

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

2015 MAY -1 A 10: 23

CATHY S. GARDNER, CLERK
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA *ex rel.*)
PATRICK MORRISEY, ATTORNEY GENERAL)

Plaintiff,)

v.)

VOLKSWAGEN AG, AUDI AG,)
VOLKSWAGEN GROUP OF AMERICA, INC.)
(D/B/A VOLKSWAGEN OF AMERICA, INC.)
OR AUDI OF AMERICA, INC.), AUDI OF)
AMERICA, LLC,)
DR. ING. H.C. F.)
PORSCHE AG AND PORSCHE CARS)
NORTH AMERICA, INC., ROBERT BOSCH)
GMBH, ROBERT BOSCH, LLC)

Defendants.)

Civil Action No. 15-C-1833

FINAL CONSENT JUDGMENT AND ORDER

WHEREAS, on or about October 2, 2015, the State of West Virginia (“West Virginia”) filed this action (the “Action”) in the Circuit Court of Kanawha County, West Virginia alleging defendants Volkswagen AG, Audi AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.), and Audi of America, LLC, (collectively, “Volkswagen”); Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (collectively, “Porsche”); and Robert Bosch GMBH, and Robert Bosch LLC (collectively, “Bosch”) violated W. Va. Code § 46A-1-101, *et seq.* and created a Public Nuisance in connection with their marketing, advertising, distribution, sale and lease of certain 2.0- and 3.0-liter diesel passenger

vehicles (the “Subject Vehicles”)¹ containing undisclosed software allegedly intended to circumvent federal or state emissions standards.

WHEREAS, on or about August 3, 2016, West Virginia filed its Amended Complaint in the Action.

WHEREAS, West Virginia, Volkswagen and Porsche (collectively, “Settling Parties”) wish to avoid the expense, uncertainty and inconvenience of further litigation.

WHEREAS, West Virginia, on the one hand, and Volkswagen and Porsche (collectively, “Settling Defendants”) on the other, now seek entry of a Consent Judgment on the terms set forth herein to settle the Action.

WHEREAS, the Settling Parties agree there is no just reason for delay and consent to entry of this Consent Judgment without trial or adjudication of any issue of fact or law.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED:

JURISDICTION AND VENUE

1. The Settling Defendants consent to this Court’s continuing subject matter and personal jurisdiction solely for purposes of entry, enforcement and modification of this Consent Judgment and without waiving their right to contest this Court’s jurisdiction in other matters. This Court retains jurisdiction of the Action for the purpose of enforcing or modifying the terms of this Consent Judgment, or granting such further relief as the Court deems just and proper. The provisions of this Consent Judgment shall be construed in accordance with the laws of West Virginia.

¹ The Subject Vehicles are identified in paragraph 3(C), *infra*.

2. Solely for purposes of entry, enforcement and modification of this Consent Judgment, Settling Defendants consent to venue in this Court and do not waive their right to contest this Court's venue in other matters.

DEFINITIONS

3. As used herein, the below terms shall have the following meanings:
 - (A) As used herein, the term "Covered Conduct" shall mean any and all acts or omissions with respect to the Subject Vehicles occurring up to and including the Effective Date of this Consent Judgment, including all communications, relating to (i) the design, installation, presence, or failure to disclose any Defeat Device in any Subject Vehicle; (ii) the marketing, advertising, selling, or leasing of any and all Subject Vehicles as green, clean, or environmentally friendly (or similar such terms), and/or compliant with local, state or federal emissions standards, whether criminal or civil, including marketing or advertisement of any and all Subject Vehicles without disclosing the design, installation, update, or presence of a Defeat Device; and (iii) the Subject Vehicles' emissions of nitrogen oxides ("NOx") or other emissions in excess of federal or state emissions standards.
 - (B) "Defeat Device" means "an auxiliary emission control device ('AECD') that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: (i) Such conditions are substantially included in the Federal emission test procedure; (ii) The need for the

AECD is justified in terms of protecting the vehicle against damage or accident; (iii) The AECD does not go beyond the requirements of engine starting; or (iv) The AECD applies only for emergency vehicles[,]” 40 C.F.R. § 86.1803-01 or “any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [the Emission Standards for Moving Sources section of the Clean Air Act], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use,” 42 U.S.C. § 7522(a)(3)(B).

(C) “Subject Vehicles” means each and every light duty diesel vehicle equipped with a 2.0-liter or 3.0-liter TDI engine that Volkswagen and Porsche or their respective affiliates sold or offered for sale in, leased or offered for lease in, or introduced or delivered for introduction into commerce in the United States or its states or territories, or imported into the United States or its states or territories, and that is or was purported to have been covered by the following United States Environmental Protection Agency (“EPA”) Test Groups:

2.0 Liter Diesel Models

Model Year (MY)	EPA Test Group	Vehicle Make and Model(s)
2009	9VWXV02.035N 9VWXV02.0U5N	VW Jetta VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3

2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta Sportwagen
2012 2013 2014	CVWXV02.0U4S DVWXV02.0U4S EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf Sportwagen, VW Jetta, VW Passat, Audi A3

3.0 Liter Diesel Models

Model Year (MY)	EPA Test Groups	Vehicle Make and Model(s)
2009	9ADXT03.03LD	VW Touareg, Audi Q7
2010	AADXT03.03LD	VW Touareg, Audi Q7
2011	BADXT03.02UG BADXT03.03UG	VW Touareg Audi Q7
2012	CADXT03.02UG CADXT03.03UG	VW Touareg Audi Q7
2013	DADXT03.02UG DADXT03.03UG DPRXT03.0CDD	VW Touareg Audi Q7 Porsche Cayenne Diesel
2014	EADXT03.02UG EADXT03.03UG EPRXT03.0CDD EADXJ03.04UG	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5
2015	FVGAT03.0NU2 FVGAT03.0NU3 FPRXT03.0CDD FVGAJ03.0NU4	VW Touareg Audi Q7 Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5
2016	GVGAT03.0NU2 GPRXT03.0CDD GVGAJ03.0NU4	VW Touareg Porsche Cayenne Diesel Audi A6 Quattro, A7 Quattro, A8L, Q5

- (D) “West Virginia Claims” means claims or potential claims West Virginia asserted, or could assert in its sovereign enforcement capacity or as *parens patriae* on behalf of its citizens under all potentially applicable consumer protection and unfair trade and deceptive acts and practices laws, including, without limitation, W. Va. Code § 46A-1-101, *et seq.*, as well as common law and equitable claims; including claims of public nuisance and any similar or related statutory, equitable or common law doctrines.
- (E) “2.0-Liter Settlements” means the following settlement agreements entered in the multidistrict litigation styled as *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (“MDL Court”) to resolve claims concerning the 2.0 Liter Subject Vehicles: a consent decree executed by Volkswagen, the United States, on behalf of the United States Environmental Protection Agency (“DOJ/EPA”), and California, by and through the California Air Resources Board (“CARB”) and the California Attorney General (“CA AG”) concerning the 2.0-liter Subject Vehicles (“U.S. First Partial Consent Decree”), entered on October 25, 2016; a consent decree executed by Volkswagen and California, by and through CARB and the CA AG, concerning the 2.0 liter Subject Vehicles, entered on September 1, 2016 (“California First Partial Consent Decree”); a settlement agreement with the Plaintiffs’ Steering Committee (“PSC”) for consumer class action lawsuits, entered on October 25, 2016 (“PSC 2.0 Liter Settlement”); and a consent order with the Federal Trade

Commission (“FTC”), entered on October 25, 2016 (“FTC First Consent Order”).

