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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES AND
14 PRODUCTS LIABILITY LITIGATION

MDL 2672 CRB (JSC)

15 This Documents Relates to:

16 ALL CONSUMER AND RESELLER
17 ACTIONS

**CONSUMER CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Hearing: July 26, 2016
Time: 8:00 a.m.
Courtroom: 6, 17th floor

The Honorable Charles R. Breyer

1 **1. THE PROPOSED SETTLEMENT**

2 In September 2015, the U.S. Environmental Protection Agency (“EPA”) issued a notice of
3 violation to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (collectively
4 “Volkswagen”), alleging that certain 2.0-liter Volkswagen and Audi branded turbocharged direct-
5 injection (“TDI”) diesel vehicles in the United States were equipped with “defeat device”
6 software designed to reduce the effectiveness of the vehicles’ emission control systems with
7 respect to nitrogen oxides (“NOx”). Starting in September 2015, owners, lessees, and dealers
8 filed hundreds of lawsuits against Volkswagen in federal courts across the United States, which
9 were consolidated in the United States District Court for the Northern District of California
10 before the Honorable Charles R. Breyer (the “Action”). Judge Breyer appointed Lead Plaintiffs’
11 Counsel, as well as a committee of plaintiffs’ lawyers from law firms across the United States
12 (referred to collectively as the Plaintiffs’ Steering Committee (“PSC”)), to oversee the litigation
13 on behalf of affected owners, lessees, and dealers.

14 After months of negotiations facilitated by Court-appointed Settlement Master Robert
15 Mueller III, former director of the Federal Bureau of Investigation, the Parties reached this Class
16 Action Agreement to settle the claims of certain current and former owners and lessees of certain
17 Volkswagen and Audi branded vehicles with 2.0-liter TDI engines (“Eligible Vehicles”). This
18 Class Action Agreement does not apply to vehicles equipped with 3.0-liter engines, which are the
19 subject of continued litigation in this Action.

20 This Class Action Agreement will become effective only if it is approved by the Court.

21 This Class Action Agreement is part of a coordinated effort among not only the Parties,
22 but also the Federal Trade Commission (“FTC”) and the United States Department of Justice
23 (“DOJ”). In addition to this Agreement, Volkswagen is entering into a separate Consent Order
24 with the FTC, and also a separate Consent Decree with the DOJ (acting on behalf of the EPA),
25 the California Air Resources Board (“CARB”), and the California Attorney General (“CA AG”).

26 As discussed in greater detail below, the Class Action Agreement, if approved by the
27 Court, provides Class Members with two options: (1) under option one, Class Members who own
28 an Eligible Vehicle can sell their car to Volkswagen and receive the Vehicle Value and a

1 restitution payment, and Class Members who lease an Eligible Vehicle can terminate their leases
2 without any penalty for early termination and receive a restitution payment; or (2) under option
3 two, Class Members who own or lease an Eligible Vehicle can have Volkswagen modify their
4 car's emissions system free of charge to reduce NOx emissions, and also receive a restitution
5 payment. As explained in more detail below, Volkswagen must first obtain regulatory approval
6 for such emission modifications from the EPA and CARB. Should Volkswagen fail to acquire
7 the necessary regulatory approvals, Class Members who own or lease Eligible Vehicles and
8 elected option two shall have the opportunity to sell their car or terminate their lease, or to
9 withdraw from the Class. Certain Class Members who no longer own or lease an Eligible Vehicle
10 also will be entitled to certain restitution payments. The details of all restitution payments for
11 Class Members are set forth in Exhibit 1, and more information will be made available on the
12 Settlement Website, www.VWCourtSettlement.com. Only Class Members qualify to participate
13 in the Class Action Settlement Program.

14 Under this Class Action Agreement and the related FTC Consent Order, Volkswagen has
15 agreed to create one Funding Pool of \$10.033 billion from which funds will be drawn to
16 compensate Class Members. In addition, under the related DOJ Consent Decree, Volkswagen
17 will pay \$2.7 billion to fully remediate any environmental effects of excess NOx emissions, and
18 will invest an additional \$2.0 billion to create infrastructure for and promote public awareness of
19 zero emission vehicles ("ZEVs").

20 The ultimate goal of this agreement is to compensate owners or lessees of Eligible
21 Vehicles for any harm they suffered as a result of the emissions issues and to ensure that
22 Volkswagen's 2.0-liter TDI vehicles do not generate excess NOx emissions.

23 **2. DEFINITIONS**

24 As used in this Class Action Agreement, including the attached Exhibits, the terms
25 defined herein have the following meanings, unless this Class Action Agreement specifically
26 provides otherwise.

27 2.1. "2.0-liter TDI Matter" means (1) the installation or presence of any Defeat Device
28 or other auxiliary emission control device in any Eligible Vehicle; (2) the design, manufacture,

1 assembly, testing, or development of any Defeat Device or other auxiliary emission control
2 device used or for use in an Eligible Vehicle; (3) the marketing or advertisement of any Eligible
3 Vehicle as green, environmentally friendly, and/or compliant with state or federal emissions
4 standards; (4) the actual or alleged noncompliance of any Eligible Vehicle with state or federal
5 emissions standards; and/or (5) the subject matter of the Action, as well as any related events or
6 allegations, with respect to Eligible Vehicles. For the avoidance of doubt, the 2.0-liter TDI
7 Matter does not encompass 3.0-liter TDI vehicles or claims relating to those vehicles.

8 2.2. “Action” means the coordinated class, mass, and individual actions, however
9 named, that are coordinated pursuant to 28 U.S.C. § 1407 in the United States District Court for
10 the Northern District of California in *In re: Volkswagen “Clean Diesel” Marketing, Sales*
11 *Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (MDL 2672)
12 (the “MDL”), except that the Action does not include actions in the MDL brought under the
13 securities laws, for physical injury, on behalf of Volkswagen Dealers, or on behalf of competitor
14 dealerships not related to such competitor dealerships’ purchase, sale or lease of Eligible
15 Vehicles.

16 2.3. “Approved Emissions Modification” means a change to the emissions system of an
17 Eligible Vehicle that is proposed by Volkswagen and approved by the EPA and CARB, as set
18 forth in the DOJ Consent Decree. The term “Emissions Modification” means a change to the
19 emissions system of an Eligible Vehicle that is proposed by Volkswagen, but has not yet been
20 approved by the EPA and CARB.

21 2.4. “Approved Emissions Modification Option” means the option of an Eligible
22 Owner or Eligible Lessee under this Class Action Agreement to have his, her, or its Eligible
23 Vehicle modified pursuant to an Approved Emissions Modification, and to receive compensation,
24 as set forth in Section 4 and Exhibit 1.

25 2.5. “Base Value” means, where available, the Clean Trade value of an Eligible
26 Vehicle based on the NADA Vehicle Identification Code (“VIC”) for each Eligible Vehicle in the
27 September 2015 NADA Used Car Guide published in or about August 2015. For Model Year
28 (“MY”) 2015 Eligible Vehicles for which no value was published by NADA as of September

1 2015, Base Value is derived by multiplying the MSRP for each individual vehicle by 0.717,
2 dropping any fractional amount, and then adjusting the amount for options. The method for
3 calculating the Base Value for Eligible Vehicles is further detailed in Exhibit 1, paragraph 5.

4 2.6. "Buyback" means the buyback process available under this Class Action
5 Agreement by which an Eligible Owner may sell an Eligible Vehicle back to Volkswagen in
6 exchange for certain compensation, as set forth in Section 4 and Exhibit 1.

7 2.7. "Buyback Option" means the option of an Eligible Owner under this Class Action
8 Agreement to have his, her, or its Eligible Vehicle bought back by Volkswagen through the
9 Buyback, as set forth in Section 4 and Exhibit 1.

10 2.8. "CARB" means the California Air Resources Board.

11 2.9. "Claim" means the claim of any Class Member or his or her or its representative
12 submitted on a Claim Form as provided in this Class Action Agreement.

13 2.10. "Claim Form" means the document used to submit a Claim under this Class
14 Action Agreement.

