the Porsche Parties'
23 corporate Code of Conduct to include compliance with environmental laws or
24 regulations within the Code's discussion of (1) environmental protection and (2)
25 responsibility for compliance. The Porsche Parties shall ensure that the Code of
26 Conduct is discussed with new employees during new employee orientation and inform
27 current employees about the amended content.

28 b. The Porsche Parties shall provide technical product conformity

1 training to employees involved in the Product Development Process to ensure
2 appropriate knowledge of the following topics: correct use of test equipment, guidelines
3 for handling test data, overview of U.S. emission-relevant regulations and standards
4 (including California regulations and standards), and AECD-relevant topics.

5 c. In each semi-annual report to California, the Porsche Parties shall
6 provide a summary of training provided to employees as described in this Paragraph 38.

7 39. Semi-Annual Reporting on the Porsche Parties' Implementation of the Porsche
8 Remediation Plan and Internal Audit.

9 a. Semi-Annual Reporting. On a semi-annual basis (January 31 and
10 July 31 of each year), the Porsche Parties' Head of Internal Audit shall submit a report,
11 with a certification in accordance with Paragraph 51 of the Consent Decree, to
12 California, identifying the objectives, as defined in the Remediation Plan, which have
13 been completed and track the status of objectives that have not yet been completed,
14 including the identification of any issues that may delay the implementation of the
15 same. Each semi-annual report shall also provide information regarding the Porsche
16 Parties' compliance with the requirements of Paragraphs 30 through 38. The Porsche
17 Parties may elect to fulfill their reporting obligations under this Paragraph 39.a by
18 submitting the required information in a single joint report to the Department of Justice
19 and California.

20 b. Internal Audit. Within two years after the Effective Date, or earlier
21 as consistent with the timelines and schedule of the Porsche Remediation Plan, the
22 Porsche Parties shall conduct and complete an internal audit to track the implementation
23 of internal procedures relating to approval procedures or software development in the
24 Product Development Process. The audit shall assess: (1) the implementation and
25 effectiveness of the internal procedures, as specifically set forth in the Porsche
26 Remediation Plan, and propose any corrective actions to improve their effectiveness;
27 and (2) the escalation of critical issues, as defined in the Porsche Remediation Plan, to
28 report recipients, including the Executive Board of Dr. Ing. h.c. F. Porsche AG.

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

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

10 **VIII. REPORTING AND CERTIFICATION REQUIREMENTS**

11 46. Timing of Reports. The Volkswagen Parties shall submit to California an annual
12 report incorporating information required by Paragraphs 18, 20, 21, 22, and 28. The first annual
13 report is due one year after the Effective Date; the second annual report is due two years after the
14 Effective Date, and the third annual report is due three years after the Effective Date. The reports
15 required by Paragraphs 14, 17, 24, and 48.b shall be due as set forth in those Paragraphs. The
16 Volkswagen Parties may elect to fulfill their reporting obligations under this Paragraph 46 by
17 submitting the required information in a single joint report to the Department of Justice and
18 California.

19 47. Defendants may assert that information submitted under this Consent Decree is
20 protected as Confidential Business Information as set out in Cal. Code Regs. tit. 17, §§ 91000 to
21 91022.

22 48. Reporting of Violations.

23 a. If the Volkswagen Parties or the Porsche Parties reasonably believe
24 they have violated, or that they may violate, any requirement of this Consent Decree,
25 such Defendants shall notify California of such violation and its likely duration, in a
26 written report submitted within 14 business Days after the Day such Defendants first
27 reasonably believe that a violation has occurred or may occur, with an explanation of
28 the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or

1 minimize such violation. If the Volkswagen Parties or the Porsche Parties believe the
2 cause of a violation cannot be fully explained at the time the report is due, such
3 Defendants shall so state in the report. The Volkswagen Parties or the Porsche Parties,
4 as applicable, shall investigate the cause of the violation and shall then submit an
5 amendment to the report, including a full explanation of the cause of the violation,
6 within 30 Days after the Day on which such Defendants reasonably believe they have
7 determined the cause of the violation. Nothing in this Paragraph 48.a or the following
8 Paragraph relieves Defendants of their obligation to provide the notice required by
9 Section IX (Force Majeure).