- (F) “3.0-Liter Settlements” means the following settlement agreements filed in the MDL Court to resolve claims concerning the 3.0 Liter Subject Vehicles: a consent decree executed by Volkswagen, Porsche, DOJ/EPA, and California, by and through CARB and the CA AG, entered May 17, 2017 (“U.S. Second Partial Consent Decree”); the PSC’s 3.0-Liter Class Action Settlement Agreement, entered May 17, 2017 (“PSC 3.0 Liter Settlement”); the FTC’s Second Partial Stipulated Order, entered May 17, 2017 (“FTC Second Consent Order”); and the Second Partial Consent Decree with California, by and through CARB and the CA AG, entered May 17, 2017 (“California Second Partial Consent Decree”).

ADMISSIONS

4. Volkswagen admits that:
- a. software in the 2.0 and 3.0 Liter Subject Vehicles enables the vehicles’ engine control modules to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the engine control module detects the vehicles are not undergoing Federal Test Procedures, resulting in NOx emissions that exceed EPA-compliant and CARB-compliant levels when the vehicles are driven on the road;

- b. this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 2.0 and 3.0 Liter Subject Vehicles, and, as a result, the design specifications of the 2.0 and 3.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications.
- 5. Porsche admits that:
 - a. software in the 3.0 Liter Subject Vehicles enables the vehicles' engine control modules to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the engine control module detects the vehicles are not undergoing Federal Test Procedures, resulting in NOx emissions that exceed EPA-compliant and CARB-compliant levels when the vehicles are driven on the road;
 - b. this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 3.0 Liter Subject Vehicles, and, as a result, the design specifications of the 3.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications.
- 6. Volkswagen AG admits, agrees, and stipulates that the factual allegations set forth in the Statement of Facts attached as Exhibit 2 to its January 11, 2017 Rule 11 Plea Agreement in *U.S. v. Volkswagen AG*, No. 16-CR-20394 are true and correct. Volkswagen AG agrees it will neither contest the admissibility of, nor

contradict, the Statement of Facts contained in Exhibit 2 to the Rule 11 Plea Agreement in any proceeding. A true and correct copy of the Statement of Facts described in this paragraph is attached hereto as Attachment A.

7. Except as provided in Paragraphs 4-6, Volkswagen and/or Porsche neither admits nor denies any factual allegations regarding the Covered Conduct.

RELIEF

8. **Monetary Relief**

Volkswagen agrees to pay to West Virginia the sum of two million six-hundred fifty-four thousand and two hundred dollars and zero cents (\$2,654,200.00) within ten (10) business days of receipt from the State of (1) a signed, written certification, in the form attached as Annex A,² that the Consent Judgment has been duly approved by all necessary legal action and is now final under the law of West Virginia, (2) a true and accurate copy of this Consent Judgment, and (3) instructions, in the form attached as Annex B, for wiring funds to West Virginia. At the discretion of the Attorney General, the payment shall be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

² The certification shall include the name and title of the signatory and shall certify that such signatory is a duly authorized representative of the State and is duly authorized to make such certification.

9. **Injunctive Relief**

- (A) Volkswagen, Porsche and their affiliates shall not engage in future unfair or deceptive acts or practices in connection with their dealings with consumers and West Virginia regulators, directly or indirectly, regarding:
- (i) Advertising, marketing, offering for sale, selling, offering for lease, leasing, or distributing in West Virginia any vehicle that contains a Defeat Device.
 - (ii) Misrepresenting that a vehicle complies with any United States, State, or local emissions standard.
 - (iii) Misrepresenting that a vehicle is environmentally friendly, eco-friendly, green or words of similar import.
 - (iv) Misrepresenting that a vehicle has low emissions, lower emissions than other vehicles, or a specific level(s) of emissions.
 - (v) With respect to environmental or engineering attributes, misrepresenting the degree to which a vehicle maintains its resale value, comparative resale value, or any specific resale value.
- (B) Volkswagen shall not engage in any additional unfair or deceptive acts or practices prohibited by the U.S. First Partial Consent Decree, the FTC First Consent Order or the California First Partial Consent Decree, including materially:
- (i) Failing to affirmatively disclose the existence of a Defeat Device in advertising or marketing concerning a vehicle, where such vehicle contains a Defeat Device.

- (ii) Providing to others the means and instrumentalities with which to make any representation prohibited by this Consent Judgment.
- (iii) Misrepresenting or assisting others in misrepresenting any other environmental attribute or the value of a product or service.
- (iv) Making any false or misleading statement, or falsifying any test or data, in or in connection with an application or other submission to the West Virginia Department of Environmental Protection

10. **Release, Reservation of Rights and Effect of Settlement**

- (A) In consideration of the relief described in paragraphs 8 and 9, the Admissions in paragraphs 4-6 above, and the undertakings to which Volkswagen has agreed to in paragraph 11, and contemporaneously with West Virginia's receipt of the Monetary Relief described in paragraph 8,
 - (i) West Virginia releases Volkswagen, Porsche, their affiliates, and any of Volkswagen's, Porsche's or their affiliates' former, present or future owners, shareholders, directors, officers, employees, attorneys, parent companies, subsidiaries, predecessors, successors, dealers, agents, assigns and representatives (collectively, the "Released Parties")³ from all West Virginia Claims that were brought or could be brought arising from or related to the Covered Conduct, including: (a) restitution or other monetary payments to consumers; and (b) penalties, fines, restitution or other monetary

³ For avoidance of doubt, for purposes of this Consent Judgment, defendants Robert Bosch GMBH and Robert Bosch LLC are not Released Parties.

payments to West Virginia or consumers; and (c) all West Virginia Claims that were brought or could be brought for injunctive relief concerning the Subject Vehicles.

- (ii) West Virginia's release under this Consent Judgment includes West Virginia Claims that West Virginia brought or could have brought: (a) in its sovereign enforcement capacity; and (b) as *parens patriae* on behalf of its citizens.
- (B) Nothing in this Consent Judgment shall release, mitigate, or alter in any way the effect of West Virginia's Certification for Beneficiary Status Under Environmental Mitigation Trust Agreement, filed November 27, 2017, including the "Waiver of Claims for Injunctive Relief under Environmental or Common Laws" set forth therein.
- (C) West Virginia reserves, and this Consent Judgment is without prejudice to, all claims, rights and remedies against Volkswagen, Porsche and their affiliates, and Volkswagen, Porsche and their affiliates reserve, and this Consent Judgment is without prejudice to, all defenses, with respect to all matters not expressly released under Paragraph 10(A), including, without limitation:
- (i) any claims arising under state tax laws;
 - (ii) any claims for the violation of securities laws;
 - (iii) any civil claims unrelated to the Covered Conduct;
 - (iv) any action to enforce this Consent Judgment and subsequent orders or judgments related to this Consent Judgment.

11. **Additional Undertakings**

- (A) The Volkswagen restitution program set forth in the 2.0 Liter and 3.0 Liter Settlements shall be deemed a part of this agreement.
- (B) Consistent with the terms and definitions set forth in the 2.0 Liter Settlements, Volkswagen (except Audi of America, LLC) shall:
 - (i) Implement the Buyback, Lease Termination, and Vehicle Modification Recall Program;
 - (ii) Implement the Vehicle Recall and Emissions Modification Program;
 - (iii) Comply with its \$2,000,000,000 ZEV Investment Commitments; and
 - (iv) Pay \$2,700,000,000 to fund Eligible Mitigation Trust Actions.⁴
- (C) Consistent with the terms and definitions set forth in the 3.0 Liter Settlements, Volkswagen (except Audi of America, LLC) and Porsche shall:
 - (i) implement the Buyback, Lease Termination, Vehicle Modification, Emissions Compliant Recall Program, and Vehicle Recall and Emissions Modification Program for 3.0 Liter Vehicles set forth in Section IV and Appendices A and B of the U.S. Second Partial Consent Decree; and

⁴ West Virginia has received, as a beneficiary of the Environmental Mitigation Trust, the amount of \$12,131,842.13.