15 2.11. "Claim Period" means the time period during which Class Members may submit a
16 Claim for review to the Claims Supervisor and obtain benefits under the Class Action Settlement
17 Program. The Claim Period shall run from entry of the Preliminary Approval Order until
18 December 30, 2018. Class Members must submit a complete and valid Claim by no later than
19 September 1, 2018, and, if eligible, shall have until December 30, 2018, to obtain their chosen
20 remedy.

21 2.12. "Claimant" means a Class Member who has completed and submitted a Claim
22 Form, as set forth in more detail in Exhibit 4.

23 2.13. "Claims Program" means the program through which Class Members may file
24 Claims and, if eligible, obtain benefits under this Class Action Agreement, as described in
25 Exhibit 4.

26 2.14. "Claims Review Committee" or "CRC" means the committee approved by the
27 Court to resolve disputed Claims, as set forth in Section 5.3 below.

28 2.15. "Claims Supervisor" means the third-party agent agreed to by the Parties and

1 appointed by the Court to oversee the Claims process described in Section 5.2. The Parties agree
2 that Ankura Consulting Group, LLC shall serve as Claims Supervisor, subject to approval by the
3 Court.

4 2.16. "Class" means, for purposes of this Class Action Settlement only, a nationwide
5 class of all persons (including individuals and entities) who, on September 18, 2015, were
6 registered owners or lessees of a Volkswagen or Audi 2.0-liter TDI vehicle in the United States or
7 its territories (an "Eligible Vehicle," defined more fully in Section 2.33), or who, between
8 September 18, 2015, and the end of the Claim Period, become a registered owner of an Eligible
9 Vehicle. The following entities and individuals are excluded from the Class:

- 10 (a) Owners who acquired ownership of their Volkswagen or Audi 2.0-liter TDI
11 vehicles after September 18, 2015, and transfer title before participating in the
12 Settlement Program through a Buyback or an Approved Emissions Modification;
- 13 (b) Lessees of a Volkswagen or Audi 2.0-liter TDI vehicle that is leased from a
14 leasing company other than VW Credit, Inc.;
- 15 (c) Owners whose Volkswagen or Audi 2.0-liter TDI vehicle (i) could not be driven
16 under the power of its own 2.0-liter TDI engine on June 28, 2016, or (ii) had a
17 Branded Title of Assembled, Dismantled, Flood, Junk, Rebuilt, Reconstructed, or
18 Salvage on September 18, 2015, and was acquired from a junkyard or salvage yard
19 after September 18, 2015;
- 20 (d) Owners who sell or otherwise transfer ownership of their Volkswagen or Audi 2.0-
21 liter TDI vehicle between June 28, 2016, and September 16, 2016 (the "Opt-Out
22 Deadline"), inclusive of those dates;
- 23 (e) Volkswagen's officers, directors and employees and participants in Volkswagen's
24 Internal Lease Program; Volkswagen's affiliates and affiliates' officers, directors
25 and employees; their distributors and distributors' officers, directors and
26 employees; and Volkswagen Dealers and Volkswagen Dealers' officers and
27 directors;
- 28

1 (f) Judicial officers and their immediate family members and associated court staff
2 assigned to this case; and

3 (g) All those otherwise in the Class who or which timely and properly exclude
4 themselves from the Class as provided in this Class Action Agreement.

5 2.17. "Class Action Agreement" means this settlement agreement and the exhibits
6 attached hereto, including any subsequent amendments or any exhibits to such amendments. The
7 Agreement may alternatively be referred to as the "Class Action Settlement."

8 2.18. "Class Action Settlement Program" means the Buyback, Lease Termination,
9 Approved Emissions Modification, and Restitution Payment programs offered during the Claim
10 Period pursuant to this Class Action Agreement.

11 2.19. "Class Counsel" means Lead Counsel and the PSC.

12 2.20. "Class Member" means a member of the Class.

13 2.21. "Class Notice Program" means the program for distributing information about the
14 Class Settlement to Class Members.

15 2.22. "Class Representative" or "Settlement Class Representative" means a Plaintiff
16 named in the Complaint, who own(ed) or leas(ed) a Volkswagen or Audi 2.0-liter TDI Eligible
17 Vehicle, who meets the Class definition set forth in Section 2.16 of this Class Action Agreement,
18 and who has agreed to represent the Class for purposes of obtaining approval of, and effectuating,
19 this Class Action Agreement, as listed in the moving papers submitted for preliminary approval of
20 this Class Action Agreement.

21 2.23. "Complaint" means the Consolidated Consumer Class Action complaint filed in
22 the Action on February 22, 2016, ECF No. 1230.

23 2.24. "Court" means the United States District Court for the Northern District of
24 California, San Francisco Division.

25 2.25. "Defeat Device" has the same meaning as in 40 C.F.R. § 86.1803-01 or 42 U.S.C.
26 § 7522(a)(3)(B).

27 2.26. "DOJ" means the United States Department of Justice.

28 2.27. "DOJ Consent Decree" means the consent decree lodged with the Court on or

1 about June 28, 2016, as agreed by (1) the United States on behalf of the Environmental Protection
2 Agency; and (2) the People of the State of California, by and through CARB and the Attorney
3 General of California; and (3) Volkswagen, resolving certain aspects of the disputes between
4 those parties on the terms described therein.

5 2.28. "Effective Date" means the date the Court enters the Final Approval Order, the
6 FTC Consent Order, or the DOJ Consent Decree, whichever is latest.

7 2.29. "Eligible Lessee" means (1) the current lessee or lessees of an Eligible Vehicle
8 with a lease issued by VW Credit, Inc.; (2) the former lessee or lessees of an Eligible Vehicle
9 who had an active lease issued by VW Credit, Inc. as of September 18, 2015 and who surrendered
10 or surrenders the leased Eligible Vehicle to Volkswagen; or (3) the owner of an Eligible Vehicle
11 who had an active lease issued by VW Credit, Inc. as of September 18, 2015, and who acquired
12 ownership of the previously leased Eligible Vehicle at the conclusion of the lease after June 28,
13 2016. For avoidance of doubt, no person shall be considered an Eligible Lessee by virtue of
14 holding a lease issued by a lessor other than VW Credit, Inc.

15 2.30. "Eligible Owner" means the registered owner or owners of an Eligible Vehicle on
16 June 28, 2016, or the registered owner or owners who acquire an Eligible Vehicle after June 28,
17 2016, but before the end of the Claim Period, except that the owner of an Eligible Vehicle who
18 had an active lease issued by VW Credit, Inc. as of September 18, 2015, and purchased an
19 Eligible Vehicle previously leased by that owner after June 28, 2016, shall be an Eligible Lessee.
20 For avoidance of doubt, an Eligible Owner ceases to be an Eligible Owner if he transfers
21 ownership of the Eligible Vehicle to a third party on or after June 28, 2016; and a third party who
22 acquires ownership of an Eligible Vehicle on or after June 28, 2016, thereby becomes an Eligible
23 Owner if that third party otherwise meets the definition of an Eligible Owner. An owner of an
24 Eligible Vehicle will not qualify as an Eligible Owner while the Eligible Vehicle is under lease to
25 any third party, although any such owner, including any leasing company other than VW Credit,
26 Inc., who otherwise meets the definition of an Eligible Owner would become an Eligible Owner if
27 such lease has been canceled or terminated and the owner has taken possession of the vehicle. In
28 exceptional cases, specific arrangements may be made with the leasing company, in consultation

1 with the Claims Supervisor, such that, (1) without canceling or terminating the lease, the leasing
2 company may be treated as an Eligible Owner and obtain an Approved Emissions Modification
3 and Owner Restitution and (2) a lessor that takes possession of a leased Eligible Vehicle after the
4 September 1, 2018, Claim submission deadline (or the December 30, 2018, end date of the Claim
5 Program) may nonetheless be entitled to submit a Claim.

6 2.31. “Eligible Seller” means a person who purchased or otherwise acquired an Eligible
7 Vehicle on or before September 18, 2015, and sold or otherwise transferred ownership of such
8 vehicle after September 18, 2015, but before June 28, 2016. For avoidance of doubt, Eligible
9 Seller includes any owner (1) who acquired his, her, or its Eligible Vehicle on or before
10 September 18, 2015, (2) whose Eligible Vehicle was totaled, and (3) who consequently
11 transferred title of his, her, or its vehicle to an insurance company after September 18, 2015, but
12 before June 28, 2016.