10 b. Semi-Annual Report of Violations. On January 31 and July 31 of
11 each year, the Volkswagen Parties and Porsche Parties shall each submit a summary to
12 California of any violations of this Consent Decree that occurred during the preceding
13 six months (or potentially shorter period for the first semi-annual report), and that are
14 required to be reported pursuant to Paragraph 48.a, including the date of the violation,
15 the date the notice of violation was sent, and a brief description of the violation.

16 49. Whenever the Volkswagen Parties or the Porsche Parties reasonably believe that
17 any violation of this Consent Decree or any other event affecting the Volkswagen Parties' or the
18 Porsche Parties' performance under this Consent Decree may pose an immediate threat to the
19 public health or welfare or the environment, such Defendants shall notify California by email as
20 soon as practicable, but no later than 24 hours after such Defendants first reasonably believe the
21 violation or event has occurred. This procedure is in addition to the requirements set forth in
22 Paragraph 48.

23 50. All reports required to be posted to a public website by this Consent Decree shall
24 be accessible on the public website www.VWCourtSettlement.com, used by Defendants pursuant
25 to the First Partial Consent Decree, and a link to such website shall be displayed on
26 www.vw.com, www.audiusa.com, and www.porsche.com.

27 51. Each report to be certified pursuant to this Paragraph 51 shall be signed by an
28 officer or director of the Volkswagen Parties or the Porsche Parties, as appropriate, and shall

1 include the following sworn certification:

2 I certify under penalty of perjury under the laws of the State of California that this
3 document and all attachments were prepared under my direction or supervision in
4 accordance with a system designed to assure that qualified personnel properly
5 gather and evaluate the information submitted. Based on my inquiry of the person
6 or persons who manage the system, or those persons directly responsible for
7 gathering the information, the information submitted is, to the best of my
8 knowledge and belief, true, correct, and complete. I have no personal knowledge,
9 information or belief that the information submitted is other than true, correct, and
10 complete. I am aware that there are significant penalties for submitting false
11 information, including the possibility of fine and imprisonment for knowing
12 violations.

9 52. The certification requirement in Paragraph 51 does not apply to emergency or
10 similar notifications where compliance would be impractical.

11 53. The reporting requirements of this Consent Decree do not relieve Defendants of
12 any reporting obligations required by any other federal, state, or local law, regulation, permit, or
13 other requirement.

14 54. Any information provided pursuant to this Consent Decree may be used by
15 California in any proceeding to enforce the provisions of this Consent Decree and as otherwise
16 permitted by law.

17 **IX. FORCE MAJEURE**

18 55. “Force majeure,” for purposes of this Consent Decree, is defined as any event
19 arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or
20 of Defendants’ contractors, that delays or prevents the performance of any obligation under this
21 Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that
22 Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate
23 any potential force majeure event and best efforts to address the effects of any potential force
24 majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the
25 delay and any adverse effects of the delay are minimized. “Force majeure” does not include
26 Defendants’ financial inability to perform any obligation under this Consent Decree.

27 56. If any event occurs or has occurred that may delay the performance of any
28

1 obligation under this Consent Decree, for which Defendants intend or may intend to assert a
2 claim of force majeure, whether or not caused by a force majeure event, Defendants shall provide
3 notice by email to California, within 7 Days of when Defendants first knew that the event might
4 cause a delay. Within 14 Days thereafter, Defendants shall provide in writing to California an
5 explanation and description of the reasons for the delay; the anticipated duration of the delay; all
6 actions taken or to be taken to prevent or minimize the delay or the effect of the delay; a schedule
7 for implementation of any such measures; Defendants' rationale for attributing such delay to a
8 force majeure event if it intends to assert such a claim; and a statement as to whether, in the
9 opinion of Defendants, such event may cause or contribute to an endangerment to public health,
10 welfare, or the environment. Defendants shall include with any notice all available
11 documentation supporting the claim that the delay was attributable to a force majeure event.
12 Failure to comply with the above requirements shall preclude Defendants from asserting any
13 claim of force majeure for that event for the period of time of such failure to comply, and for any
14 additional delay caused by such failure. The Volkswagen Parties shall be deemed to know of any
15 circumstance of which the Volkswagen Parties or the Porsche Parties, any entity controlled by the
16 Volkswagen Parties or the Porsche Parties, or their respective contractors knew or should have
17 known. The Porsche Parties shall be deemed to know of any circumstance of which the Porsche
18 Parties, any entity controlled by the Porsche Parties, or the Porsche Parties' contractors knew or
19 should have known.