- (ii) comply with the obligation to deposit \$225,000,000 in Mitigation Trust Payments into the Trust Account to be used to fund Eligible Mitigation Actions, as set forth in paragraph 17(a) of Section IV of the DOJ's Second Partial Consent Decree.
- (D) Nothing in this Consent Judgment shall prevent West Virginia from serving a subpoena in this action on Defendant Volkswagen Group of America, Inc. in accordance with W. Va. R. Civ. P. 45 to obtain discovery about any non-Released Defendant, including Bosch. Volkswagen Group of America, Inc. (on behalf of itself and Defendants Volkswagen AG and AUDI AG) agrees to accept service of subpoenas by West Virginia issued in this action seeking document discovery pursuant to W. Va. R. Civ. P. 45. All parties preserve any objections to the discovery sought by such subpoenas (other than objections as to service), including objections based on jurisdiction, privilege, relevance and undue burden. This provision does not constitute consent or waiver by any Settling Defendant of service of process for subpoenas for testimony.

12. **Reporting**

- (A) Volkswagen (except Audi of America, LLC) shall produce to West Virginia: (i) any status reports to be provided by Volkswagen to the EPA, CARB and the CA AG under Paragraph 7.4 of the Appendix A to the U.S. First Partial Consent Decree; and (ii) any consumer name and address information to be provided by Volkswagen to the Notice Administrator under the PSC 2.0 and 3.0 Liter Settlements. Volkswagen shall provide

this information to West Virginia contemporaneous with its provision to the EPA, CARB, the CA AG, and the PSC 2.0 Liter Settlement Notice Administrator, as applicable. Within 10 business days of the entry of this Consent Judgment, Volkswagen shall also deliver to West Virginia all reports already delivered to the EPA, CARB, and the CA AG pursuant to Paragraph 7.4 of the Appendix A to the U.S. First Partial Consent Decree. West Virginia shall take all reasonable efforts to protect consumer data provided for any purpose related to this Consent Judgment or the other agreements and orders referenced herein. All such reports and information shall be submitted to West Virginia's representative listed in Paragraph 13 (Notice) or such other person as West Virginia may designate by sending a Notice pursuant to Paragraph 13.

- (B) Volkswagen (except Audi of America, LLC) shall promptly respond to West Virginia's reasonable inquiries about the status and of its consumers' claims submitted under the PSC 2.0 and 3.0 Liter Settlements and/or the FTC First Consent Order and the calculation of those consumers' reimbursements. Volkswagen shall provide West Virginia with contact information for a Volkswagen representative for purposes of such inquiries.

13. **Notice**

- (A) Any notices required to be sent to West Virginia, Volkswagen or Porsche under this Consent Judgment shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service

that provides for tracking services and identification of the person signing
for the document. The documents shall be sent to the following addresses:

For West Virginia

Director
Consumer Protection and Antitrust Division
West Virginia Attorney General's Office
P.O. Box 1789
812 Quarrier Street, First Floor
Charleston, WV 25326
consumer@wvago.gov

For the Volkswagen Defendants:

As to Volkswagen AG and Audi AG:

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

As to Volkswagen Group of America, Inc. and
Audi of America, LLC:

2200 Ferdinand Porsche Dr.
Herndon, VA 20171
Attention: U.S. General Counsel

As to one or more of the Volkswagen
Defendants

David M.J. Rein
William B. Monahan
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
reind@sullcrom.com
monahanw@sullcrom.com

For the Porsche Defendants:

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

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

As to 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 Porsche Defendants:

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

MISCELLANEOUS

14. Nothing in this Consent Judgment shall create or give rise to a private right of action of any kind.
15. Nothing in this Consent Judgment releases any private rights of action asserted by entities or persons not releasing claims under this Consent Judgment or the PSC 2.0 or 3.0 Liter Settlements, nor does this Consent Judgment limit any defense available to Volkswagen or Porsche in any such action.
16. This Consent Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind.
17. The Settling Parties agree that this Consent Judgment does not enforce the laws of other countries, including the emissions laws or regulations of any jurisdiction outside the United States. Nothing in this Consent Judgment is intended to apply to, or affect, Settling Defendants' 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 Settling Defendants' obligations under this Consent Judgment.
18. Upon this Consent Judgment being entered by the Court and West Virginia receiving the Monetary Relief under Paragraph 8, all claims in the Amended Complaint shall be dismissed with prejudice as to the Settling Defendants. This Consent Judgment shall not release or otherwise limit West Virginia's claims against Bosch.
19. The Court specifically finds that this Consent Judgment confirms and memorializes a good faith settlement between West Virginia, as Plaintiff and

Volkswagen and Porsche as Settling Defendants in this civil action prior to a judicial determination of liability and absolves and relieves Volkswagen and Porsche, as Settling Defendants, jointly and severally, from any liability for contribution by any non-settling joint tortfeasor.

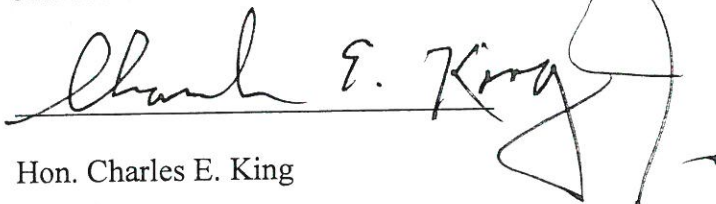
20. Nothing in this Consent Judgment constitutes an agreement by West Virginia concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. This Consent Judgment takes no position with regard to the tax consequences of the Consent Judgment with regard to federal, state, local and foreign taxes.
21. Any failure by any party to this Consent Judgment to insist upon the strict performance by any other party of any of the provisions of this Consent Judgment shall not be deemed a waiver of any of the provisions of this Consent Judgment.
22. This Consent Judgment, which constitutes a continuing obligation, is binding upon West Virginia and Settling Defendants.
23. Aside from any action stemming from compliance with this Consent Judgment and except in the event of a Court's material modification of this Consent Judgment, the Parties waive all rights of appeal in any and all jurisdictions or to re-argue or re-hear any judicial proceedings upon this Consent Judgment, any right they may possess to a jury trial, and any and all challenges in law or equity to the entry of this Consent Judgment. The Parties will not challenge or appeal (i) the entry of the Consent Judgment, unless the Court materially modifies the terms of the Consent Judgment, or (ii) the Court's jurisdiction to enter and enforce the Consent Judgment.

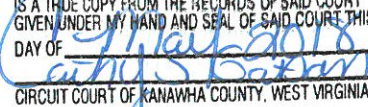
24. Nothing in this Consent Judgment shall relieve the Settling Defendants of their obligation to comply with applicable West Virginia and federal laws.
25. West Virginia's consent to this Consent Judgment does not constitute an approval by West Virginia of the Settling Defendants' business acts and practices, and Settling Defendants shall not represent this Consent Judgment as such an approval.
26. The Settling Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of the Consent Judgment by expressing the view that the Consent Judgment or its substance is without factual basis. Nothing in this paragraph affects Volkswagen or Porsche's right to take legal or factual positions in defense of litigation or other legal, administrative or regulatory proceedings, including with respect to any legal or factual matter that is not admitted herein.
27. Nothing in this Consent Judgment shall preclude any party from commencing an action to pursue any remedy or sanction that may be available to that party upon its determination that another party has failed to comply with any of the requirements of this Consent Judgment.
28. Nothing in this Consent Judgment shall be deemed to create any right in a non-party to enforce any aspect of this Consent Judgment or claim any legal or equitable injury for a violation of this Consent Judgment. The exclusive right to enforce any violation or breach of this Consent Judgment shall be with the parties to this Consent Judgment and the Court. Such rights to enforce this Consent

Judgment are non-assignable and any attempt to assign such right to enforce shall be utterly null and void.