13 2.32. “Eligible Seller Identification Period” means the time period in which an Eligible
14 Seller must identify himself, herself, or itself, by (1) electronic registration on the Settlement
15 Website or (2) submission of an Eligible Seller identification form by mail or fax. The Eligible
16 Seller Identification Period will last at least 45 days from entry of the Preliminary Approval
17 Order. If the Court enters the Preliminary Approval Order on July 26, 2016 (the date of the
18 preliminary approval hearing), the Eligible Seller Identification Period will run until September
19 16, 2016, the same date as the Opt-Out Deadline. Eligible Sellers who do not identify themselves
20 during that time period will not be eligible for a Restitution Payment under this Class Action
21 Agreement.

22 2.33. “Eligible Vehicle” means Model Year 2009 through 2015 Volkswagen and Audi
23 light-duty vehicles equipped with 2.0-liter TDI engines that are (1) covered, or purported to be
24 covered, by the EPA Test Groups in the table immediately below this paragraph; (2) registered
25 with a state Department of Motor Vehicles or equivalent agency or held by bill of sale by a non-
26 Volkswagen Dealer in the United States or its territories as of June 28, 2016; (3) for an Eligible
27 Owner, currently Operable or cease to be Operable only after the Opt-Out Deadline; and (4) have
28 not been modified pursuant to an Approved Emissions Modification. Eligible Vehicle also

1 excludes any Volkswagen or Audi vehicle that was never sold in the United States or its
2 territories.

3 Model Year	EPA Test Group	Make and Model(s)
4 2009	9VWXV02.035N	VW Jetta, VW Jetta SportWagen
5 2009	9VWXV02.0U5N	VW Jetta, VW Jetta SportWagen
6 2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
7 2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
8 2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
9 2012	CVWXV02.0U4S	VW Passat
10 2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
11 2013	DVWXV02.0U4S	VW Passat
12 2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen
13 2014	EVWXV02.0U4S	VW Passat
14 2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf SportWagen, VW Jetta, VW Passat, Audi A3

15 2.34. "EPA" means the United States Environmental Protection Agency.

16 2.35. "Escrow Account" means the escrow account managed by the Escrow Agent,
17 which shall be the sole escrow account for compensation of Class Members under the Class
18 Action Agreement, FTC Consent Order, and DOJ Consent Decree.

19 2.36. "Escrow Agent" means the agreed-upon entity to address and hold for distribution
20 the funds identified in this Class Action Agreement pursuant to the terms of the Escrow
21 Agreement. The Parties agree that Citibank Private Bank shall serve as Escrow Agent, subject to
22 approval by the Court.

23 2.37. "Escrow Agreement" means the agreement by and among Class Counsel and
24 Volkswagen's Lead Counsel with respect to the escrow of the funds to be deposited into the
25 Escrow Account pursuant to this Class Action Agreement.

26 2.38. "Fairness Hearing" means the hearing held by the Court for the purpose of
27 determining whether to approve this Class Action Agreement as fair, reasonable, and adequate.

28 2.39. "Final Approval Order" or "Final Order and Judgment" means the Court's order
approving the Class Action Settlement.

2.40. "FTC" means the Federal Trade Commission.

1 2.41. “FTC Consent Order” means the order entered by this Court by the consent of the
2 FTC and Volkswagen, resolving certain aspects of the disputes between those parties on the terms
3 described therein.

4 2.42. “Funding Pool” means the maximum \$10,033,000,000 funding pool from which
5 Class Members will be compensated and is the same funding pool described in the FTC Consent
6 Order and the DOJ Consent Decree. The Funding Pool is based on an assumed 100% Buyback of
7 all purchased Eligible Vehicles and 100% Lease Termination of all leased Eligible Vehicles. The
8 Funding Pool includes (1) \$42,670,723 designated for loan forgiveness for Eligible Owners who
9 choose a Buyback and who owe more on their Eligible Vehicles than they would receive in the
10 Buyback, as described in Exhibit 1 (the “Loan Forgiveness Designated Fund”); (2) \$26,000,000
11 designated to pay remaining future lease payments previously owed to VW Credit, Inc. as the
12 lessor of leased Eligible Vehicles held by lessees choosing Lease Termination (the “Future Lease
13 Payments Designated Fund”); and (3) \$9,964,329,277 to pay Vehicle Value, Owner Restitution,
14 Lessee Restitution, and Seller Restitution as described in Exhibit 1 (the “Principal Fund”). The
15 Loan Forgiveness Designated Fund, Future Lease Payments Designated Fund, and Principal Fund
16 are not available for any funding purpose other than their respective purposes stated above, and
17 Volkswagen shall retain any such funds not expended for these designated purposes. The Funding
18 Pool shall be capped at \$10,033,000,000, regardless of the rate of consumer participation in the
19 Settlement Program, and Volkswagen shall not be required to increase the Funding Pool. Any
20 unspent portion of the Funding Pool will belong to Volkswagen upon the completion of the Class
21 Action Settlement Program.

22 2.43. “Lead Plaintiffs’ Counsel” means Elizabeth Cabraser of Lieff, Cabraser, Heimann
23 & Bernstein, LLP, who was appointed by the Court on January 21, 2016.

24 2.44. “Lease Termination” means the process by which an Eligible Lessee may have the
25 lease for his, her, or its Eligible Vehicle terminated, without paying an early termination penalty,
26 as described in more detail in Section 4 and Exhibit 1.

27 2.45. “Lease Termination Option” means the option of an Eligible Lessee to have the
28 lease for his, her, or its Eligible Vehicle terminated through the Lease Termination, without

1 paying an early termination penalty, as described in more detail in Section 4 and Exhibit 1.

2 2.46. “Lessee Restitution” means monetary compensation that Volkswagen will pay to
3 Eligible Lessees who do not opt out of the Class, in addition to the Lease Termination or
4 Approved Emissions Modification, as determined by the formula set forth in Section 4 and
5 Exhibit 1.

6 2.47. “Loan Obligation” means any debt incurred by an Eligible Owner and secured by
7 an Eligible Vehicle, whether through VW Credit, Inc. or any other lender.

8 2.48. “Long Form Notice” means the Long Form Notice substantially in the form
9 attached hereto as Exhibit 3.

10 2.49. “Notice Administrator” means the third-party agent or administrator agreed to by
11 the Parties and appointed by the Court to implement and consult on Class Notice. The Parties
12 agree that Kinsella Media, LLC shall serve as Notice Administrator, subject to approval by the
13 Court.

14 2.50. “Operable” means a vehicle that can be driven under its own 2.0-liter TDI engine
15 power. A vehicle is not Operable if it had a Branded Title of Assembled, Dismantled, Flood,
16 Junk, Rebuilt, Reconstructed, or Salvaged on September 18, 2015, and was acquired by any
17 person or entity from a junkyard or salvage yard after September 18, 2015.

18 2.51. “Opt-Out Deadline” means the last day a Class Member may opt out of the Class
19 Action Settlement, which is September 16, 2016, for all Class Members who are registered
20 owners or lessees as of that date. Individuals and entities that purchase an Eligible Vehicle on or
21 after September 16, 2016, shall have all the rights, privileges, and responsibilities of Class
22 Members, and shall have 30 days from the date of their purchase to opt out of the Class.
23 Additionally, because the remedies available to Class Members include a contingent option, if
24 there is no Approved Emissions Modification available for a Class Member’s Eligible Vehicle by
25 May 1, 2018, that Eligible Owner or Lessee shall have a second opportunity, from May 1, 2018,
26 until June 1, 2018, to withdraw from the Class Action Settlement.

27 2.52. “Owner Restitution” means monetary compensation that Volkswagen will pay to
28 Eligible Owners who do not opt out of the Class, in addition to the Vehicle Value Payment or

1 Approved Emissions Modification, as determined by the formula set forth in Exhibit 1.

2 2.53. “Parties” means the Class Representatives and Volkswagen, collectively, as each
3 of those terms is defined in this Class Action Agreement.

4 2.54. “Plaintiffs’ Steering Committee” or “PSC” means those counsel appointed to the
5 Plaintiffs’ Steering Committee by the Court in this Action on January 21, 2016. Lead Counsel is
6 Chair of the PSC.