20 57. If California agrees that the delay or anticipated delay is attributable to a force
21 majeure event, the time for performance of the obligations under this Consent Decree that are
22 affected by the force majeure event will be extended by California for such time as is necessary to
23 complete those obligations. An extension of the time for performance of the obligations affected
24 by the force majeure event shall not, of itself, extend the time for performance of any other
25 obligation. California will notify Defendants in writing of the length of the extension, if any, for
26 performance of the obligations affected by the force majeure event.

27 58. If California does not agree that the delay or anticipated delay has been or will be
28 caused by a force majeure event, California will notify Defendants in writing of its decision.

1 but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position
2 and any supporting documentation relied upon by Defendants.

3 63. California will serve a Statement of Position within 45 Days after receipt of
4 Defendants' Statement of Position. The Statement of Position served by California will include,
5 but need not be limited to, any factual data, analysis, or opinion supporting that position and any
6 supporting documentation relied upon by California. The Statement of Position served by
7 California shall be binding on Defendants, unless Defendants file a motion for judicial review of
8 the dispute in accordance with Paragraph 64.

9 64. Defendants may seek judicial review of the dispute by filing with the Court and
10 serving on California, in accordance with Section XIV (Notices), a motion requesting judicial
11 resolution of the dispute. The motion must be filed within 10 Days after receipt of the Statement
12 of Position from California pursuant to the preceding Paragraph. The motion shall contain a
13 written statement of Defendants' position on the matter in dispute, including any supporting
14 factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any
15 schedule within which the dispute must be resolved for orderly implementation of the Consent
16 Decree.

17 65. California will respond to Defendants' motion within the time period allowed by
18 the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted
19 by the Local Rules.

20 66. Standard of Review for Judicial Disputes

21 a. Disputes Concerning Matters Accorded Record Review. Except as
22 otherwise provided in this Consent Decree, in CARB's review of the plans submitted
23 under Paragraphs 14 or 33 (PEMS Testing by the Volkswagen Parties or Porsche
24 Parties, respectively) and in any disputes that are accorded review on the administrative
25 record under applicable principles of administrative law, Defendants shall have the
26 burden of demonstrating, based on the administrative record, that the position of CARB
27 is arbitrary and capricious or otherwise not in accordance with law. Prior to the filing
28 of any motion, the Parties may submit additional Materials to be part of the

1 administrative record pursuant to applicable principles of administrative law.

2 b. Other Disputes. Except as otherwise provided in this Consent
3 Decree, in any other dispute brought pursuant to Paragraph 64, Defendants shall bear
4 the burden of demonstrating by a preponderance of the evidence that their actions were
5 in compliance with this Consent Decree.

6 67. In any disputes brought under this Section X, it is hereby expressly acknowledged
7 and agreed that this Consent Decree was jointly drafted in good faith by California and
8 Defendants. Accordingly, the Parties hereby agree that any and all rules of construction to the
9 effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute
10 concerning the terms, meaning, or interpretation of this Consent Decree.

11 68. The invocation of dispute resolution procedures under this Section X shall not, by
12 itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent
13 Decree, unless and until final resolution of the dispute so provides.

14 **XI. INFORMATION COLLECTION AND RETENTION**

15 69. CARB and the California Attorney General and their representatives, including
16 attorneys, contractors, and consultants, shall have the right of entry, upon presentation of
17 credentials, at all reasonable times into any of Defendants' offices, plants, or facilities:

- 18 a. to monitor the progress of activities required under this Consent
19 Decree;
- 20 b. to verify any data or information submitted to the California in
21 accordance with the terms of this Consent Decree;
- 22 c. to inspect records related to this Consent Decree;
- 23 d. to conduct testing related to this Consent Decree;
- 24 e. to obtain documentary evidence, including photographs and similar
25 data, related to this Consent Decree;
- 26 f. to assess Defendants' compliance with this Consent Decree; and
27 g. for other purposes as set forth in Cal. Gov't Code § 11180.