29. This Consent Judgment contains the complete agreement between the Settling Parties with respect to the matters discussed herein. No promises, representations or warranties other than those set forth in this Consent Judgment have been made by any of the Parties. This Consent Judgment supersedes any and all prior communications, discussions or understandings, if any, of the Settling Parties concerning the Covered Conduct, whether oral or in writing.
30. This Consent Judgment may not be changed, altered, or modified except by consent of the parties and further order of the Court.
31. This Consent Judgment becomes effective upon entry by the Court.
32. No court costs shall be taxed to any party.
33. Each of the persons who signs his/her name below affirms that he/she has the authority to execute this Agreement on behalf of the party whose name appears next to his/her signature and that this Agreement is a binding obligation enforceable against said party and their successors under the law of West Virginia. The signatory from the West Virginia Attorney General Office represents that he/she has the authority to execute this Agreement on behalf of West Virginia and that this Agreement is a binding obligation enforceable against West Virginia under the law of West Virginia.

APPROVED AND ORDERED THIS DAY OF 1st May, 2018:


Hon. Charles E. King

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF May 2018
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 10

APPROVED:

FOR THE STATE OF WEST VIRGINIA
ex rel. Patrick Morrisey, Attorney General



Douglas L. Davis WV Bar No. 5502
Assistant Attorney General
West Virginia Attorney General's Office
Consumer Protection and Antitrust Division
812 Quarrier Street, First Floor
Charleston, WV 25301
(304) 558-8986
douglas.l.davis@wvago.gov

Dated: April 30, 2018

APPROVED:

FOR DEFENDANTS AUDI AG, AUDI OF AMERICA, LLC, VOLKSWAGEN AG, AND VOLKSWAGEN GROUP OF AMERICA, INC.



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sgeorge@gandllaw.com
Telephone: (304)343-5555

Dated: April 30, 2018




Robert J. Giuffra, Jr.
Sharon L. Nelles
David M.J. Rein
SULLIVAN & CROMWELL LLP
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Telephone: (212) 558-4000

Dated: April 30, 2018

APPROVED:

FOR DEFENDANTS PORSCHE CARS
OF NORTH AMERICA, INC., AND
DR. ING. H.C.F. PORSCHE AG



Dated: May 1, 2018

Michael Bonasso
Nathaniel K. Tawney
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ANNEX A

FILED

[STATE LETTERHEAD]

2018 MAY -1 A 10: 23

[DATE]

CAROLY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

VIA ELECTRONIC MAIL [& FIRST-CLASS MAIL]

Volkswagen Group of America, Inc.
Attn: Office of the General Counsel
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monahanw@sullcrom.com

RE:*State of West Virginia v. Volkswagen Group of America, Inc.
et al., Civil Acton No. 15-C-1833 – Certification Pursuant to
Consent Judgment*

Dear Messrs. Duke, Rein, and Monahan:

Pursuant to Paragraph 8 of the Consent Judgment entered on or about [DATE], I hereby certify the following:

1. The attached Consent Judgment, which was duly executed by the parties thereto, was entered by the Circuit Court for Kanawha County on [DATE], and is now final under the law of the State of West Virginia.
2. I, [NAME], [TITLE], am a duly authorized representative of the State of West Virginia and am duly authorized to make the certifications contained herein.
3. The attached Consent Judgment is a true and accurate copy of the document filed in the Court and entered on [DATE].

A copy of the State of West Virginia's wiring instructions is also attached. Please disburse \$2,654,200 in accordance with the enclosed wiring instructions on or before [DATE]. Please contact me if you have any questions or require any additional information.

Sincerely,

Signature

Print Name and Title

ANNEX B

[STATE LETTERHEAD]

[DATE]

TO: Volkswagen Group of America, Inc.
(addressees listed on following page)

RE: Wire Instructions – VW Consent Decree

Ladies and Gentlemen:

Reference is made to the Consent Decree in connection with *State of West Virginia v. Volkswagen Group of America, Inc. et al.*, Civil Action No. 15-C-1833, entered into on or about [DATE] by the Circuit Court of Kanawha County.

Please find below wire instructions for the disbursement of funds pursuant to the Consent Judgment.

Funds to be Transferred (USD):	\$
Beneficiary Name:	
Beneficiary Account Number:	
Bank Name:	
Bank Routing Information: (ABA # or SWIFT Code)	
Memo:	

If you have any questions regarding these wire instructions, please contact [NAME] at [TELEPHONE] or [EMAIL].

I certify that I am a representative of the State of West Virginia authorized to deliver these instructions and that the information provided above is true and correct.

Sincerely,

Signature

Print Name and Title

The preceding wire instructions should be delivered to the following persons:

Name: Volkswagen Group of America, Inc.
Address: 2200 Ferdinand Porsche Drive
Herndon, Virginia 20171

Attn: Office of the General Counsel
Telephone: 703-364-7290
Facsimile: 703-364-7080
E-mail: kevin.duke@vw.com

Name: Sullivan & Cromwell LLP
Address: 125 Broad Street
New York, New York 10004

Attn: David M.J. Rein, Esq.
Telephone: 212-558-3035
Facsimile: 212-291-9120
E-mail: reind@sullcrom.com

Name: Sullivan & Cromwell LLP
Address: 125 Broad Street
New York, New York 10004

Attn: William B. Monahan, Esq.
Telephone: 212-558-7375
Facsimile: 212-291-9414
E-mail: monahanw@sullcrom.com

Attachment A

EXHIBIT 2

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Plea Agreement (the "Agreement") between the United States Department of Justice (the "Department") and Volkswagen AG ("VW AG"). VW AG hereby agrees and stipulates that the following information is true and accurate. VW AG admits, accepts, and acknowledges that under U.S. law it is responsible for the acts of its employees set forth in this Statement of Facts, which acts VW AG acknowledges were within the scope of the employees' employment and, at least in part, for the benefit of VW AG. All references to legal terms and emissions standards, to the extent contained herein, should be understood to refer exclusively to applicable U.S. laws and regulations, and such legal terms contained in this Statement of Facts are not intended to apply to, or affect, VW AG's rights or obligations under the laws or regulations of any jurisdiction outside the United States. This Statement of Facts does not contain all of the facts known to the Department or VW AG; the Department's investigation into individuals is ongoing. The following facts took place during the time frame specified in the Third Superseding Information and establish beyond a reasonable doubt the charges set forth in the criminal Information attached to this Agreement:

Relevant Entities and Individuals

1. VW AG was a motor vehicle manufacturer based in Wolfsburg, Germany. Under U.S. law, VW AG acts through its employees, and conduct undertaken by VW AG, as described herein, reflects conduct undertaken by employees. Pursuant to applicable German stock corporation law, VW AG was led by a Management Board that was supervised by a Supervisory Board. Solely for purposes of this Statement of Facts, unless otherwise indicated, references in this Statement of Facts to “supervisors” are to senior employees below the level of the VW AG Management Board.

2. Audi AG (“Audi”) was a motor vehicle manufacturer based in Ingolstadt, Germany and a subsidiary approximately 99.55% owned by VW AG. Under U.S. law, Audi AG acts through its employees, and conduct undertaken by Audi AG, as described herein, reflects conduct undertaken by employees.

3. Volkswagen Group of America, Inc. (“VW GOA”) was a wholly-owned subsidiary of VW AG based in Herndon, Virginia. Under U.S. law, VW GOA acts through its employees, and conduct undertaken by VW GOA, as described herein, reflects conduct undertaken by employees.

4. VW AG, Audi AG, and VW GOA are collectively referred to herein as “VW.”

5. “VW Brand” was an operational unit within VW AG that developed vehicles to be sold under the “Volkswagen” brand name.

