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13
 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION
 17

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

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

Case No. MDL 2672 CRB (JSC)

**MOTION TO ENTER SECOND
 CALIFORNIA PARTIAL CONSENT
 DECREE**

Judge: Hon. Charles R. Breyer

23
 24 Plaintiff the People of the State of California, acting by and through Kamala D. Harris,
 25 Attorney General of the State of California (“California Attorney General”) and the California Air
 26 Resources Board (“CARB”) (collectively, “California”), respectfully request that the Court enter
 27 the proposed second California partial consent decree (“Consent Decree”) attached to this
 28 Motion. If entered by the Court, this Consent Decree will partially resolve certain claims asserted

1 by California in the complaint filed on June 27, 2016 (Dkt. No. 1 in 16-CV-3620) against
2 Defendants Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of
3 America Chattanooga Operations LLC, Audi AG, Dr. Ing. H.C. F. Porsche AG, and Porsche Cars
4 North America, Inc. (collectively, “Defendants”).

5 This Consent Decree accompanies the second partial consent decree among the United
6 States, California, and Defendants lodged concurrently herewith (“USDOJ Consent Decree”), to
7 which the California Attorney General and CARB are also parties. This Consent Decree, along
8 with the USDOJ Consent Decree, will resolve most of the remaining claims asserted by
9 California in this action. However, this Consent Decree does not resolve CARB’s claims for civil
10 penalties related to 2.0 and 3.0 liter vehicles or the California Attorney General’s claims for
11 consumer relief related to 3.0 liter vehicles. All of the parties to the Consent Decree have agreed
12 to the terms, as evidenced by their signatures on the document.

13 The California Attorney General believes that the Consent Decree is fundamentally fair,
14 adequate, and reasonable. *See generally United States v. State of Or.*, 913 F.2d 576, 580 (9th
15 Cir. 1990). It is fair because, as recognized by all parties: “this Consent Decree has been
16 negotiated by the Parties in good faith and will avoid litigation among the Parties regarding the
17 California Claims, and [] this Consent Decree is fair, reasonable, and in the public interest.”
18 Consent Decree at 3. This Consent Decree is adequate and reasonable because it partially
19 resolves complex issues between the parties without the need for further litigation. *See* Consent
20 Decree at 2.

21 Once entered, this Consent Decree will provide further Zero Emission Vehicle (“ZEV”)
22 relief in California. California leads the nation in ZEV technology, and it has worked to increase
23 the number of ZEVs in use in the state in order to reduce and offset mobile source emissions and
24 in an effort to find long-term solutions to California’s unique air quality challenges. *See* Consent
25 Decree at 3. The ZEV relief provided for in this Consent Decree includes increasing ZEV
26 availability in California through the introduction of additional Battery Electric Vehicle (“BEV”)
27 models in California, as well as a monetary payment to CARB to be used to support the ZEV-
28 related aspects of the EFMP Plus Up program, or the ZEV-related aspects of similar vehicle

1 replacement programs, in California. *See* Consent Decree at 7-10. Additionally, Defendants have
2 agreed to implement a second Green City initiative in a city with a population of approximately
3 500,000 that predominately consists of disadvantaged communities. *See* Consent Decree at 7.
4 Collectively, this relief is intended to address the adverse environmental impacts that California
5 alleges resulted from Defendants' conduct. *See* Consent Decree at 3.

6 California respectfully submits that there is no just reason to delay entry of the attached
7 Consent Decree, and therefore requests that the Court enter the Consent Decree as a final
8 judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

9
10 Dated: December 20, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
NICKLAS A. AKERS
Senior Assistant Attorney General
JUDITH FIORENTINI
Supervising Deputy Attorney General

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14
15 /s/ Laurel M. Carnes
16 LAUREL M. CARNES
17 Deputy Attorney General
18 *Attorneys for the People*
19 *of the State of California*
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CERTIFICATE OF SERVICE

I hereby certify that, on December 20, 2016, I caused to be served true copies of the foregoing Motion to Enter Second California Partial Consent Decree by electronic means by filing such documents through the Court’s Electronic Case Filing System.