28 70. Until three years after the termination of this Consent Decree, Defendants shall

1 retain, and shall instruct their contractors, agents, and auditors to preserve all non-identical copies
2 of all documents, records, reports, or other information (including documents, records, or other
3 information in electronic form) (hereinafter referred to as “Records”) in their or their contractors’,
4 agents’, or auditors’ possession or control, or that come into their or their contractors’, agents’, or
5 auditors’ possession or control, relating to Defendants’ performance of their obligations under
6 this Consent Decree. This information-retention requirement shall apply regardless of any
7 contrary corporate or institutional policies or procedures. At any time during this information-
8 retention period, upon request by California, Defendants shall provide copies of any Records
9 required to be maintained under this Paragraph 70, notwithstanding any limitation or requirement
10 imposed by foreign laws. Nothing in this Paragraph 70 shall apply to any documents in the
11 possession, custody, or control of any outside legal counsel retained by Defendants in connection
12 with this Consent Decree or of any contractors or agents retained by such outside legal counsel
13 solely to assist in the legal representation of Defendants. Defendants may assert that certain
14 Records are privileged or protected as provided under California law. If Defendants assert such a
15 privilege or protection, they shall provide the following: (a) the title of the Record; (b) the date of
16 the Record; (c) the name and title of each author of the Record; (d) the name and title of each
17 addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege or
18 protection asserted by Defendants. However, Defendants may make no claim of privilege or
19 protection regarding the portion of any Record that Defendants are required to create or generate
20 pursuant to this Consent Decree.

21 71. At the conclusion of the information-retention period provided in the preceding
22 Paragraph, the Volkswagen Parties and the Porsche Parties shall notify California at least 90 Days
23 prior to the destruction of any Records subject to the requirements of the preceding Paragraph
24 and, upon request by California, such Defendants shall deliver any such Records to California.
25 Defendants may assert that certain Records are privileged or protected as provided under
26 California law. If Defendants assert such a privilege or protection, they shall provide the
27 following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of each
28 author of the Record; (d) the name and title of each addressee and recipient; (e) a description of

1 the subject of the Record; and (f) the privilege or protection asserted by Defendants. However,
2 Defendants may make no claim of privilege or protection regarding the portion of any Record that
3 Defendants are required to create or generate pursuant to this Consent Decree.

4 72. Defendants may also assert that information required to be provided under this
5 Section XI is protected as CBI as defined in Paragraph 47. As to any information that Defendants
6 seek to protect as CBI, Defendants shall follow the procedures set forth in Cal. Code Regs. tit. 17,
7 §§ 91000 to 91022.

8 73. This Consent Decree in no way limits or affects any right of entry and inspection,
9 or any right to obtain information, held by CARB or the California Attorney General pursuant to
10 applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or
11 obligation of Defendants to maintain documents, records, or other information imposed by
12 applicable federal or state laws, regulations, or permits.

13 **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

14 74. This Third California Partial Consent Decree shall release, resolve and settle
15 California's civil claims against Defendants, their respective direct or indirect parents and
16 subsidiaries, and any of their respective direct or indirect parents' or subsidiaries' present or
17 former directors, officers, employees, and dealers ("Released Parties") related to: (1) any conduct
18 described in the California Complaint, underlying claims that California made or could have
19 made against Defendants; (2) any conduct related to the emissions, or compliance with U.S.
20 emissions standards, of the 2.0L and 3.0L Subject Vehicles; and (3) any conduct related to the
21 Subject Vehicles and disclosed by or on behalf of the Defendants to, or otherwise known to,
22 California as of the date of this Agreement for the following relief:

23 a. for civil penalties, fines, restitution or other monetary payments
24 with respect to the 2.0 and 3.0 Liter Subject Vehicles, but only to the extent not
25 previously resolved in the First California Partial Consent Decree;