6. Company A was an automotive engineering company based in Berlin, Germany, which specialized in software, electronics, and technology support for vehicle manufacturers. VW AG owned fifty percent of Company A’s shares and was Company A’s largest customer.

7. “Supervisor A,” an individual whose identity is known to the United States and VW AG, was the supervisor in charge of Engine Development for all of VW AG from in or about October 2012 to in or about September 2015. From July 2013 to September 2015, Supervisor A also served as the supervisor in charge of Development for VW Brand, where he supervised a group of approximately 10,000 VW AG employees. From in or about October 2011, when he joined VW, until in or about July 2013, Supervisor A served as the supervisor in charge of the VW Brand Engine Development department.

8. “Supervisor B,” an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about May 2005 to in or about April 2007.

9. “Supervisor C,” an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about May 2007 to in or about March 2011.

10. "Supervisor D," an individual whose identity is known to the United States and VW AG, was a supervisor in charge of the VW Brand Engine Development department from in or about October 2013 to the present.

11. "Supervisor E," an individual whose identity is known to the United States and VW AG, was a supervisor with responsibility for VW AG's Quality Management and Product Safety department who reported to the supervisor in charge of Quality Management from in or about 2007 to in or about October 2014.

12. "Supervisor F," an individual whose identity is known to the United States and VW AG, was a supervisor within the VW Brand Engine Development department from in or about 2003 until in or about December 2012.

13. "Attorney A," an individual whose identity is known to the United States and VW AG, was a German-qualified in-house attorney for VW AG who was the in-house attorney principally responsible for providing legal advice in connection with VW AG's response to U.S. emissions issues from in or about May 2015 to in or about September 2015.

U.S. NO_x Emissions Standards

14. The purpose of the Clean Air Act and its implementing regulations was to protect human health and the environment by, among other things, reducing emissions of pollutants from new motor vehicles, including nitrogen oxides (“NO_x”).

15. The Clean Air Act required the U.S. Environmental Protection Agency (“EPA”) to promulgate emissions standards for new motor vehicles. The EPA established standards and test procedures for light-duty motor vehicles sold in the United States, including emission standards for NO_x.

16. The Clean Air Act prohibited manufacturers of new motor vehicles from selling, offering for sale, introducing or delivering for introduction into U.S. commerce, or importing (or causing the foregoing with respect to) any new motor vehicle unless the vehicle complied with U.S. emissions standards, including NO_x emissions standards, and was issued an EPA certificate of conformity.

17. To obtain a certificate of conformity, a manufacturer was required to submit an application to the EPA for each model year and for each test group of vehicles that it intended to sell in the United States. The application was required to be in writing, to be signed by an authorized representative of the manufacturer, and to include, among other things, the results of testing done pursuant to the published Federal Test Procedures that measure NO_x emissions, and a description

of the engine, emissions control system, and fuel system components, including a detailed description of each Auxiliary Emission Control Device ("AECD") to be installed on the vehicle.

18. An AECD was defined under U.S. law as "any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system." The manufacturer was also required to include a justification for each AECD. If the EPA, in reviewing the application for a certificate of conformity, determined that the AECD "reduced the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use," and that (1) it was not substantially included in the Federal Test Procedure, (2) the need for the AECD was not justified for protection of the vehicle against damage or accident, or (3) it went beyond the requirements of engine starting, the AECD was considered a "defeat device." Whenever the term "defeat device" is used in this Statement of Facts, it refers to a defeat device as defined by U.S. law.

19. The EPA would not certify motor vehicles equipped with defeat devices. Manufacturers could not sell motor vehicles in the United States without a certificate of conformity from the EPA.

20. The California Air Resources Board (“CARB”) (together with the EPA, “U.S. regulators”) issued its own certificates, called executive orders, for the sale of motor vehicles in the State of California. To obtain such a certificate, the manufacturer was required to satisfy the standards set forth by the State of California, which were equal to or more stringent than those of the EPA.

21. As part of the application for a certification process, manufacturers often worked in parallel with the EPA and CARB. To obtain a certificate of conformity from the EPA, manufacturers were required to demonstrate that the light-duty vehicles were equipped with an on-board diagnostic (“OBD”) system capable of monitoring all emissions-related systems or components. Manufacturers could demonstrate compliance with California OBD standards in order to meet federal requirements. CARB reviewed applications from manufacturers, including VW, to determine whether their OBD systems were in compliance with California OBD standards, and CARB’s conclusion would be included in the application the manufacturer submitted to the EPA.

22. In 1998, the United States established new federal emissions standards that would be implemented in separate steps, or Tiers. Tier II emissions standards, including for NOx emissions, were significantly stricter than Tier I. For light-duty vehicles, the regulations required manufacturers to begin to phase in compliance with the new, stricter Tier II NOx emissions standards in 2004 and required

manufacturers to fully comply with the stricter standards for model year 2007.

These strict U.S. NOx emissions standards were applicable specifically to vehicles in the United States.

VW Diesel Vehicles Sold in the United States

23. In the United States, VW sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused the foregoing actions (collectively, "sold in the United States") the following vehicles containing 2.0 liter diesel engines ("2.0 Liter Subject Vehicles"):

- a. Model Year ("MY") 2009-2015 VW Jetta;
- b. MY 2009-2014 VW Jetta Sportwagen;
- c. MY 2010-2015 VW Golf;
- d. MY 2015 VW Golf Sportwagen;
- e. MY 2010-2013, 2015 Audi A3;
- f. MY 2013-2015 VW Beetle and VW Beetle Convertible; and
- g. MY 2012-2015 VW Passat.

24. VW sold in the United States the following vehicles containing 3.0 liter diesel engines ("3.0 Liter Subject Vehicles"):

- a. MY 2009-2016 VW Touareg;
- b. MY 2009-2015 Audi Q7;
- c. MY 2014-2016 Audi A6 Quattro;

- d. MY 2014-2016 Audi A7 Quattro;
- e. MY 2014-2016 Audi A8L; and
- f. MY 2014-2016 Audi Q5.

25. VW GOA's Engineering and Environmental Office ("EEO") was located in Auburn Hills, Michigan, in the Eastern District of Michigan. Among other things, EEO prepared and submitted applications (the "Applications") for a certificate of conformity and an executive order (collectively, "Certificates") to the EPA and CARB to obtain authorization to sell each of the 2.0 Liter Subject Vehicles and 3.0 Liter Subject Vehicles in the United States (collectively, the "Subject Vehicles"). VW GOA's Test Center California performed testing related to the Subject Vehicles.

26. VW AG developed the engines for the 2.0 Liter Subject Vehicles. Audi AG developed the engines for the 3.0 Liter Subject Vehicles and the MY 2013-2016 Porsche Cayenne diesel vehicles sold in the United States (the "Porsche Vehicles").

27. The Applications to the EPA were accompanied by the following signed statement by a VW representative:

The Volkswagen Group states that any element of design, system, or emission control device installed on or incorporated in the Volkswagen Group's new motor vehicles or new motor vehicle engines for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of the Volkswagen Group's information and belief,

cause the emission into the ambient air of pollutants in the operation of its motor vehicles or motor vehicle engines which cause or contribute to an unreasonable risk to public health or welfare except as specifically permitted by the standards prescribed under section 202 of the Clean Air Act. The Volkswagen Group further states that any element of design, system, or emission control device installed or incorporated in the Volkswagen Group's new motor vehicles or new motor vehicle engines, for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of the Volkswagen Group's information and belief, cause or contribute to an unreasonable risk to public safety.

...

All vehicles have been tested in accordance with good engineering practice to ascertain that such test vehicles meet the requirement of this section for the useful life of the vehicle.

28. Based on the representations made by VW employees in the Applications for the Subject Vehicles, EPA and CARB issued Certificates for these vehicles, allowing the Subject Vehicles to be sold in the United States.