7 2.55. “Post-Appeal Date” means the latest date on which the Final Approval Order
8 approving this Class Action Agreement becomes final. For purposes of this Class Action
9 Agreement:

10 2.55.1. if no appeal has been taken from the Final Approval Order, “Post-Appeal
11 Date” means the date on which the time to appeal therefrom has expired;
12 or

13 2.55.2. if any appeal has been taken from the Final Approval Order, “Post-
14 Appeal Date” means the date on which all appeals therefrom, including
15 petitions for rehearing or reargument, petitions for rehearing *en banc* and
16 petitions for a writ of *certiorari* or any other form of review, have been
17 fully disposed of in a manner that affirms the Final Approval Order; or

18 2.55.3. if Class Counsel and Volkswagen agree in writing, the “Post-Appeal
19 Date” can occur on any other earlier agreed date.

20 2.56. “Preliminary Approval Order” means the order that may, at the discretion of the
21 Court, be entered by the Court preliminarily approving the Class Action Settlement as outlined in
22 Section 3 of this Class Action Agreement.

23 2.57. “Release” means the release and waiver described in Section 9 of this Class Action
24 Agreement and in the Final Approval Order. In addition, Class Members who participate in the
25 Buyback, Lease Termination, and Restitution Program, or the Approved Emissions Modification
26 and Restitution Program, or otherwise receive a Restitution Payment pursuant to this Class Action
27 Agreement, will execute an Individual Release as described in Section 9.7 of the Class Action
28 Agreement, and that Individual Release will remain valid even if the Final Approval Order is later

1 reversed and/or vacated on appeal.

2 2.58. “Released Party” or “Released Parties” has the definition set forth in Section 9.2 of
3 this Class Action Agreement.

4 2.59. “Restitution Payment” or “Restitution Payments” means the Owner Restitution,
5 Lessee Restitution, and Seller Restitution payments, separately or collectively.

6 2.60. “Seller Restitution” means monetary compensation that Volkswagen will pay to
7 Eligible Sellers who do not opt out of the Class, as determined by the formula set forth in
8 Exhibit 1.

9 2.61. “Settlement Master” means Robert Mueller III, who was appointed by the Court to
10 serve as Settlement Master to administer, coordinate, and preside over settlement-related
11 proceedings.

12 2.62. “Settlement Website” means the public website that provides information and key
13 filings regarding the Class Action Settlement, including FAQs, and at which Class Members will,
14 after entry of the Preliminary Approval Order, be able to access a “Claims Portal,” which will
15 allow a Class Member to complete and submit an online Claim Form, and/or obtain a description
16 of the remedies available to the Class Member, including, as applicable: (1) the amount of the
17 Vehicle Value; (2) details concerning the Lease Termination; (3) the amount of the Restitution
18 Payment; (4) a tool for the Class Member to determine the effect of mileage on the Vehicle
19 Value; and (5) details concerning the Approved Emissions Modification, if any, for the Eligible
20 Vehicle. The Claims Portal will be available to begin the registration and submission process
21 upon entry of the Preliminary Approval Order, but no Claim will be considered submitted until
22 entry of the Final Approval Order.

23 2.63. “Short Form Notice” means the Short Form Notice substantially in the form as
24 attached hereto as Exhibit 2.

25 2.64. “Vehicle Value” means an Eligible Vehicle’s Base Value adjusted for options and
26 mileage, as set forth in Exhibit 1.

27 2.65. “Volkswagen,” “VW,” or “Volkswagen Entities” means Volkswagen AG, Audi
28 AG, and Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of

1 America, Inc.).

2 2.66. "Volkswagen Dealer" means any authorized Volkswagen or Audi dealer located in
3 the United States and Puerto Rico as evidenced by a current and valid Dealer Sales and Service
4 Agreement.

5 2.67. "Volkswagen's Internal Lease Program" means the program through which
6 employees and retirees may lease vehicles from Volkswagen for themselves and certain members
7 of their families. For purposes of this agreement, "participants" in Volkswagen's Internal Lease
8 Program shall include anyone for whom a vehicle is leased under the program.

9 2.68. "Volkswagen's Lead Counsel" means Robert J. Giuffra, Jr. and Sharon L. Nelles
10 of Sullivan & Cromwell LLP.

11 2.69. "VW Class Update" means the notice that will be provided by Volkswagen when
12 (1) an Approved Emissions Modification becomes available for any make, model, and model year
13 of an Eligible Vehicle or (2) it is determined that an Approved Emissions Modification will not
14 become available for any particular make, model, or model year of an Eligible Vehicle.
15 Volkswagen will provide the VW Class Updates to Class Counsel for comment prior to releasing
16 them. Once final, the VW Class Update(s) will be distributed by First-Class U.S. Mail, postage
17 paid.

18 2.70. "VW Credit, Inc." means VW Credit, Inc., including VW Credit, Inc. d/b/a
19 Volkswagen Credit and Audi Financial Services.

20 2.71. Other capitalized terms used in this Class Action Agreement but not defined in this
21 Section shall have the meanings ascribed to them elsewhere in this Class Action Agreement.

22 2.72. The term "he or she" and "his or her" include "it" or "its" where applicable.

23 **3. PRELIMINARY APPROVAL BY THE COURT AND CLASS CERTIFICATION**

24 3.1. Promptly after this Agreement is signed, but by no later than June 28, 2016, the
25 Parties shall file the Agreement with the Court, together with a Motion for Preliminary Approval
26 of the Class Action Agreement and Approval of Class Notice. Simultaneously, the Class
27 Representatives shall move for certification of the Class for settlement purposes only, pursuant to
28 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 23(a), 23(b)(3), and 23(e). It is expressly

1 agreed that any certification of the Class shall be for settlement purposes only, and Volkswagen
2 does not waive any arguments that it may have that class certification for any other purpose
3 would be improper.

4 3.2. The Parties agree to take all actions and steps reasonably necessary to obtain a
5 Preliminary Approval Order from the Court.

6 **4. CONSUMER COMPENSATION AND REMEDIES**

7 4.1. Except as otherwise provided in this Class Action Agreement, Eligible Owners
8 and Eligible Lessees who do not opt out of the Class have two different options under the Class
9 Action Agreement: (1) a Buyback or Lease Termination Option; or (2) subject to regulatory
10 approvals, an option to have their emissions systems modified free of charge by Volkswagen to
11 reduce NOx emissions (the Approved Emissions Modification Option). Both options include a
12 Restitution Payment, which will be the same regardless of which option the Class Member
13 selects. In other words, Eligible Owners and Eligible Lessees may sell or surrender their Eligible
14 Vehicle to Volkswagen and also receive a Restitution Payment, or they may have their Eligible
15 Vehicle modified for free by Volkswagen and receive the same Restitution Payment. The
16 Buyback/Lease Termination and Approved Emissions Modification Options are described more
17 fully in Exhibit 1 to this Class Action Agreement, and summarized in this Section 4. An estimate
18 of the range of compensation available through the Class Action Settlement, including Vehicle
19 Value and Restitution Payments, is provided in Exhibit 6.

20 **4.2. Class Action Buyback, Lease Termination, and Restitution Program**

21 4.2.1. **Buyback.** Eligible Owners who do not opt out of the Class can sell their
22 car back to Volkswagen for the Vehicle Value, which is determined by
23 (i) taking the September 2015 NADA Clean Trade value, or, where no
24 value was published by NADA as of September 2015, a calculation based
25 on each individual vehicle's MSRP and (ii) making adjustments for
26 options and mileage. If this Class Action Agreement is approved,
27 Volkswagen will not buy back any vehicle under the Class Action
28

1 Agreement, DOJ Consent Decree, or FTC Order without receiving a
2 Release, as described in Section 9.

3 4.2.2. **Owner Restitution.** Eligible Owners who sell their Eligible Vehicles to
4 Volkswagen under the terms of this Class Action Agreement will, in
5 addition to the Vehicle Value payment, be entitled to an Owner
6 Restitution payment calculated based on a percentage of the Vehicle
7 Value, plus a fixed component. For Eligible Owners with Loan
8 Obligations, some or all of the Vehicle Value and Owner Restitution will
9 be paid directly to such Eligible Owners' lenders. Subject to the
10 conditions described in more detail in Exhibit 1, Eligible Owners will be
11 eligible for Loan Forgiveness in an amount up to 30% of the sum of the
12 Vehicle Value and the Owner Restitution payment. Certain former
13 owners who sold or transferred ownership of their Eligible Vehicles after
14 September 18, 2015, but before June 28, 2016 (*i.e.*, Eligible Sellers), will
15 be entitled, if they do not opt out of the Class, to a portion of the Owner
16 Restitution for their Eligible Vehicles. Any owner whose Eligible
17 Vehicle was totaled and who consequently transferred title of his, her, or
18 its vehicle to an insurance company on or after the Opt-Out Deadline, but
19 before the end of the Claim Period, will be entitled to Owner Restitution
20 but not a Buyback payment. For more information about the Buyback
21 and Owner Restitution available pursuant to the Class Action Agreement,
22 see Exhibit 1. For information regarding the timeframe to submit a Claim,
23 please refer to the Claim Period definition in Section 2.11.