26 b. for costs and attorneys' fees related to the investigation and
27 litigation related to the 2.0 and 3.0 Liter Subject Vehicles, as well as for costs incurred
28 in connection with Defendants' actions to fulfill the requirements of the First Partial

1 Consent Decree, Second Partial Consent Decree, First California Partial Consent
2 Decree, Second California Partial Consent Decree, and this Consent Decree as to the 2.0
3 and 3.0 Liter Vehicles; and

4 c. for injunctive relief that is intended to enjoin, prevent, and deter
5 future violations of the Health and Safety Code and related regulations of the types
6 alleged in the California Complaint related to the 2.0 and 3.0 Liter Subject Vehicles.

7 75. California releases claims against Released Parties for relief to consumers,
8 including claims for restitution, refunds, rescission, damages, and disgorgement, arising from the
9 conduct alleged in the California Complaint related to the 3.0 Liter Subject Vehicles. In
10 exchange for this release of claims for relief to consumers, Settling Defendants shall provide the
11 relief to consumers that is provided for in the Second Partial Consent Decree, as well as the relief
12 to consumers that is provided for in the following documents filed in this MDL: (1) a consumer
13 class action settlement concerning 3.0 Liter Subject Diesel Vehicles to be filed by the Plaintiffs'
14 Steering Committee ("3L Consumer Class Action Settlement") and (2) a proposed partial
15 stipulated order by the Federal Trade Commission ("3L FTC Order"). This paragraph does not
16 release any claims of individual consumers.

17 76. To the extent that any claims released herein are duplicative of claims to be
18 released, settled, or resolved by California under the Second Partial Consent Decree or Second
19 California Partial Consent Decree, such claims are not released unless or until the Court approves
20 and enters the Second Partial Consent Decree and Second California Partial Consent Decree.

21 77. California reserves, and this Consent Decree is without prejudice to, all claims,
22 rights, and remedies against Defendants with respect to all matters not expressly resolved in
23 Paragraphs 74 through 75. Notwithstanding any other provision of this Consent Decree,
24 California reserves all claims, rights, and remedies against Defendants with respect to:

25 a. All rights reserved under the First Partial Consent Decree, Second
26 Partial Consent Decree, First California Partial Consent Decree, and Second California
27 Partial Consent Decree, except as provided under this Consent Decree, including in
28 Paragraphs 74 through 75 of this Consent Decree;

- b. Any and all civil claims related to any vehicle other than the 2.0 and 3.0 Liter Subject Vehicles;
- c. Any criminal liability;
- d. Any claims for the violation of securities laws; and
- e. Any other claim(s) of any officer or agency of the State of California, other than CARB or the California Attorney General.

78. Except as expressly set forth herein, this Consent Decree, including the releases set forth in Paragraphs 74 and 75, does not modify, abrogate, or otherwise limit the injunctive and other relief to be provided by Defendants under, nor any obligation of any party or person under, the First Partial Consent Decree, the First California Partial Consent Decree, the Second Partial Consent Decree, or the Second California Partial Consent Decree.

79. By entering into this Consent Decree, California is not enforcing the laws of other countries, including the emissions laws or regulations of any jurisdiction outside the United States. Nothing in this Consent Decree is intended to apply to, or affect, Volkswagen's or Porsche's obligations under the laws or regulations of any jurisdiction outside the United States. At the same time, the laws and regulations of other countries shall not affect Volkswagen's or Porsche's obligations under this Consent Decree.

80. This Consent Decree shall not be construed to limit the rights of California to obtain penalties or injunctive relief, except as specifically provided in this Consent Decree, including in Paragraphs 74 through 75. California further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at any of Volkswagen's or Porsche's facilities, or posed by Defendants' 2.0 and 3.0 Liter Subject Vehicles, whether related to the violations addressed in this Consent Decree or otherwise.

81. In any subsequent judicial proceeding initiated by California for injunctive relief, civil penalties, or other relief, Volkswagen and Porsche shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the

1 claims raised by California in the subsequent proceeding were or should have been brought in the
2 instant case, except with respect to the claims that have been specifically released pursuant to
3 Paragraphs 74 through 75.