29. Upon importing the Subject Vehicles into the United States, VW disclosed to U.S. Customs and Border Protection ("CBP") that the vehicles were covered by valid Certificates by affixing an emissions label to the vehicles' engines. These labels stated that the vehicles conformed to EPA and CARB emissions regulations. VW affixed these labels to each of the Subject Vehicles that it imported into the United States.

30. VW represented to its U.S. customers, U.S. dealers, U.S. regulators and others in the United States that the Subject Vehicles met the new and stricter

U.S. emissions standards identified in paragraph 22 above. Further, VW designed a specific marketing campaign to market these vehicles to U.S. customers as “clean diesel” vehicles.

VW AG’s Criminal Conduct

31. From approximately May 2006 to approximately November 2015, VW AG, through Supervisors A-F and other VW employees, agreed to deceive U.S. regulators and U.S. customers about whether the Subject Vehicles and the Porsche Vehicles complied with U.S. emissions standards. During their involvement with design, marketing and/or sale of the Subject Vehicles and the Porsche Vehicles in the United States, Supervisors A-F and other VW employees: (a) knew that the Subject Vehicles and the Porsche Vehicles did not meet U.S. emissions standards; (b) knew that VW was using software to cheat the U.S. testing process by making it appear as if the Subject Vehicles and the Porsche Vehicles met U.S. emissions standards when, in fact, they did not; and (c) attempted to and did conceal these facts from U.S. regulators and U.S. customers.

The 2.0 Liter Defeat Device in the United States

32. In at least in or about 2006, VW AG employees working under the supervision of Supervisors B, C, and F were designing the new EA 189 2.0 liter diesel engine (later known as the Generation 1 or “Gen 1”) for use in the United States that would be the cornerstone of a new project to sell passenger diesel

vehicles in the United States. Selling diesel vehicles in the U.S. market was an important strategic goal of VW AG. This project became known within VW as the “US’07” project.

33. Supervisors B, C, and F, and others, however, realized that VW could not design a diesel engine that would both meet the stricter U.S. NOx emissions standards that would become effective in 2007 and attract sufficient customer demand in the U.S. market. Instead of bringing to market a diesel vehicle that could legitimately meet the new, more restrictive U.S. NOx emissions standards, VW AG employees acting at the direction of Supervisors B, C, and F and others, including Company A employees, designed, created, and implemented a software function to detect, evade and defeat U.S. emissions standards.

34. While employees acting at their direction designed and implemented the defeat device software, Supervisors B, C, and F, and others knew that U.S. regulators would measure VW’s diesel vehicles’ emissions through standard U.S. tests with specific, published drive cycles. VW AG employees acting at the direction of Supervisors B, C, and F, and others designed the VW defeat device to recognize whether the vehicle was undergoing standard U.S. emissions testing on a dynamometer (or “dyno”) or whether the vehicle was being driven on the road under normal driving conditions. The defeat device accomplished this by recognizing the standard drive cycles used by U.S. regulators. If the vehicle’s

software detected that it was being tested, the vehicle performed in one mode, which satisfied U.S. NOx emissions standards. If the defeat device detected that the vehicle was not being tested, it operated in a different mode, in which the effectiveness of the vehicle's emissions control systems was reduced substantially, causing the vehicle to emit substantially higher NOx, sometimes 35 times higher than U.S. standards.

35. In designing the defeat device, VW engineers borrowed the original concept of the dual-mode, emissions cycle-beating software from Audi. On or about May 17, 2006, a VW engineer, in describing the Audi software, sent an email to employees in the VW Brand Engine Development department that described aspects of the software and cautioned against using it in its current form because it was "pure" cycle-beating, i.e., as a mechanism to detect, evade and defeat U.S. emissions cycles or tests. The VW AG engineer wrote (in German), "within the clearance structure of the pre-fuel injection the acoustic function is nearly always activated within our current US'07-data set. This function is pure [cycle-beating] and can like this absolutely not be used for US'07."

36. Throughout in or around 2006, Supervisor F authorized VW AG engineers to use the defeat device in the development of the US'07 project, despite concerns expressed by certain VW AG employees about the propriety of designing and activating the defeat device software. In or about the fall of 2006, lower level

VW AG engineers, with the support of their supervisors, raised objections to the propriety of the defeat device, and elevated the issue to Supervisor B. During a meeting that occurred in or about November 2006, VW AG employees briefed Supervisor B on the purpose and design of the defeat device. During the meeting, Supervisor B decided that VW should continue with production of the US'07 project with the defeat device, and instructed those in attendance, in sum and substance, not to get caught.

37. Throughout 2007, various technical problems arose with the US'07 project that led to internal discussions and disagreements among members of the VW AG team that was primarily responsible for ensuring vehicles met U.S. emissions standards. Those disagreements over the direction of the project were expressly articulated during a contentious meeting on or about October 5, 2007, over which Supervisor C presided. As a result of the meeting, Supervisor C authorized Supervisor F and his team to proceed with the US'07 project despite knowing that only the use of the defeat device software would enable VW diesel vehicles to pass U.S. emissions tests.

38. Starting with the first model year 2009 of VW's new engine for the 2.0 Liter Subject Vehicles through model year 2016, Supervisors A-D and F, and others, then caused the defeat device software to be installed in the 2.0 Liter Subject Vehicles marketed and sold in the United States.

The 3.0 Liter Defeat Device in the United States

39. Starting in or around 2006, Audi AG engineers designed a 3.0 liter diesel for the U.S. market. The 3.0 liter engine was more powerful than the 2.0 liter engine, and was included in larger and higher-end model vehicles. The 3.0 liter engine was ultimately placed in various Volkswagen, Audi and Porsche diesel vehicles sold in the United States for model years 2009 through 2016. In order to pass U.S. emissions tests, Audi engineers designed and installed software designed to detect, evade and defeat U.S. emissions standards, which constituted a defeat device under U.S. law.

40. Specifically, Audi AG engineers calibrated a defeat device for the 3.0 Liter Subject Vehicles and the Porsche Vehicles that varied injection levels of a solution consisting of urea and water (“AdBlue”) into the exhaust gas system based on whether the vehicle was being tested or not, with less NOx reduction occurring during regular driving conditions. In this way, the vehicle consumed less AdBlue, and avoided a corresponding increase in the vehicle’s AdBlue tank size, which would have decreased the vehicle’s trunk size, and made the vehicle less marketable in the United States. In addition, the vehicle could drive further between service intervals, which was also perceived as important to the vehicle’s marketability in the United States.

Certification of VW Diesel Vehicles in the United States

41. VW employees met with the EPA and CARB to seek the certifications required to sell the Subject Vehicles to U.S. customers. During these meetings, some of which Supervisor F attended personally, VW employees misrepresented, and caused to be misrepresented, to the EPA and CARB staff that the Subject Vehicles complied with U.S. NOx emissions standards, when they knew the vehicles did not. During these meetings, VW employees described, and caused to be described, VW's diesel technology and emissions control systems to the EPA and CARB staff in detail but omitted the fact that the engine could not meet U.S. emissions standards without using the defeat device software.

42. Also as part of the certification process for each new model year, Supervisors A-F and others certified, and/or caused to be certified, to the EPA and CARB that the Subject Vehicles met U.S. emissions standards and complied with standards prescribed by the Clean Air Act. Supervisors A-F, and others, knew that if they had told the truth and disclosed the existence of the defeat device, VW would not have obtained the requisite Certificates for the Subject Vehicles and could not have sold any of them in the United States.

Importation of VW Diesel Vehicles in the United States

43. In order to import the Subject Vehicles into the United States, VW was required to disclose to CBP whether the vehicles were covered by valid certificates for the United States. VW did so by affixing a label to the vehicles' engines. VW employees caused to be stated on the labels that the vehicles complied with applicable EPA and CARB emissions regulations and limitations, knowing that if they had disclosed that the Subject Vehicles did not meet U.S. emissions regulations and limitations, VW would not have been able to import the vehicles into the United States. Certain VW employees knew that the labels for the Porsche Vehicles stated that those vehicles complied with EPA and CARB emissions regulations and limitations, when in fact, the VW employees knew they did not.