24 4.2.3. **Lease Termination.** Eligible Lessees who do not opt out of the Class
25 and retain an active lease of an Eligible Vehicle can terminate their leases
26 with no penalty for early termination.

27 4.2.4. **Lessee Restitution.** Eligible Lessees who terminate their leases pursuant
28 to this Class Action Agreement will be entitled to a Lessee Restitution

1 payment calculated based on a percentage of the Vehicle Value, plus a
2 fixed component (the percentages and fixed components used to calculate
3 Lessee Restitution will be different than those used to calculate Owner
4 Restitution). If they do not opt out of the Class, Eligible Lessees whose
5 leases terminated after September 18, 2015 and who do not own an
6 Eligible Vehicle will be entitled to Lessee Restitution. Eligible Lessees
7 who previously leased an Eligible Vehicle and obtained ownership after
8 June 28, 2016 may obtain an Approved Emissions Modification, if
9 available, plus Lessee Restitution. For more information about the Lease
10 Termination and Lessee Restitution available under this Class Action
11 Agreement, see Exhibit 1.

12 **4.3. Class Action Approved Emissions Modification and Restitution Program**

13 **4.3.1. Approved Emissions Modification.** As set forth more fully in
14 Appendix B to the DOJ Consent Decree, Volkswagen may apply for, and
15 if approved by the EPA and CARB, shall offer to Eligible Owners and
16 Eligible Lessees who own or lease an Eligible Vehicle at or after the time
17 of approval, an Approved Emissions Modification. As set forth in the
18 DOJ Consent Decree, the EPA and CARB will either approve or
19 disapprove an Emissions Modification for each generation of engines
20 depending on certain factors, such as the effect of the proposed Emissions
21 Modification on the vehicles' emissions levels, On Board Diagnostic
22 ("OBD") system requirements, and durability, as more fully described in
23 Appendix B to the DOJ Consent Decree. The expected timeline for
24 Volkswagen to submit proposed Emissions Modifications and for the
25 EPA and CARB to approve or conclusively reject those Emissions
26 Modifications is set forth in the DOJ Consent Decree. It is possible that
27 EPA and CARB may approve Emissions Modifications for some Eligible
28 Vehicles, but not for others. If the EPA and CARB reject a proposed

1 Emissions Modification for a particular type of Eligible Vehicle, the
2 Approved Emissions Modification Option will not be available to Eligible
3 Owners and Eligible Lessees of that type of Eligible Vehicle. If no
4 Approved Emissions Modification becomes available, Eligible Owners
5 and Eligible Lessees who own or lease an Eligible Vehicle at that time
6 will be informed that they remain eligible to participate in a Buyback or
7 Lease Termination, or to opt out of the Class Action Settlement during
8 the period from May 1, 2018, to June 1, 2018.

9 4.3.2. **Approved Emissions Modification Disclosure.** As set forth more fully
10 in Appendix B to the DOJ Consent Decree, upon approval of each
11 proposed Emission Modification, Volkswagen shall provide Eligible
12 Owners, Eligible Lessees, and, as applicable, prospective purchasers, with
13 a clear and accurate written disclosure as approved in the sole discretion
14 of EPA and CARB (the “Approved Emissions Modification Disclosure”)
15 regarding the impacts of any Approved Emissions Modification on an
16 Eligible Vehicle. The Approved Emissions Modification Disclosure shall
17 also be made available online by Volkswagen using the Settlement
18 Website, which will, among other things, display the Approved
19 Emissions Modification Disclosure applicable to a specific vehicle when
20 a user inputs the Vehicle Identification Number (“VIN”). This online
21 access shall continue for a minimum of ten (10) years after the DOJ
22 Consent Decree is entered. As described more fully in Appendix B to the
23 DOJ Consent Decree, the Approved Emissions Modification Disclosure
24 will describe in plain language: (1) the Approved Emissions Modification
25 generally; (2) all software changes; (3) all hardware changes; (4) for
26 Generation 3, a clear explanation of each subsequent service action
27 required by the Approved Emissions Modification; (5) any and all
28 reasonably predictable changes resulting from the Approved Emissions

1 Modification, including but not limited to changes to reliability,
2 durability, fuel economy, noise vibration, vehicle performance, drivability
3 and any other vehicle attributes that may reasonably be important to
4 vehicle owners; (6) a basic summary of how Eligible Owners and Eligible
5 Lessees can obtain the Approved Emissions Modification; (7) system
6 limitations that make identification and repair of any components difficult
7 or even impossible, compromise warranty coverage, or may reduce the
8 effectiveness of inspection and maintenance program vehicle inspections;
9 and (8) any other disclosures required under the terms of the DOJ
10 Consent Decree. This Approved Emissions Modification Disclosure, and
11 a description of the Approved Emissions Extended Warranty, will be part
12 of the VW Class Update that is defined in Section 2.69. Class Counsel
13 will have an opportunity to comment on the disclosures made by
14 Volkswagen on the Settlement Website on a reasonable schedule.

15 4.3.3. **Restitution Payment.** If an Eligible Owner or Eligible Lessee remains in
16 the Class and accepts an Approved Emissions Modification, Volkswagen
17 shall, in addition to performing the Approved Emissions Modification,
18 provide a Restitution Payment to the Eligible Owner or Eligible Lessee in
19 accordance with the terms of Exhibit 1. Such Restitution Payment will be
20 the same as the Restitution Payment component offered to that Eligible
21 Owner or Eligible Lessee if he, she, or it selects the Buyback or Lease
22 Termination Option, as applicable, described in Sections 4.2.2 and 4.2.4.

23 4.3.4. **Two-Step Approved Emissions Modifications for Generation 3**
24 **Vehicles.** As described more fully in Appendix B to the DOJ Consent
25 Decree, any Emissions Modification for Eligible Vehicles with
26 Generation 3 engines shall be proposed and, if approved by the EPA and
27 CARB, made available in two stages. Under this Class Action
28 Agreement, Eligible Owners and Eligible Lessees of Generation 3

1 Eligible Vehicles who elect an Approved Emissions Modification will be
2 offered two-thirds (2/3) of their Restitution Payment upon submitting
3 their vehicles for the first stage of the Approved Emissions Modification
4 and the remaining one-third (1/3) of their Restitution Payment, as well as
5 a free oil change with respective engine oil filter, to the Eligible Owner or
6 Eligible Lessee, upon submitting their vehicles for the second stage of the
7 Approved Emissions Modification.

8 4.3.5. **Approved Emissions Modification Extended Warranty.** In addition to
9 the Restitution Payment received in connection with the Approved
10 Emissions Modification, each Eligible Owner or Eligible Lessee who
11 receives the Approved Emissions Modification shall also receive an
12 Approved Emissions Modification Extended Warranty, as set forth more
13 fully in Appendix B to the DOJ Consent Decree. The Approved
14 Emissions Modification Extended Warranty shall cover all components
15 which are replaced as part of the Approved Emissions Modification, any
16 component which, as determined by EPA and CARB, can reasonably be
17 impacted by effects of the Approved Emissions Modification, as well as
18 the engine sub-assembly that consists of the assembled block, crankshaft,
19 cylinder head, camshaft, and valve train. The Approved Emissions
20 Modification Extended Warranty shall cover all parts and labor related to
21 the covered components, as well as the cost or provision of a loaner
22 vehicle for warranty service lasting longer than 3 hours. Volkswagen will
23 not impose on Class Members any fees or charges, and must pay any fees
24 or charges imposed by its dealers related to the Approved Emissions
25 Modification Extended Warranty. Volkswagen shall provide a free
26 loaner vehicle for the owner of any Eligible Vehicle undergoing an
27 Approved Emissions Modification that is scheduled to, or does, last
28 longer than three hours to complete.