/s/ Laurel M. Carnes
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*Attorneys for the People
of the State of California*

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13
 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION
 17

18 **THE PEOPLE OF THE STATE OF**
 19 **CALIFORNIA,**

20 Plaintiff,

21 v.

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

26 Defendants.
 27
 28

Case No. 3:16-CV-03620

**SECOND PARTIAL CONSENT
 DECREE**

1 **WHEREAS**, Plaintiff the People of the State of California (“the People”) acting by and
2 through Kamala D. Harris, Attorney General of the State of California (“the California Attorney
3 General”) and the California Air Resources Board (“CARB”) (collectively “California”) filed a
4 complaint (the “California Complaint”) in this action on June 27, 2016, against Volkswagen AG,
5 Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations
6 LLC, and Audi AG (collectively, “Volkswagen” or the “Volkswagen Parties”), and Dr. Ing. h.c.
7 F. Porsche AG and Porsche Cars North America, Inc. (together “Porsche” or the “Porsche
8 Parties”) (Volkswagen and Porsche together, “Defendants”), alleging in relevant part that
9 Volkswagen and Porsche violated California Health and Safety Code sections 43016, 43017,
10 43151, 43152, 43153, 43205, 43211, and 43212; California Code of Regulations Title 13,
11 sections 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and the 40 C.F.R sections incorporated
12 therein by reference; California Business and Professions Code sections 17200, 17500, and
13 17580.5; California Civil Code section 3494; and 12 USC § 5536 *et seq.* in connection with the
14 certification, marketing, distribution and sale of certain Volkswagen, Audi and Porsche diesel
15 vehicles (the “California Claims”).
16
17

18 **WHEREAS**, the California Claims have been partially resolved through: (1) the entry of
19 the partial consent decree between the California Attorney General and Defendants (the “First
20 California Partial Consent Decree”) on September 1, 2016; and (2) the entry of the partial consent
21 decree among the United States, California, and the Volkswagen Parties (the “First Partial
22 Consent Decree”), concerning 2.0 Liter Subject Vehicles, on October 25, 2016.
23

24 **WHEREAS**, Defendants and the People (together the “Parties”) have agreed to resolve
25 certain remaining aspects of the California Claims related to 3.0 Liter Subject Vehicles without
26 the need for litigation.
27

28 **WHEREAS**, this further partial resolution of California Claims is documented: (1) in part

1 through the second partial consent decree among the United States, California and Defendants
2 lodged concurrently herewith (the “Second Partial Consent Decree”), which provides relief to
3 California in the form of environmental mitigation trust funds, and which addresses other
4 environmental issues including vehicle recall; and (2) in part through this Partial Consent Decree
5 (the “Second California Partial Consent Decree”), which provides further Zero Emission Vehicle
6 (“ZEV”) relief in California that is intended to address the adverse environmental impacts that
7 California alleges resulted from Defendants’ conduct.

9 **WHEREAS**, California leads the nation in ZEV technology, and it has worked to increase
10 the number of ZEVs in use in the state in order to reduce and offset mobile source emissions and
11 in an effort to find long-term solutions to California’s unique air quality challenges.

12 **WHEREAS**, Volkswagen is committed to supporting the growth of the market for ZEVs
13 in California, including through the introduction of new Volkswagen ZEVs and the strengthening
14 of infrastructure for ZEVs in California and throughout the United States, as demonstrated by the
15 \$2 billion ZEV investment provided for under the First Partial Consent Decree.

17 **WHEREAS**, except as expressly provided in this Second California Partial Consent
18 Decree (which is referred to herein as the “Consent Decree”), nothing in this Consent Decree
19 shall constitute an admission of any fact or law by any Party, including as to any factual or legal
20 assertion set forth in the California Complaint, except for the purpose of enforcing the terms or
21 conditions set forth herein.

22 **WHEREAS**, the Parties recognize, and the Court by entering this Consent Decree finds,
23 that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation
24 among the Parties regarding the California Claims, and that this Consent Decree is fair,
25 reasonable, and in the public interest.

26 **AND WHEREAS**, various settlement documents have been filed in this Multidistrict
27
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1 Litigation (“MDL”) proceeding along with this Second California Partial Consent Decree,
2 including the Second Partial Consent Decree, and this California Partial Consent Decree will not
3 become effective unless and until the Second Partial Consent Decree is also entered by the Court.