4 82. This Consent Decree is not a permit, or a modification of any permit, under any
5 federal, State, or local laws or regulations. Volkswagen and Porsche are each responsible for
6 achieving and maintaining complete compliance with all applicable federal, State, and local laws,
7 regulations, and permits; and Volkswagen's or Porsche's compliance with this Consent Decree
8 shall be no defense to any action commenced pursuant to any such laws, regulations, or permits,
9 except as set forth herein. California does not, by its consent to the entry of this Consent Decree,
10 warrant or aver in any manner that Volkswagen's or Porsche's compliance with any aspect of this
11 Consent Decree will result in compliance with provisions of the Clean Air Act, or with any other
12 provisions of United States, State, or local laws, regulations, or permits.

13 83. Nothing in this Consent Decree releases any private rights of action asserted by
14 entities or persons not releasing claims under this Consent Decree, nor does this Consent Decree
15 limit any defense available to Volkswagen or Porsche in any such action.

16 84. This Consent Decree does not limit or affect the rights of Volkswagen or Porsche
17 or of California against any third parties, not party to this Consent Decree, nor does it limit the
18 rights of third parties, not party to this Consent Decree, against Volkswagen or Porsche, except as
19 otherwise provided by law.

20 85. Except for persons or entities released under Paragraphs 74 and 75, this Consent
21 Decree shall not be construed to create rights in, or grant any cause of action to, any third party
22 not party to this Consent Decree. Except for persons or entities released under Paragraphs 74 and
23 75, no third party shall be entitled to enforce any aspect of this Consent Decree or claim any legal
24 or equitable injury for a violation of this Consent Decree.

25 86. Nothing in this Consent Decree shall be construed as a waiver or limitation of any
26 defense or cause of action otherwise available to Volkswagen or Porsche in any action. This
27 Agreement is made without trial or adjudication of any issue of fact or law or finding of liability
28 of any kind.

XIII. COSTS

87. Apart from the cost reimbursement payments required by this Consent Decree in Paragraph 10, the Parties shall bear their own costs of this Consent Decree, including attorneys' fees, except that California shall be entitled to collect the costs and reasonable attorneys' fees incurred in any action necessary to collect any portion of the civil penalty or cost reimbursement payments due under this Consent Decree but not paid by Defendants.

XIV. NOTICES

88. Except as specified elsewhere in this Consent Decree, whenever any Materials or Submissions are required to be submitted pursuant to this Consent Decree, whenever any notification or other communication is required by this Consent Decree, or whenever any communication is required in any action or proceeding related to or bearing upon this Consent Decree or the rights or obligations thereunder, it shall be made in writing (except that if any attachment is voluminous, it shall be provided on a disk, hard drive, or other equivalent successor technology), and shall be addressed as follows:

As to the California Attorney General: Senior Assistant Attorney General
Consumer Law Section
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

Senior Assistant Attorney General
Natural Resources Law Section
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

As to the California Air Resources Board: Chief Counsel
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814

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

With copies to each of the following:

Volkswagen AG

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Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

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

As to Audi AG:

Audi AG
Auto-Union-Straße 1
85045 Ingolstadt, Germany
Attention: Company Secretary

With copies to each of the following:

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg, Germany
Attention: Group General Counsel

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

As to Volkswagen Group of
America, Inc.:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

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

As to Volkswagen Group of America
Chattanooga Operations LLC:

Volkswagen Group of America
Chattanooga Operations LLC
8001 Volkswagen Dr.

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Chattanooga, TN 37416
Attention: Company Secretary

With copies to each of the following:

Volkswagen Group of
America, Inc.
2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: President

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

As to Dr. Ing. h.c. F. Porsche AG:

Dr. Ing. h.c. F. Porsche Aktiengesellschaft
Porscheplatz 1, D-70435 Stuttgart
Attention:
GR/ Rechtsabteilung/ General Counsel

As to Porsche Cars North America, Inc.:

Porsche Cars North America, Inc.
1 Porsche Dr.
Atlanta, GA 30354
Attention: Secretary
With copy by email to offsecy@porsche.us

As to one or more of the Volkswagen
Parties by email:

Robert J. Giuffra, Jr.
Sharon L. Nelles
giuffrar@sullcrom.com
nelless@sullcrom.com

As to one or more of the
Defendants by mail:

Robert J. Giuffra, Jr.
Sharon L. Nelles
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

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As to one or more of the Porsche
Parties by email:

Granta Y. Nakayama
Joseph A. Eisert
gnakayama@kslaw.com
jeisert@kslaw.com

As to one or more of the Porsche
Parties by mail:

Granta Y. Nakayama
Joseph A. Eisert
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

89. Any party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

90. Communications submitted pursuant to this Section XIV shall be deemed submitted upon (1) mailing or emailing as required and where Defendants have a choice, or (2) where both email and mail are required, when both methods have been accomplished, except as provided elsewhere in this Consent Decree or by mutual agreement of the Parties in writing.

91. The Parties anticipate that a non-public secure web-based electronic portal may be developed in the future for submissions of Materials. The Parties may agree in the future to use such a portal, or any other means, for submission of Materials. Any such agreement shall be approved as a non-material modification to this Consent Decree in accordance with Section XVII.

XV. EFFECTIVE DATE

92. The Effective Date of this Consent Decree shall be deemed to be the Effective Date of the US Third Partial Consent Decree. If the Effective Date of the US Third Partial Consent Decree occurs before the Entry Date of this Consent Decree, the Parties shall have no obligations under this Consent Decree until its Entry Date.

XVI. RETENTION OF JURISDICTION

93. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

XVII. MODIFICATION

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2 94. Except as otherwise provided herein, the terms of this Consent Decree may be
3 modified only by a subsequent written agreement signed by all the Parties. Where the
4 modification constitutes a material change to this Consent Decree, it shall be effective only upon
5 approval by the Court.

6 95. California will file any non-material modifications with the Court. Once the non-
7 material modification has been filed, Defendants shall post the filed version (with ECF stamp) on
8 the website required by Paragraph 50.

9 96. Any disputes concerning modification of this Decree shall be resolved pursuant to
10 Section X (Dispute Resolution), provided, however, that instead of the burden of proof provided
11 by Paragraph 66, the Party seeking the modification bears the burden of demonstrating that it is
12 entitled to the requested modification in accordance with Federal Rule of Civil Procedure § 60(b).
13

XVIII. TERMINATION

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15 97. After Volkswagen has paid the civil penalty and cost reimbursement required in
16 Section IV (Monetary Terms), and the Volkswagen Parties have implemented the requirements of
17 Section V (Injunctive Relief for the Volkswagen Parties) and Section VIII (Reporting and
18 Certification Requirements), but in any event no later than four years after the Effective Date, the
19 Volkswagen Parties may serve upon California a Request for Termination. The Request for
20 Termination will state that the Volkswagen Parties have satisfied those requirements and be
21 submitted with all necessary supporting documentation.

22 98. After Volkswagen has paid the civil penalty and cost reimbursement required in
23 Section IV (Monetary Terms), and the Porsche Defendants have implemented the requirements of
24 Section VI (Injunctive Relief for the Porsche Parties) and Section VIII (Reporting and
25 Certification Requirements), but in any event no later than four years after the Effective Date, the
26 Porsche Parties may serve upon California a Request for Termination. The Request for
27 Termination will state that the Porsche Parties have satisfied those requirements and be submitted
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1 with all necessary supporting documentation.

2 99. Following receipt by California of the Volkswagen Parties' or the Porsche
3 Parties' Request for Termination, the Parties shall confer informally concerning the Request and
4 any disagreement that the Parties may have as to whether such Defendants have satisfactorily
5 complied with the requirements for termination of this Consent Decree. If California agrees that
6 the Consent Decree may be terminated, California will file a motion to terminate the Consent
7 Decree.

8 100. If California does not agree that the Decree may be terminated, such Defendants
9 may invoke Dispute Resolution under Section X. However, such Defendants shall not seek
10 Dispute Resolution of any dispute regarding termination until 90 Days after service of their
11 Request for Termination.