1 4.3.6. **Warranty Remedies.** As set forth more fully in Appendix A to the DOJ
2 Consent Decree, in addition to any protections provided by law,
3 Volkswagen must reoffer and provide a Buyback or Lease Termination to
4 any Eligible Owner or Eligible Lessee of a vehicle modified in
5 accordance with an Approved Emissions Modification (a “Modified
6 Vehicle”), in the event that, during the 18 months or 18,000 miles
7 following the completion of the Approved Emissions Modification (the
8 “Reoffer Period”), Volkswagen fails to repair or remedy a confirmed
9 mechanical failure or malfunction covered by the Approved Emissions
10 Modification Extended Warranty and associated with the Approved
11 Emissions Modification (a “Warrantable Failure”) after the Eligible
12 Owner or Eligible Lessee physically presents the Modified Vehicle to a
13 dealer for repair of the Warrantable Failure; and (1) the Warrantable
14 Failure is unable to be remedied after making four separate service visits
15 for the same Warrantable Failure during the Reoffer Period; or (2) the
16 Modified Vehicle with the Warrantable Failure is out of service due to the
17 Warrantable Failure for a cumulative total of 30 Days during the Reoffer
18 Period. For avoidance of doubt, a Modified Vehicle shall not be deemed
19 “out of service” when (after diagnosing the Warrantable Failure) the
20 dealer returns or tenders the Modified Vehicle to the customer while the
21 dealer awaits necessary parts for the Warrantable Failure, and the
22 Modified Vehicle remains operable. In such a case, the Eligible Owner
23 or Eligible Lessee shall receive the payments that he or she would have
24 received under a Buyback or Lease Termination at the time the Eligible
25 Owner or Eligible Lessee first requested the Approved Emissions
26 Modification less any payment amounts already received. No Eligible
27 Owner or Eligible Lessee shall receive double-recovery of any portion of
28 any payment.

1 4.3.7. **Preservation of Remedies.** The Approved Emissions Modification
2 Extended Warranty shall be subject to any remedies provided by state or
3 federal laws, such as the Magnuson-Moss Warranty Act, that provide
4 consumers with protections, including, without limitation, “Lemon Law”
5 protections, with respect to warranties.

6 4.3.8. **No Defense.** Neither this Class Action Agreement nor the Final
7 Approval Order is a defense to liability arising out of any Approved
8 Emissions Modification. Nothing herein prohibits Volkswagen from
9 relying on this Class Action Agreement in any action alleging
10 noncompliance with the Class Action Agreement.

11 4.3.9. **Disclosure to Subsequent Purchasers.** For each Eligible Vehicle that
12 receives an Approved Emissions Modification, Volkswagen shall label
13 the vehicle as set forth in the DOJ Consent Decree and provide a
14 mechanism for potential purchasers to determine if the vehicle has
15 received an Approved Emissions Modification.

16 4.4. **Other Provisions**

17 4.4.1. **Allocation of Funding Pool.** The Parties have negotiated among
18 themselves, under the supervision of the Settlement Master, a plan of
19 allocation of the Funding Pool among eligible Class Members so that
20 those parameters can be described as part of notice to the Class. The plan
21 of allocation is set forth in Exhibit 1.

22 4.4.2. **No Prohibition on Other Incentives.** Nothing in this Class Action
23 Agreement is intended to prohibit Volkswagen from offering any
24 consumer any further incentives or trade-in options in addition to those
25 provided herein; however, Volkswagen may not offer consumers other
26 incentives or trade-in options in lieu of the options contained herein, in
27 whole or in part, or any incentive not to participate in the Class Action
28 Settlement Program. Likewise, Volkswagen shall request that

1 Volkswagen Dealers not offer any incentive not to participate in the
2 Settlement Program.

3 4.4.3. **Disposition of Returned Vehicles.** As set forth more fully in Appendix
4 A to the DOJ Consent Decree, Eligible Vehicles bought back by or
5 returned to Volkswagen must be rendered inoperable by removing the
6 vehicles' Engine Control Unit and may be, to the extent possible,
7 recycled to the extent permitted by law. No such Eligible Vehicle that is
8 rendered inoperable may subsequently be rendered operable until it has
9 first received an Approved Emissions Modification. After modifying a
10 bought-back or returned Eligible Vehicle in accordance with an Approved
11 Emissions Modification, Volkswagen may then elect to (i) resell the
12 bought-back or returned Eligible Vehicles in the United States, if properly
13 labeled to disclose the Approved Emissions Modification, or (ii) export
14 the bought-back or returned Eligible Vehicles.

15 4.4.4. **Telephone Call Center.** Volkswagen shall establish a telephone call
16 center to address Class Member inquiries. The Parties will agree as to
17 what information will be provided by the Telephone Call Center to
18 inquiring Class Members.

19 4.4.5. **No Attorneys' Fees or Costs.** To the extent Volkswagen elects or is
20 ordered to pay private attorneys' fees or costs, Volkswagen will not
21 receive credit for such payments against obligations to Class Members
22 under this Class Action Agreement and the Final Approval Order.
23 Volkswagen reserves the right to challenge attorneys' fees or costs to the
24 extent the request for an award of fees and costs exceeds the fees and
25 costs that Volkswagen has agreed to pay.

26 4.4.6. **Joint and Several Responsibility.** The Volkswagen Entities' obligations
27 to comply with the requirements of the Class Action Agreement are joint
28 and several. In the event of the insolvency of any Volkswagen Entity or

1 the failure by any Volkswagen Entity to implement any requirement of
2 the Class Action Agreement, the remaining Volkswagen Entities shall
3 complete all such requirements. Any legal successor or assign of any
4 Volkswagen Entity shall remain jointly and severally liable for the
5 payment and other performance obligations hereunder. The Volkswagen
6 Entities shall include an agreement to so remain liable in the terms of any
7 sale, acquisition, merger or other transaction changing the ownership or
8 control of any of the Volkswagen Entities, and no change in the
9 ownership or control of any Volkswagen Entity shall affect the
10 obligations hereunder of any Volkswagen Entity.

11 4.4.7. **Tax Implications.** Nothing in the Class Action Agreement prevents tax-
12 advantaged sales tax treatment of the Buyback, which may be available
13 under the laws of some states. Class Members are encouraged to consult
14 their personal tax advisor for further assistance regarding any tax
15 ramifications of this Class Action Settlement.

16 4.4.8. **Deceased, Dissolved, or Bankrupt Claim Members.** Nothing in the
17 Class Action Agreement shall prevent the Claims Supervisor from
18 providing Class benefits, upon appropriate proof, to, or for the benefit of,
19 an otherwise eligible Class Member, or that Class Member's estate or
20 legal representative, notwithstanding that Class Member's death,
21 dissolution, or bankruptcy (whether discharged or ongoing), in
22 accordance with applicable law.

23 5. CLASS CLAIMS PROCESS AND ADMINISTRATION

24 5.1. **Claims Program.** The Claims Program involves five steps. At **Step 1**, based on
25 information they provide to Volkswagen online or by telephone, Class Members will obtain
26 information about the options available to them. At **Step 2**, once a Class Member is ready to
27 proceed with the Claims Process, the Class Member will submit a Claim Form online, by mail, or
28 by fax, that contains certain information about his or her Eligible Vehicle along with required

1 documentation. At **Step 3**, the Class Member's eligibility or ineligibility to participate in the
2 Class Action Settlement will be determined, and a formal offer will be made if the Class Member
3 is deemed an eligible "Claimant." At **Step 4**, Claimants will confirm their selection of an offered
4 remedy, accept their formal offer, and schedule an appointment at their preferred Volkswagen (or
5 Audi) Dealer (if necessary). At **Step 5**, Claimants will obtain their chosen remedy. The process
6 for submitting a Claim is designed to be as simple and convenient to Claimants as possible,
7 consistent with the integrity of the Claims Program.