4 **NOW, THEREFORE**, before the taking of any testimony, without the adjudication of
5 any issue of fact or law, and with the consent of the Parties, **IT IS HEREBY ADJUDGED,**
6 **ORDERED, AND DECREED** as follows:
7

8 **I. JURISDICTION AND VENUE**

9 1. The Court has jurisdiction over the subject matter of this action, pursuant to
10 28 U.S.C. §§ 1331 and 1355, and over the Parties to the extent limited by this paragraph.

11 Venue lies in this District pursuant to 28 U.S.C. § 1407 and the MDL Panel’s Transfer Order,
12 dated December 8, 2015, and filed in this MDL action as Dkt. # 1. The Court has
13 supplemental jurisdiction over California’s state law claims pursuant to 28 U.S.C. § 1367.

14 Volkswagen and Porsche consent to the Court’s jurisdiction over entry of this Consent Decree
15 and over any action against Volkswagen or Porsche to enforce this Consent Decree, and
16 consent to venue in this judicial district for such purposes. Volkswagen and Porsche reserve
17 the right to challenge and oppose any claims to jurisdiction by California that do not arise from
18 the Court’s jurisdiction over this Consent Decree or an action to enforce this Consent Decree.
19

20 2. Solely for purposes of this Consent Decree, without admission of any legal
21 or factual assertion set forth in the California Complaint, and without prejudice to their ability
22 to contest the legal sufficiency or merits of a complaint in any other proceeding, Volkswagen
23 and Porsche do not contest that the California Complaint states claims upon which relief may
24 be granted pursuant to: California Health and Safety Code sections 43016, 43017, 43151,
25 43152, 43153, 43205, 43211, and 43212; California Code of Regulations Title 13, sections
26 1903, 1961, 1961.2, 1965, 1968.2, and 2037, and the 40 C.F.R. provisions incorporated therein
27
28

1 by reference; California Business and Professions Code Sections 17200, 17500, and 17580.5;
2 California Civil Code section 3494; and 12 USC § 5536 *et seq.*

3 **II. APPLICABILITY**

4 3. The obligations of this Consent Decree apply to and are binding upon
5 California, and upon Volkswagen and Porsche, as applicable, and any of their respective
6 successors, assigns, or other entities or persons otherwise bound by law.
7

8 4. In the event of the insolvency of any Volkswagen Party or the failure by
9 any Volkswagen Party to implement any requirement of this Consent Decree, the remaining
10 Volkswagen Parties that are parties to this Consent Decree shall complete all such
11 requirements.

12 5. In the event of the insolvency of any Porsche Party or the failure by any
13 Porsche Party to implement any requirement of this Consent Decree, the remaining Porsche
14 Parties that are parties to this Consent Decree shall complete all such requirements.
15

16 6. Volkswagen shall include an agreement to remain responsible for the
17 performance obligations hereunder in the terms of any sale, acquisition, merger or other
18 transaction changing the ownership or control of Volkswagen, and no change in the ownership
19 or control of Volkswagen shall affect the obligations hereunder of Volkswagen without the
20 written agreement of the California Attorney General and CARB or modification of this
21 Consent Decree.
22

23 7. Porsche shall include an agreement to remain responsible for the
24 performance obligations hereunder in the terms of any sale, acquisition, merger or other
25 transaction changing the ownership or control of Porsche, and no change in the ownership or
26 control of Porsche shall affect the obligations hereunder of Porsche without the written
27 agreement of the California Attorney General and CARB or modification of this Consent
28

1 Decree.

2 8. In any action to enforce this Consent Decree, Volkswagen and Porsche
3 shall not raise as a defense the failure by any of their respective officers, directors, employees,
4 agents, or contractors to take any actions necessary to comply with the provisions of this
5 Consent Decree.
6

7 **III. DEFINITIONS**

8 9. For purposes of this Consent Decree:

9 “3.0 Liter Subject Vehicles” means each and every model year 2009 to 2016 light duty
10 diesel vehicle equipped with a 3.0 liter TDI engine that Volkswagen or Porsche sold, leased or
11 offered for sale or lease in, introduced or delivered for introduction into commerce, or imported
12 into the United States or its Territories, and that is or was purported to have been covered by the
13 following EPA Test Groups:
14