12 **XIX. SIGNATORIES/SERVICE**

13 101. Each undersigned representative of Volkswagen, Porsche, and California certifies
14 that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and
15 to execute and legally bind the Party he or she represents to this document. The California
16 Attorney General and CARB represent that they have the authority to execute this Consent
17 Decree on behalf of California and that, upon entry, this Consent Decree is a binding obligation
18 enforceable against California under applicable law.

19 102. This Consent Decree may be signed in counterparts, and its validity shall not be
20 challenged on that basis. For purposes of this Consent Decree, a signature page that is
21 transmitted electronically (*e.g.*, by facsimile or e-mailed "PDF") shall have the same effect as an
22 original.

23 **XX. INTEGRATION**

24 103. This Consent Decree constitutes the final, complete, and exclusive agreement and
25 understanding among the Parties with respect to the settlement embodied in this Consent Decree
26 and supersedes all prior agreements and understandings, whether oral or written, concerning the
27 settlement embodied herein, with the exception of the First Partial Consent Decree, Second
28 Partial Consent Decree, US Third Partial Consent Decree, First California Partial Consent Decree,

1 and Second California Partial Consent Decree. Other than deliverables that are subsequently
2 submitted and approved pursuant to this Consent Decree, the Parties acknowledge that there are
3 no documents, representations, inducements, agreements, understandings or promises that
4 constitute any part of this Consent Decree or the settlement it represents other than those
5 expressly contained or referenced in this Consent Decree.

6 **XXI. FINAL JUDGMENT**

7 104. Upon approval and entry of this Consent Decree by the Court, this Consent
8 Decree shall constitute a final judgment of the Court as to California and the Defendants. The
9 Court finds that there is no just reason for delay and therefore enters this judgment as a final
10 judgment under Fed. R. Civ. P. 54 and 58.

11
12 Dated and entered this 21st day of July, 2017

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14 CHARLES R. BREYER
15 UNITED STATES DISTRICT JUDGE

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

4 XAVIER BECERRA
5 Attorney General of California
6 NICKLAS A. AKERS
7 ROBERT W. BYRNE
8 SALLY MAGNANI
9 Senior Assistant Attorneys General
10 JUDITH A. FIORENTINI
11 GAVIN G. MCCABE
12 DAVID A. ZONANA
13 Supervising Deputy Attorneys General
14 AMOS E. HARTSTON
15 JOHN S. SASAKI
16 WILLIAM R. PLETCHER
17 JON F. WORM
18 ELIZABETH B. RUMSEY
19 LAUREL M. CARNES
20 Deputy Attorneys General

21 Dated: June 23, 2017




22 NICKLAS A. AKERS
23 Senior Assistant Attorney General
24 *Attorneys for the*
25 *People of the State of California*


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FOR THE CALIFORNIA AIR RESOURCES BOARD:

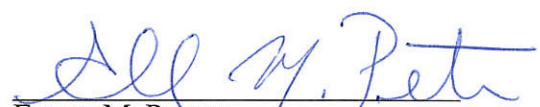
Dated: 6/23, 2017



MARY D. NICHOLS
Chair
California Air Resources Board



RICHARD W. COREY
Executive Officer
California Air Resources Board



ELLEN M. PETER
Chief Counsel
D. ARON LIVINGSTON
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Legal Office
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FOR VOLKSWAGEN AG:

Dated: June, 26th, 2017



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14 Dated: 06 / 26, 2017



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1 FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

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DAVID DETWEILER
VOLKSWAGEN GROUP OF AMERICA,
INC.

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Dated: June 28, 2017

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FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS LLC:

Dated: June 28, 2017

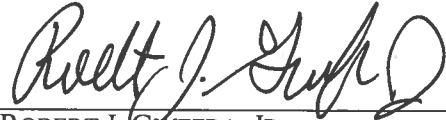


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COUNSEL FOR VOLKSWAGEN AG; AUDI AG; VOLKSWAGEN GROUP OF AMERICA, INC.; And VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS LLC:

Dated: June 28, 2017



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

Dated: 27. June, 2017



DR. MICHAEL STEINER
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4 Dated: _____, 2017

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10 Dated: 27 June, 2017

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4 Dated: 6/26, 2017

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10 Dated: JUNE 23, 2017

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

Dated: June 26, 2017



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