8 **5.2. Claims Supervisor.** Based on information and documents collected from Class
9 Members by Volkswagen, the Claims Supervisor will oversee the implementation and
10 administration of the Claims Process, including validation of Claim eligibility and approval of
11 compensation offers and payments to Class Members. The Claims Supervisor's duties include,
12 but are not limited to (1) receiving and maintaining on behalf of the Court any Class Member
13 correspondence regarding requests for exclusion and/or objections to the Settlement; and (2)
14 forwarding written inquiries to Class Counsel or its designee for a response, if warranted.

15 **5.3. Claims Review Committee.** The Court shall appoint a Claims Review
16 Committee ("CRC") to review contested claims deemed ineligible and appealed by the Claimant.
17 The CRC will include one representative from Volkswagen and one representative from Class
18 Counsel, as well as a Court-appointed "Neutral," who would be called upon only to resolve any
19 disagreements between the CRC's other members, should they arise. It is anticipated that the
20 Parties will be able to resolve most issues, but the availability of a neutral third party appointed
21 by the Court ensures that disputes can be resolved without Court intervention. The Class Counsel
22 representative on the CRC will have responsibility for handling CRC communication with
23 Claimants and Claimants' counsel. Determinations by the CRC as to ineligible Claims will
24 constitute final determinations.

25 **5.4. Reporting.** The Claims Supervisor will prepare periodic reports on the progress
26 and status of the Claims Program. The Claims Supervisor shall provide its first report to the
27 Court within one month from the Effective Date and every three months thereafter. The Claims
28 Supervisor shall provide reports to the Parties on a monthly basis. These reports will include

1 information sufficient to allow the Court and the Parties to assess the Claims Program's progress.

2 **5.5. The Court's Ongoing and Exclusive Jurisdiction.** The Court retains the
3 ongoing and exclusive jurisdiction and independent case management authority, as MDL
4 Transferee Judge and under Federal Rule of Civil Procedure 23, regarding the general operation
5 of the Claims Program and those appointed to implement and oversee it.

6 **6. REQUESTS FOR EXCLUSION**

7 **6.1. Manner of Opting Out.** The Class Notice will provide instructions regarding the
8 procedures that must be followed to opt out of the Class pursuant to Fed. R. Civ. P.
9 23(c)(2)(B)(v). The Parties agree that, to opt out validly from the Class, a Class Member must
10 personally sign and submit a written request to opt out stating "I wish to exclude myself from the
11 Class in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability*
12 *Litigation*, No. 15-md-2672," (or substantially similar clear and unambiguous language) to the
13 Notice Administrator on or before the Opt-Out Deadline. That written request also will contain
14 the Class Member's printed name, address, telephone number, and VIN of the Eligible Vehicle
15 forming the basis of the Class Member's inclusion in the Class, a statement as to whether the
16 Class Member is an Eligible Owner, Eligible Lessee, or Eligible Seller, and the dates of the Class
17 Member's ownership or lease of an Eligible Vehicle. For any Class Member who no longer owns
18 or leases an Eligible Vehicle, evidence that the vehicle was sold or that the lease expired or was
19 terminated also must be provided. The Claims Supervisor will provide copies of all opt-out
20 requests to Lead Class Counsel and Counsel for Volkswagen within seven (7) days of the receipt
21 of each such request.

22 **6.2. Consequences of Failure To Opt Out in a Timely and Proper Manner.** All
23 Class Members who do not timely and properly opt out of the Class will in all respects be bound
24 by all terms of this Class Action Agreement and the Final Approval Order upon the Effective
25 Date.

26 **6.3. Opting Out and Objecting Are Mutually Exclusive Options.** Any Class
27 Member who elects to opt out pursuant to this Section may not also object to the Settlement,
28 pursuant to Section 7 herein. Any Class Member who elects to object pursuant to Section 7

1 herein may also not opt out pursuant to this Section.

2 **7. OBJECTIONS TO THE SETTLEMENT**

3 7.1. **Manner of Objecting.** The Class Notice Program will provide instructions
4 regarding the procedures that must be followed to object to the Settlement pursuant to Federal
5 Rule of Civil Procedure 23(e)(5). Provided that a Class Member has not submitted a written
6 request to opt out, as set forth in Section 6, the Class Member may present written objections, if
7 any, explaining why he or she believes the Class Action Settlement should not be approved by the
8 Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a
9 Class Member who wishes to object to any aspect of the Class Action Settlement must file with
10 the Court, or as the Court otherwise may direct, a written statement of the objection(s). The
11 written statement of objection(s) must include a detailed statement of the Class Member's
12 objection(s), as well as the specific reasons, if any, for each such objection, including any
13 evidence and legal authority the Class Member wishes to bring to the Court's attention. That
14 written statement also will contain the Class Member's printed name, address, telephone number,
15 and VIN of the Eligible Vehicle forming the basis of the Class Member's inclusion in the Class,
16 the dates of the Class Member's ownership or lease of the Eligible Vehicle, a statement as to
17 whether the Class Member is an Eligible Owner, Eligible Lessee, or Eligible Seller, a statement
18 that the Class Member has reviewed the Class definition and has not opted out of the Class, and
19 any other supporting papers, materials, or briefs the Class Member wishes the Court to consider
20 when reviewing the objection.

21 7.2. **Objecting Through Counsel.** A Class Member may object on his or her own
22 behalf or through a lawyer hired at that Class Member's own expense, provided the Class
23 Member has not submitted a written request to opt out, as set forth in Section 7. The objection
24 must state whether it applies only to the objector, to a specific subset of the Class, or to the entire
25 Class, and also state with specificity the grounds for the objection. Lawyers asserting objections
26 on behalf of Class Members must: (a) file a notice of appearance with the Court by the date set
27 forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may
28 direct; (b) file a sworn declaration attesting to his or her representation of each Class Member on

1 whose behalf the objection is being filed or file (in camera) a copy of the contract between that
2 lawyer and each such Class Member; and (c) comply with the procedures described in this
3 Section.

4 **7.3. Intent To Appear at the Fairness Hearing.** A Class Member (or counsel
5 individually representing him or her, if any) seeking to make an appearance at the Fairness
6 Hearing must file with the Court, by the date set forth in the Preliminary Approval Order, a
7 written notice of his or her intent to appear at the Fairness Hearing, in accordance with the
8 requirements set forth in the Preliminary Approval Order, or by such time and in such manner as
9 the Court may otherwise direct.

10 **7.4. Consequences of Failure To Object in a Timely and Proper Manner.** Unless
11 the Court directs otherwise, any Class Member who fails to comply with the provisions of this
12 Section, will waive and forfeit any and all rights he, she, or it may have to object to the Class
13 Action Settlement and/or to appear and be heard on said objection at the Fairness Hearing.
14 Failure to object waives a Class Member's right to appeal.

15 **8. DUTIES OF THE NOTICE ADMINISTRATOR**

16 **8.1.** The Notice Administrator shall be responsible for, without limitation: (a) printing,
17 mailing by First-Class U.S. Mail, postage paid, or arranging for the mailing of the Long Form
18 Notice (attached as Exhibit 3) and personalized cover letters; (b) updating Class Member address
19 information prior to mailing using the National Change of Address (NCOA) system; (c) handling
20 returned notice-related mail not delivered to Class Members; (d) attempting to obtain updated
21 address information for any Long Form Notice packages returned without a forwarding address;
22 (e) responding to requests for Long Form Notice packages; (f) establishing a post-office box for
23 the receipt of any correspondence; (g) responding to requests from Class Counsel and/or
24 Volkswagen's Negotiating Counsel; (h) assisting in the creation of Notice-related content for the
25 Settlement Websites to which Class Members may refer for information about the Action and the
26 Settlement; and (i) otherwise implementing and/or assisting with the dissemination of the notice
27 of the Settlement.