15 Model Year	EPA Test Group(s)	Vehicle Make and Model(s)	Generation
16 2009	9ADXT03.03LD	VW Touareg, Audi Q7	1.1
17 2010	AADXT03.03LD	VW Touareg, Audi Q7	1.1
18 2011	BADXT03.02UG BADXT03.03UG	VW Touareg, Audi Q7	1.2
19 2012	CADXT03.02UG CADXT03.03UG	VW Touareg Audi Q7	1.2
20 2013	DADXT03.02UG DADXT03.03UG DPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel	2.1 SUV
21 2014	EADXT03.02UG EADXT03.03UG EPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel	2.1 SUV
22 2014	EADXJ03.04UG	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC

1	2015	FVGAT03.0NU3	Audi: Q7, A6 quattro, A7 quattro, A8, A8L, Q5	2.1 SUV
2				
3	2015	FVGAT03.0NU2	VW Touareg	2.2 SUV
4		FPRXT03.0CDD	Porsche Cayenne Diesel	
5	2015	FVGAJ03.0NU4	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC
6				
7	2016	GVGAT03.0NU2	VW Touareg	2.2 SUV
8		GPRXT03.0CDD	Porsche Cayenne Diesel	
9	2016	GVGAJ03.0NU4	Audi: A6 quattro, A7 quattro, A8, A8L, Q5	2 PC

IV. ZERO EMISSION VEHICLE-RELATED RELIEF IN CALIFORNIA

10. Volkswagen shall complete two Green City initiatives in California as part of the ZEV investments required by Appendix C to the First Partial Consent Decree. The Green City initiatives may include, but need not be limited to, the operation of ZEV car sharing services, zero emission transit applications, and zero emission freight transport projects. The first Green City initiative shall consist of the project currently under development as part of the California ZEV Investment Plan provided for in the First Partial Consent Decree. The second of the two Green City initiatives shall be implemented in a city with a population of approximately 500,000 that predominately consists of Disadvantaged Communities as identified by the California Office of Environmental Health Hazard Assessment's CalEnviroScreen mapping tool. Volkswagen may receive credit toward its ZEV investment requirements under the First Partial Consent Decree for Creditable Costs associated with these two initiatives, subject to the requirements and limitations imposed by the First Partial Consent Decree.

11. Defendants shall contribute to the increased availability of Zero Emission Vehicles in California by introducing three additional Battery Electric Vehicle ("BEV") models in California as follows:

1 a. Defendants shall offer and sell two additional BEV models in
2 California, including one BEV Sport Utility Vehicle (“SUV”), in or before
3 2019. For the avoidance of doubt, this means that Defendants must offer no fewer
4 than three BEVs (the two additional BEVs, plus Volkswagen’s existing e-Golf
5 BEV or its BEV successor), including one SUV BEV, in California in or before
6 2019.
7

8 b. Defendants shall offer and sell an additional BEV SUV model in
9 California in or before 2020. For the avoidance of doubt, this means that
10 Defendants must offer no fewer than three BEVs (the two additional BEVs
11 described in paragraph 11(a), plus the third additional BEV described in this
12 paragraph), including two SUV BEVs, in California in or before 2020.
13

14 c. Defendants shall offer and sell these three additional BEV models
15 (or their successors) in California through 2025, and they shall sell an average of
16 5,000 of these three additional BEV models (collectively) in California each year
17 from 2019 until 2025. For the avoidance of doubt, this means that Defendants are
18 required to sell 35,000 total units of the three additional BEV models (or their
19 successors) during the seven-year period 2019 to 2025, but that they are not
20 required to sell 5,000 units in any given year.
21

22 d. It is the intention of the parties that the requirements of this section
23 will result in an increased availability of ZEVs in California. For that reason: (i)
24 Defendants shall not sell ZEV credits resulting from their sale in California of these
25 three additional models; and (ii) Volkswagen shall continue to offer its existing
26 BEV model (the VW e-Golf BEV) or its successor or replacement models in
27 California until 2019. In the event that Volkswagen introduces a new BEV model
28

1 in the United States between 2020 and 2025, it agrees to offer that BEV model (or
2 its successor) in California until at least 2025.