Marketing of "Clean Diesel" Vehicles in the United States

44. Supervisors A and C and others marketed, and caused to be marketed, the Subject Vehicles to the U.S. public as "clean diesel" and environmentally-friendly, when they knew the Subject Vehicles were intentionally designed to detect, evade and defeat U.S. emissions standards.

45. For example, on or about November 18, 2007, Supervisor C sent an email to Supervisor F and others attaching three photos of himself with

California's then-Governor, which were taken during an event at which Supervisor C promoted the 2.0 Liter Subject Vehicles in the United States as "green diesel."

The Improvement of the 2.0 Liter Defeat Device in the United States

46. Following the launch of the Gen 1 2.0 Liter Subject Vehicles in the United States, Supervisors C and F, and others, worked on a second generation of the vehicle (the "Gen 2"), which also contained software designed to detect, evade and defeat U.S. emissions tests. The Gen 2 2.0 Liter Subject Vehicles were launched in the United States in or around 2011.

47. In or around 2012, hardware failures developed in certain of the 2.0 Liter Subject Vehicles that were being used by customers on the road in the United States. VW AG engineers hypothesized that vehicles equipped with the defeat device stayed in "dyno" mode (i.e., testing mode) even when driven on the road outside of test conditions. Since the 2.0 Liter Subject Vehicles were not designed to be driven for longer periods of time in "dyno" mode, VW AG engineers suspected that the increased stress on the exhaust system from being driven too long in "dyno" mode could be the root cause of the hardware failures.

48. In or around July 2012, engineers from the VW Brand Engine Development department met, in separate meetings, with Supervisors A and E to explain that they suspected that the root cause of the hardware failures in the 2.0 Liter Subject Vehicles was the increased stress on the exhaust system from being

driven too long in “dyno” mode as a result of the use of software designed to detect, evade and defeat U.S. emissions tests. To illustrate the software’s function, the engineers used a document. Although they understood the purpose and significance of the software, Supervisors A and E each encouraged the further concealment of the software. Specifically, Supervisors A and E each instructed the engineers who presented the issue to them to destroy the document they had used to illustrate the operation of the defeat device software.

49. VW AG engineers, having informed the supervisor in charge of the VW AG Engine Development department and within the VW AG Quality Management and Product Safety department of the existence and purpose of the defeat device in the 2.0 Liter Subject Vehicles, then sought ways to improve its operation in existing 2.0 Liter Subject Vehicles to avoid the hardware failures. To solve the hardware failures, VW AG engineers decided to start the 2.0 Liter Subject Vehicles in the “street mode” and, when the defeat device recognized that the vehicle was being tested for compliance with U.S. emissions standards, switch to the “dyno mode.” To increase the likelihood that the vehicle in fact realized that it was being tested on the dynamometer for compliance with U.S. emissions standards, the VW AG engineers activated a “steering wheel angle recognition” feature. The steering wheel angle recognition interacted with the software by

enabling the vehicle to detect whether it was being tested on a dynamometer (where the steering wheel is not turned), or being driven on the road.

50. Certain VW AG employees again expressed concern, specifically about the expansion of the defeat device through the steering wheel angle detection, and sought approval for the function from more senior supervisors within the VW AG Engine Development department. In particular, VW AG engineers asked Supervisor A for a decision on whether or not to use the proposed function in the 2.0 Liter Subject Vehicles. In or about April 2013, Supervisor A authorized activation of the software underlying the steering wheel angle recognition function. VW employees then installed the new software function in new 2.0 Liter Subject Vehicles being sold in the United States, and later installed it in existing 2.0 Liter Subject Vehicles through software updates during maintenance.

51. VW employees falsely told, and caused others to tell, U.S. regulators, U.S. customers and others in the United States that the software update in or around 2014 was intended to improve the 2.0 Liter Subject Vehicles when, in fact, VW employees knew that the update also used the steering wheel angle of the vehicle as a basis to more easily detect when the vehicle was undergoing emissions tests, thereby improving the defeat device's precision in order to reduce the stress on the emissions control systems.

The Concealment of the Defeat Devices in the United States – 2.0 Liter

52. In or around March 2014, certain VW employees learned of the results of a study undertaken by West Virginia University's Center for Alternative Fuels, Engines and Emissions and commissioned by the International Council on Clean Transportation (the "ICCT study"). The ICCT study identified substantial discrepancies in the NOx emissions from certain 2.0 Liter Subject Vehicles when tested on the road compared to when these vehicles were undergoing EPA and CARB standard drive cycle tests on a dynamometer. The results of the study showed that two of the three vehicles tested on the road, both 2.0 Liter Subject Vehicles, emitted NOx at values of up to approximately 40 times the permissible limit applicable during testing in the United States.

53. Following the ICCT study, CARB, in coordination with the EPA, attempted to work with VW to determine the cause for the higher NOx emissions in the 2.0 Liter Subject Vehicles when being driven on the road as opposed to on the dynamometer undergoing standard emissions test cycles. To do this, CARB, in coordination with the EPA, repeatedly asked VW questions that became increasingly more specific and detailed, as well as conducted additional testing themselves.

54. In response to learning about the results of the ICCT study, engineers in the VW Brand Engine Development department formed an ad hoc task force to

formulate responses to questions that arose from the U.S. regulators. VW AG supervisors, including Supervisors A, D, and E, and others, determined not to disclose to U.S. regulators that the tested vehicle models operated with a defeat device. Instead, Supervisors A, D, and E, and others decided to pursue a strategy of concealing the defeat device in responding to questions from U.S. regulators, while appearing to cooperate.

55. Throughout 2014 and the first half of 2015, Supervisors A, D, and E, and others, continued to offer, and/or cause to be offered, software and hardware “fixes” and explanations to U.S. regulators for the 2.0 Liter Subject Vehicles’ higher NO_x measurements on the road without revealing the underlying reason – the existence of software designed to detect, evade and defeat U.S. emissions tests.

56. On or about April 28, 2014, members of the VW task force presented the findings of the ICCT study to Supervisor E, whose supervisory responsibility included addressing safety and quality problems in vehicles in production. Included in the presentation was an explanation of the potential financial consequences VW could face if the defeat device was discovered by U.S. regulators, including but not limited to applicable fines per vehicle, which were substantial.

57. On or about May 21, 2014, a VW AG employee sent an email to his supervisor, Supervisor D, and others, describing an “early round meeting” with

Supervisor A, at which emissions issues in North America for the Gen 2 2.0 Liter Subject Vehicles were discussed, and questions were raised about the risk of what could happen and the available options for VW. Supervisor D responded by email that he was in “direct touch” with the supervisor in charge of Quality Management at VW AG and instructed the VW AG employee to “please treat confidentially” the issue.

58. On or about October 1, 2014, VW AG employees presented to CARB regarding the ICCT study results and discrepancies identified in NOx emissions between dynamometer testing and road driving. In response to questions, the VW AG employees did not reveal that the existence of the defeat device was the explanation for the discrepancies in NOx emissions, and, in fact, gave CARB various false reasons for the discrepancies in NOx emissions including driving patterns and technical issues.

59. When U.S. regulators threatened not to certify VW model year 2016 vehicles for sale in the United States, VW AG supervisors requested a briefing on the situation in the United States. On or about July 27, 2015, VW AG employees presented to VW AG supervisors. Supervisors A and D were present, among others.