3 e. If prevailing market conditions—including, but not limited to, the
4 price of gasoline, overall vehicle sales, and sales of premium, ZEV, and sport
5 utility vehicles—materially change in a manner that adversely affects the market in
6 California for ZEVs, and that materially impairs the ability of Defendants to meet
7 their obligation to sell a combined total of 35,000 units (*i.e.*, a 5,000-unit annual
8 average) of those three additional ZEV models (collectively) in California during
9 the period 2019 through 2025, California agrees to meet with Defendants in good
10 faith to negotiate a reduction in this sales requirement. If Defendants and
11 California fail to reach agreement concerning a requested reduction, Defendants
12 may petition the Court for such a reduction, and California may oppose the
13 petition. The Court's determination as to whether a reduction is appropriate and, if
14 so, the amount of the reduction shall be binding upon the Parties. Notwithstanding
15 the foregoing, the State of California's failure to offer a rebate, tax credit, or similar
16 incentive for the purchase of ZEVs shall not relieve Defendants of their obligations
17 under this paragraph, except that, for each year in which no such rebate, tax credit,
18 or similar incentive is offered, Defendants' obligation to sell an annual average of
19 5,000 vehicles per year under paragraph 11(c) shall be reduced by 50% (*i.e.*, the
20 total sales obligation for the seven-year-period shall be reduced by a number of
21 vehicles equal to 50% of one seventh of 35,000 vehicles).

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25 12. Volkswagen shall further contribute to the availability of Zero Emission
26 Vehicles in California by making a payment of \$25,000,000 to ARB no later than July 1,
27 2017. Such payment shall be used, in the discretion of ARB, to support the ZEV-related
28

1 aspects of the EFMP Plus Up program, or the ZEV-related aspects of similar vehicle
2 replacement programs, in California in FY 2017-2018 or later years.

3 13. Defendants shall, within six months of the entry of this Consent Decree,
4 and every year thereafter until it has completed its obligations under this Consent Decree,
5 provide CARB and the California Attorney General with a written report regarding their
6 compliance with the requirements of this Section IV. Defendants shall also provide CARB
7 and the California Attorney General with any documents or information, including but not
8 limited to information related to vehicle sales, that they may reasonably request in order to
9 evaluate whether Defendants have complied with the requirements of this Section IV.
10

11 14. Nothing in this Consent Decree alters the requirements of federal or state
12 law to the extent they offer greater protection to consumers or to the environment.

13 15. Payments required to be made pursuant this Consent Decree shall be made
14 via wire transfer to CARB pursuant to instructions to be provided by CARB.
15

16 **V. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

17 16. Satisfaction of all the requirements of this Consent Decree, and of the
18 Second Partial Consent Decree, shall resolve and settle all of California’s civil claims in the
19 California Complaint for injunctive relief, based on facts that were disclosed by Defendants
20 to EPA and CARB prior to October 24, 2016, relating to any defeat devices or auxiliary
21 emission control devices (“AECDS”) in the 3.0 Liter Subject Vehicles, that they made or
22 could have made against Defendants:
23

24 a. requiring Defendants to take action to buy back, recall, or modify
25 the 3.0 Liter Subject Vehicles in order to remedy the violations alleged in the
26 California Complaint concerning the 3.0 Liter Subject Vehicles;

27 b. requiring Defendants to make payments to owners and lessees of
28

1 the 3.0 Liter Subject Vehicles in order to remedy the violations alleged in the
2 California Complaints concerning the 3.0 Liter Subject Vehicles; and

3 c. requiring Defendants to mitigate the environmental harm associated
4 with the violations alleged in the California Complaint concerning the 3.0 Liter
5 Subject Vehicles.
6

7 17. California reserves, and this Consent Decree is without prejudice to, all
8 claims, rights, and remedies against Defendants with respect to all matters not expressly
9 resolved in Paragraph 16. Notwithstanding any other provision of this Decree, California
10 reserves all claims, rights, and remedies against Defendants with respect to:

11 a. An order requiring Defendants to take all actions necessary to
12 enjoin, prevent, and deter future violations of the Health and Safety Code and
13 related regulations of the types alleged in the California Complaint related to the
14 3.0 Liter Subject Vehicles;
15

16 b. Further injunctive relief, including prohibitory and mandatory
17 injunctive provisions intended to enjoin, prevent, and deter future misconduct,
18 and/or incentivize its detection, disclosure, and/or prosecution; or to enjoin false
19 advertising, violation of environmental laws, the making of false statements, or the
20 use or employment of any practice that constitutes unfair competition;
21

22 c. All rights to address noncompliance with Appendix B to the Second
23 Partial Consent Decree as set forth in Paragraph 8.1, therein;

24 d. All rights reserved by Paragraph 53 of the Second Partial Consent
25 Decree;

26 e. Civil penalties with respect to the 3.0 Liter Subject Vehicles, but
27 only to the extent not previously resolved in the First California Partial Consent
28

1 Decree;

2 f. Any and all civil claims related to any 2.0 Liter Subject Vehicle,
3 but only to the extent not previously resolved under the First Partial Consent
4 Decree or the First California Partial Consent Decree, or to any vehicle other than
5 the 3.0 Liter Subject Vehicles;

6 g. Any and all civil claims and administrative authorities for
7 injunctive relief (i) based on facts that were not disclosed by Defendants to EPA
8 and CARB prior to October 24, 2016, related to any defeat devices or AECDs
9 installed on or in the 3.0 Liter Subject Vehicles; or (ii) related to any other failures
10 by the 3.0 Liter Subject Vehicles to conform with the California Health and Safety
11 Code or its implementing regulations;

12 h. Any criminal liability;

13 i. Any part of any claims for the violation of securities laws;

14 j. Costs and attorneys' fees, including investigative costs, incurred
15 after the date of lodging;

16 k. California Attorney General Claims for relief to consumers,
17 including claims for restitution, refunds, rescission, damages, and disgorgement,
18 but only to the extent not previously resolved under the First Partial Consent
19 Decree or First California Partial Consent Decree; and

20 l. Any other claim(s) of any officer or agency of the State of
21 California, other than CARB or the California Attorney General.

22 18. This Consent Decree, including the release set forth in paragraph 16, does
23 not modify, abrogate or otherwise limit the injunctive and other relief to be provided by
24 Defendants under, nor any obligation of any party or person under, the First Partial Consent
25 Decree.

1 Decree, the First California Partial Consent Decree, or the Second Partial Consent Decree.

2 19. By entering into this Consent Decree, California is not enforcing the laws
3 of other countries, including the emissions laws or regulations of any jurisdiction outside the
4 United States. Nothing in this Consent Decree is intended to apply to, or affect, Volkswagen's
5 or Porsche's obligations under the laws or regulations of any jurisdiction outside the United
6 States. At the same time, the laws and regulations of other countries shall not affect
7 Volkswagen's or Porsche's obligations under this Consent Decree.
8

9 20. This Consent Decree shall not be construed to limit the rights of California
10 to obtain penalties or injunctive relief, except as specifically provided in paragraph 16.
11 California further reserves all legal and equitable remedies to address any imminent and
12 substantial endangerment to the public health or welfare or the environment arising at any of
13 Volkswagen's or Porsche's facilities, or posed by Defendants' 3.0 Liter Subject Vehicles,
14 whether related to the violations addressed in this Consent Decree or otherwise.
15

16 21. In any subsequent judicial proceeding initiated by California for injunctive
17 relief, civil penalties, or other relief, Volkswagen and Porsche shall not assert, and may not
18 maintain, any defense or claim based upon the principles of waiver, res judicata, collateral
19 estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any
20 contention that the claims raised by California in the subsequent proceeding were or should
21 have been brought in the instant case, except with respect to the claims that have been
22 specifically released pursuant to paragraph 16.
23

24 22. This Consent Decree is not a permit, or a modification of any permit, under
25 any federal, State, or local laws or regulations. Volkswagen and Porsche are each responsible
26 for achieving and maintaining complete compliance with all applicable federal, State, and local
27 laws, regulations, and permits; and Volkswagen's or Porsche's compliance with this Consent
28

1 Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or
2 permits, except as set forth herein. California does not, by its consent to the entry of this
3 Consent Decree, warrant or aver in any manner that Volkswagen's or Porsche's compliance
4 with any aspect of this Consent Decree will result in compliance with provisions of the Clean
5 Air Act, or with any other provisions of United States, State, or local laws, regulations, or
6 permits.
7

8 23. Nothing in this Consent Decree releases any private rights of action
9 asserted by entities or persons not releasing claims under this Consent Decree, nor does this
10 Consent Decree limit any defense available to Volkswagen or Porsche in any such action.

11 24. This Consent Decree does not limit or affect the rights of Volkswagen or
12 Porsche or of California against any third parties, not party to this Consent Decree, nor does it
13 limit the rights of third parties, not party to this Consent Decree, against Volkswagen or
14 Porsche, except as otherwise provided by law.
15

16 25. This Consent Decree shall not be construed to create rights in, or grant any
17 cause of action to, any third party not party to this Consent Decree. No third party shall be
18 entitled to enforce any aspect of this Consent Decree or claim any legal or equitable injury for
19 a violation of this Consent Decree.
20

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

25 **VI. NOTICES**

26 27. Except as specified elsewhere in this Consent Decree, whenever any notification,
27 or other communication is required by this Consent Decree, or whenever any communication
28

1 is required in any action or proceeding related to or bearing upon this Consent Decree or the
2 rights or obligations thereunder, it shall be made in writing (except that if any attachment is
3 voluminous, it shall be provided on a disk, hard drive, or other equivalent successor
4 technology), and shall be addressed as follows:

5
6 As to the California Attorney General: Senior Assistant Attorney General
7 Consumer Law Section
8 California Department of Justice
9 455 Golden Gate Ave., Suite 11000
10 San Francisco, CA 94102-7004

11
12 As to the California Air Resources Board: Chief Counsel
13 California Air Resources Board
14 1001 "I" Street
15 Sacramento, CA 95814

16
17 As to Volkswagen AG: Volkswagen AG
18 Berliner Ring 2
19 38440 Wolfsburg, Germany
20 Attention: Company Secretary

21 With copies to each of the following:

22 Volkswagen AG
23 Berliner Ring 2
24 38440 Wolfsburg, Germany
25 Attention: Group General Counsel

26 Volkswagen Group of
27 America, Inc.
28 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

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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 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.
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

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

As to one or more of the Porsche Parties: Granta Y. Nakayama
Joseph A. Eisert
King & Spalding LLP
1700 Pennsylvania Ave., N.W., Suite 200
Washington, DC 20006

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

VII. RETENTION OF JURISDICTION

29. 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, or effectuating or enforcing compliance with the terms of this Consent Decree.

1 **VIII. SIGNATORIES/SERVICE**

2 30. Each undersigned representative of Volkswagen, Porsche, and California
3 certifies that he or she is fully authorized to enter into the terms and conditions of this Consent
4 Decree and to execute and legally bind the Party he or she represents to this document. The
5 California Attorney General and CARB represent that they have the authority to execute this
6 Consent Decree on behalf of the State of California and that, upon entry, this Consent Decree
7 is a binding obligation enforceable against California under applicable law.
8

9 31. This Consent Decree may be signed in counterparts, and its validity shall not be
10 challenged on that basis. For purposes of this Consent Decree, a signature page that is
11 transmitted electronically (*e.g.*, by facsimile or e-mailed “PDF”) shall have the same effect as
12 an original.
13

14 **IX. INTEGRATION**

15 32. This Consent Decree constitutes the final, complete, and exclusive agreement and
16 understanding among the Parties with respect to the settlement embodied in this Consent
17 Decree and supersedes all prior agreements and understandings, whether oral or written,
18 concerning the settlement embodied herein, with the exception of the First California Partial
19 Consent Decree, First Partial Consent Decree, and Second Partial Consent Decree. Other than
20 deliverables that are subsequently submitted and approved pursuant to this Consent Decree, the
21 Parties acknowledge that there are no documents, representations, inducements, agreements,
22 understandings or promises that constitute any part of this Consent Decree or the settlement it
23 represents other than those expressly contained or referenced in this Consent Decree.
24