60. On or about August 5, 2015, in a meeting in Traverse City, Michigan, two VW employees met with a CARB official to discuss again the discrepancies in

emissions of the 2.0 Liter Subject Vehicles. The VW employees did not reveal the existence of the defeat device.

61. On or about August 18, 2015, Supervisors A and D, and others, approved a script to be followed by VW AG employees during an upcoming meeting with CARB in California on or about August 19, 2015. The script provided for continued concealment of the defeat device from CARB in the 2.0 Liter Subject Vehicles, with the goal of obtaining approval to sell the Gen 3 model year 2016 2.0 Liter Subject Vehicles in the United States.

62. On or about August 19, 2015, in a meeting with CARB in El Monte, California, a VW employee explained, for the first time to U.S. regulators and in direct contravention of instructions from supervisors at VW AG, that certain of the 2.0 Liter Subject Vehicles used different emissions treatment depending on whether the vehicles were on the dynamometer or the road, thereby signaling that VW had evaded U.S. emissions tests.

63. On or about September 3, 2015, in a meeting in El Monte, California with CARB and EPA, Supervisor D, while creating the false impression that he had been unaware of the defeat device previously, admitted that VW had installed a defeat device in the 2.0 Liter Subject Vehicles.

64. On or about September 18, 2015, the EPA issued a public Notice of Violation to VW stating that the EPA had determined that VW had violated the

Clean Air Act by manufacturing and installing defeat devices in the 2.0 Liter Subject Vehicles.

The Concealment of the Defeat Devices in the United States – 3.0 Liter

65. On or about January 27, 2015, CARB informed VW AG that CARB would not approve certification of the Model Year 2016 3.0 Liter Subject Vehicles until Audi AG confirmed that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as had been identified by the ICCT study and as were being addressed by VW with the 2.0 Liter Subject Vehicles.

66. On or about March 24, 2015, in response to CARB's questions, Audi AG employees made a presentation to CARB, during which Audi AG employees did not disclose that the Audi 2.0 and 3.0 Liter Subject Vehicles and the Porsche Vehicles in fact contained a defeat device, which caused emissions discrepancies in those vehicles. The Audi AG employees informed CARB that the 3.0 Liter Subject Vehicles did not possess the same emissions issues as the 2.0 Liter Subject Vehicles when, in fact, the 3.0 Liter Subject Vehicles possessed at least one defeat device that interfered with the emissions systems to reduce NOx emissions on the dyno but not on the road. On or about March 25, 2015, CARB, based on the misstatements and omissions made by the Audi AG representatives, issued an executive order approving the sale of Model Year 2016 3.0 Liter Subject Vehicles.

67. On or about November 2, 2015, EPA issued a Notice of Violation to VW AG, Audi AG and Porsche AG, citing violations of the Clean Air Act related to EPA's discovery that the 3.0 Liter Subject Vehicles and the Porsche Vehicles contained a defeat device that resulted in excess NOx emissions when the vehicles were driven on the road.

68. On or about November 2, 2015, VW AG issued a statement that "no software has been installed in the 3-liter V6 diesel power units to alter emissions characteristics in a forbidden manner."

69. On or about November 19, 2015, Audi AG representatives met with EPA and admitted that the 3.0 Liter Subject Vehicles contained at least three undisclosed AECDs. Upon questioning from EPA, Audi AG representatives conceded that one of these three undisclosed AECDs met the criteria of a defeat device under U.S. law.

70. On or about May 16, 2016, Audi AG representatives met with CARB and admitted that there were additional elements within two of its undisclosed AECDs, which impacted the dosing strategy in the 3.0 Liter Subject Vehicles and the Porsche Vehicles.

71. On or about July 19, 2016, in a presentation to CARB, Audi AG representatives conceded that elements of two of its undisclosed AECDs met the definition of a defeat device.

72. Supervisors A-F and others caused defeat device software to be installed on all of the approximately 585,000 Subject Vehicles and the Porsche Vehicles sold in the United States from 2009 through 2015.

Obstruction of Justice

73. As VW employees prepared to admit to U.S. regulators that VW used a “defeat device” in the 2.0 Liter Subject Vehicles, counsel for VW GOA prepared a litigation hold notice to ensure that VW GOA preserved documents relevant to diesel emissions issues. At the same time, VW GOA was in contact with VW AG to discuss VW AG preserving documents relevant to diesel emissions issues. Attorney A made statements that several employees understood as suggesting the destruction of these materials. In anticipation of this hold taking effect at VW AG, certain VW AG employees destroyed documents and files related to U.S. emissions issues that they believed would be covered by the hold. Certain VW AG employees also requested that their counterparts at Company A destroy sensitive documents relating to U.S. emissions issues. Certain Audi AG employees also destroyed documents related to U.S. emissions issues. The VW AG and Audi AG employees who participated in this deletion activity did so to protect both VW and themselves from the legal consequences of their actions.

74. Between the August 19, 2015 and September 3, 2015 meetings with U.S. regulators, certain VW AG employees discussed issues with Attorney A and others.

75. On or about August 26, 2015, VW GOA's legal team sent the text of a litigation hold notice to Attorney A in VW AG's Wolfsburg office that would require recipients to preserve and retain records in their control. The subject of the e-mail was "Legal Hold Notice – Emissions Certification of MY2009-2016 2.0L TDI Volkswagen and Audi vehicles." The VW GOA legal team stated that VW GOA would be issuing the litigation hold notice to certain VW GOA employees the following day. On or about August 28, 2015, Attorney A received notice that VW GOA was issuing that litigation hold notice that day. Attorney A indicated to his staff on August 31 that the hold would be sent out at VW AG on September 1. Among those at VW AG being asked to retain and preserve documents were Supervisors A and D and a number of other VW AG employees.

76. On or about August 27, 2015, Attorney A met with several VW AG engineers to discuss the technology behind the defeat device. Attorney A indicated that a hold was imminent, and that these engineers should check their documents, which multiple participants understood to mean that they should delete documents prior to the hold being issued.

77. On or about August 31, 2015, a meeting was held to prepare for the September 3 presentation to CARB and EPA where VW's use of the defeat device in the United States was to be formally revealed. During the meeting, within hearing of several participants, Attorney A discussed the forthcoming hold and again told the engineers that the hold was imminent and recommended that they check what documents they had. This comment led multiple individuals, including supervisors in the VW Brand Engine Development department at VW AG, to delete documents related to U.S. emissions issues.

78. On or about September 1, 2015, the hold at VW AG was issued. On or about September 1, 2015, several employees in the VW Brand Engine Development department at VW AG discussed the fact that their counterparts at Company A would also possess documents related to U.S. emissions issues. At least two VW AG employees contacted Company A employees and asked them to delete documents relating to U.S. emissions issues.

79. On or about September 3, 2015, Supervisor A approached Supervisor D's assistant, and requested that Supervisor D's assistant search in Supervisor D's office for a hard drive on which documents were stored containing emails of VW AG supervisors, including Supervisor A. Supervisor D's assistant recovered the hard drive and gave it to Supervisor A. Supervisor A later asked his assistant to throw away the hard drive.

80. On or about September 15, 2015, a supervisor within the VW Brand Engine Development department convened a meeting with approximately 30-40 employees, during which Attorney A informed the VW AG employees present about the current situation regarding disclosure of the defeat device in the United States. During this meeting, a VW AG employee asked Attorney A what the employees should do with new documents that were created, because they could be harmful to VW AG. Attorney A indicated that new data should be kept on USB drives and only the final versions saved on VW AG's system, and then, only if "necessary."

81. Even employees who did not attend these meetings, or meet with Attorney A personally, became aware that there had been a recommendation from a VW AG attorney to delete documents related to U.S. emissions issues. Within VW AG and Audi AG, thousands of documents were deleted by approximately 40 VW AG and Audi AG employees.

82. After it began an internal investigation, VW AG was subsequently able to recover many of the deleted documents.