25 **X. FINAL JUDGMENT**

26 33. Upon approval and entry of this Consent Decree by the Court, this Consent
27
28

1 Decree shall constitute a final judgment of the Court as to California and the Defendants. The
2 Court finds that there is no just reason for delay and therefore enters this judgment as a final
3 judgment under Fed. R. Civ. P. 54 and 58.
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6 UNITED STATES DISTRICT JUDGE
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FOR THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through KAMALA D. HARRIS, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, and the CALIFORNIA AIR RESOURCE BOARD:

KAMALA D. HARRIS
Attorney General of California
NICKLAS A. AKERS
ROBERT W. BYRNE
SALLY MAGNANI
Senior Assistant Attorneys General
JUDITH A. FIORENTINI
GAVIN G. MCCABE
DAVID A. ZONANA
Supervising Deputy Attorneys General
AMOS E. HARTSTON
JOHN S. SASAKI
WILLIAM R. PLETCHER
JON F. WORM
ELIZABETH B. RUMSEY
LAUREL M. CARNES
Deputy Attorneys General

Dated: DECEMBER 7, 2016



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

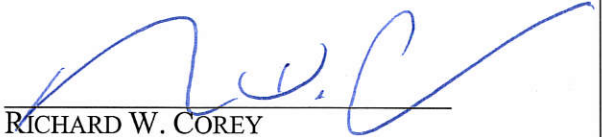
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FOR THE CALIFORNIA AIR RESOURCES BOARD:

Dated: December_7, 2016



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
Assistant Chief Counsel
DIANE KIYOTA
ALEXANDRA KAMEL
Attorneys
Legal Office
California Air Resources Board

1 FOR VOLKSWAGEN AG:
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5 Dated: Dec. 7, 2016

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MANFRED DOESS
VOLKSWAGEN AG
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1 FOR AUDI AG:
2

3
4 Dated: Dec. 7, 2016



BERND MARTENS
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10 Dated: Dec. 7, 2016



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FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

Dated: Dec. 7, 2016

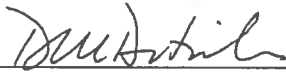


DAVID DETWEILER
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INC.
2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

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FOR VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS LLC:

Dated: Dec. 7, 2016

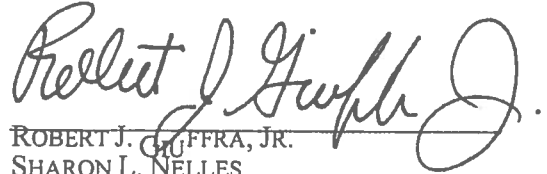


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COUNSEL FOR VOLKSWAGEN AG; AUDI AG; VOLKSWAGEN GROUP OF AMERICA, INC.; And VOLKSWAGEN GROUP OF AMERICA CHATTANOOGA OPERATIONS LLC:

Dated: Dec. 7, 2016



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Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

*Attorneys for Volkswagen AG; Audi AG,
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Volkswagen Group of America Chattanooga
Operations LLC*

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

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4 Dated: Dec. 7, 2016

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


ANGELA KREITZ
General Counsel & Chief Compliance Officer
DR. ING. h.c. F. PORSCHE AG
AKTIENGESELLSCHAFT
Porscheplatz 1
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1 FOR PORSCHE CARS NORTH AMERICA, INC.:

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Dated: Dec. 7, 2016


TIMOTHY L. QUINN
Vice President, After Sales
PORSCHE CARS NORTH AMERICA,
INC.
1 Porsche Dr.
Atlanta, GA 30354


Dated: Dec. 7, 2016


JOSEPH S. FOLZ
Vice President, General Counsel and
Secretary
PORSCHE CARS NORTH AMERICA,
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Atlanta, GA 30354

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

Dated: Dec. 7, 2016


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*Attorneys for Dr. Ing. h.c. F. Porsche AG
and Porsche Cars North America, Inc.*

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

3
4 Dated: Dec. 7, 2016

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6 GRANTA Y. NAKAYAMA
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23 *Attorneys for Dr. Ing. h.c. F. Porsche AG*
24 *and Porsche Cars North America, Inc.*