28 **8.2.** The Notice Administrator shall be responsible for arranging for the publication of

1 the Short Form Notice (attached as Exhibit 2), establishing Internet banner notifications, and for
2 consulting on other aspects of the Class Notice Program including, but not limited to, media
3 outreach, including advertisements, in national newspapers, trade publications, and the Internet.
4 The print advertisements will be substantially similar to the Short Form Notice. The Claims
5 Supervisor and/or the Notice Administrator shall coordinate to minimize costs in effectuating the
6 terms of this Class Action Agreement. The Notice Administrator shall submit a projected budget
7 to Class Counsel and Volkswagen on an annual basis and shall not make expenditures that exceed
8 that projected budget by more than eight (8) percent without the prior approval of Class Counsel
9 and Volkswagen.

10 8.3. All reasonable and necessary costs of the Class Notice Program, including the VW
11 Class Update, and the fees and costs of the Notice Administrator, shall be borne exclusively by
12 Volkswagen.

13 8.4. Within two (2) days of the issuance of the Preliminary Approval Order and the
14 approval of the Class Notice Program by the Court, Volkswagen shall transfer or pay to the
15 Notice Administrator an amount sufficient to cover the initial costs of the Class Notice Program.

16 8.5. The Notice Administrator may retain one or more persons to assist in the
17 completion of his or her responsibilities.

18 8.6. The Notice Administrator shall send to each appropriate state and federal official
19 the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms. The identities of
20 such officials and the content of the materials shall be mutually agreed to by the Parties.

21 8.7. Not later than ten (10) days before the date of the Fairness Hearing, the Notice
22 Administrator shall file with the Court a list of those persons who have opted out or excluded
23 themselves from the Settlement. The Notice Administrator shall file with the Court the details
24 outlining the scope, method and results of the Class Notice Program.

25 8.8. The Notice Administrator and the Parties shall promptly after receipt provide
26 copies of any requests for exclusion, objections and/or related correspondence to each other.

27 **9. RELEASE AND WAIVER**

28 9.1. The Parties agree to the following release and waiver (the “Release”), which shall

1 take effect upon entry of the Final Approval Order. The terms of the Release are a material term
2 of the Class Action Agreement and will be reflected in the Final Approval Order.

3 **9.2. Released Parties.** Released Parties means any person who, or entity that, is or
4 could be responsible or liable in any way whatsoever, whether directly or indirectly, for the 2.0-
5 liter TDI Matter. The Released Parties include, without limitation, (1) Volkswagen AG,
6 Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America,
7 Inc.), Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Audi of America,
8 LLC, VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC, and any former,
9 present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates,
10 parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the “VW
11 Released Entities”); (2) any and all contractors, subcontractors, and suppliers of the VW Released
12 Entities; (3) any and all persons and entities indemnified by any VW Released Entity with respect
13 to the 2.0-liter TDI Matter; (4) any and all other persons and entities involved in the design,
14 research, development, manufacture, assembly, testing, sale, leasing, repair, warranting,
15 marketing, advertising, public relations, promotion, or distribution of any Eligible Vehicle, even
16 if such persons are not specifically named in this paragraph, including without limitation all
17 Volkswagen Dealers, as well as non-authorized dealers and sellers; (5) Claims Supervisor;
18 (6) Notice Administrator; (7) lenders, creditors, financial institutions, or any other parties that
19 financed any purchase or lease of an Eligible Vehicle; and (8) for each of the foregoing, their
20 respective former, present, and future affiliates, parent companies, subsidiaries, predecessors,
21 successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited
22 partners, attorneys, assigns, principals, officers, directors, employees, members, agents,
23 representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors,
24 administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.
25 Notwithstanding the foregoing, this Release does not release any claims against Robert Bosch
26 GmbH and Robert Bosch, LLC or any of its former, present, and future owners, shareholders,
27 directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors,
28 or successors.

1 9.3. **Class Release.** In consideration for the Settlement, Class Members, on behalf of
2 themselves and their agents, heirs, executors and administrators, successors, assigns, insurers,
3 attorneys, representatives, shareholders, owners associations, and any other legal or natural
4 persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally,
5 irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all
6 claims, demands, actions, or causes of action, whether known or unknown, that they may have,
7 purport to have, or may have hereafter against any Released Party, as defined above, arising out
8 of or in any way related to the 2.0-liter TDI Matter. This Release applies to any and all claims,
9 demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in
10 equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past,
11 present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-
12 contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any
13 way related to the 2.0-liter TDI Matter, including without limitation (1) any claims that were or
14 could have been asserted in the Action; and (2) any claims for fines, penalties, criminal
15 assessments, economic damages, punitive damages, exemplary damages, liens, injunctive relief,
16 attorneys’, expert, consultant, or other litigation fees or costs other than fees and costs awarded by
17 the Court in connection with this Settlement, or any other liabilities, that were or could have been
18 asserted in any civil, criminal, administrative, or other proceeding, including arbitration (the
19 “Released Claims”). This Release applies without limitation to any and all such claims, demands,
20 actions, or causes of action regardless of the legal or equitable theory or nature under which they
21 are based or advanced including without limitation legal and/or equitable theories under any
22 federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance,
23 code, regulation, contract, common law, equity, or any other source, and whether based in strict
24 liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty,
25 misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether
26 existing now or arising in the future, that arise from or in any way relate to the 2.0-liter TDI
27 Matter. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful
28 death or personal injury. For the avoidance of doubt, claims relating to 3.0-liter TDI vehicles are

1 not subject to any release in this Class Action Agreement.

2 9.4. **Possible Future Claims.** For the avoidance of doubt, Class Members expressly
3 understand and acknowledge that they may hereafter discover claims presently unknown or
4 unsuspected, or facts in addition to or different from those that they now know or believe to be
5 true, related to the 2.0-liter TDI Matter, the Action and/or the Release herein. Nevertheless, it is
6 the intention of Class Counsel and the Class Representatives in executing this Class Action
7 Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle,
8 and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or
9 might have existed (whether or not previously or currently asserted in any action or proceeding)
10 with respect to the 2.0-liter TDI Matter.

11 9.5. **Release of “Holder Rule” Claims.** In exchange for the Class Action Settlement
12 compensation and remedies described in Section 4 and Exhibit 1, Class Members shall execute a
13 release releasing their potential claims under the Trade Regulation Rule Concerning the
14 Preservation of Consumers’ Claims and Defenses 16 C.F.R. §433.2 (the “Holder Rule”), relating
15 to the 2.0-liter TDI Matter.

16 9.6. **Waiver of California Civil Code Section 1542 and Analogous Provisions.**
17 Class Representatives expressly understand and acknowledge, and Class Members will be
18 deemed to understand and acknowledge Section 1542 of the California Civil Code, which
19 provides: “**A general release does not extend to claims which the creditor does not know or**
20 **suspect to exist in his or her favor at the time of executing the release, which if known by**
21 **him or her must have materially affected his or her settlement with the debtor.**” Each Class
22 Representative expressly acknowledges that he, she, or it has been advised by Class Counsel of
23 the contents and effect of Section 1542 and that he, she, or it has considered the possibility that
24 the number or magnitude of all claims may not currently be known. To ensure that this Release is
25 interpreted fully in accordance with its terms, Class Members expressly waive and relinquish any
26 and all rights and benefits that they may have under Section 1542 to the extent that such section
27 may be applicable to the Release. Class Members likewise expressly waive and relinquish any
28 rights or benefits of any law of any state or territory of the United States, federal law or principle

1 of common law, or of international or foreign law, which is similar, comparable, analogous, or
2 equivalent to Section 1542 of the California Code to the extent that such laws or principles may
3 be applicable to the Release.

4 **9.7. Individual Release.** Class Members who receive a Buyback, Lease Termination
5 and/or Restitution Payment shall be required to execute an Individual Release, in the form
6 attached as Exhibit 5, as a precondition to receiving such relief. Consistent with the Release
7 provided in this Agreement, the Individual Release will provide that the Class Member releases
8 all of the Released Parties from any and all present and future claims (as described in Sections 9.3
9 and 9.4) arising out of or related to the 2.0-liter TDI Matter. The Individual Release shall remain
10 effective even if the Final Approval Order is reversed and/or vacated on appeal, or if this Class
11 Action Agreement is abrogated or otherwise voided in whole or in part.

12 **9.8. Actions or Proceedings Involving Released Claims.** Class Members who do not
13 opt out expressly agree that this Release, and the Final Approval Order, is, will be, and may be
14 raised as a complete defense to, and will preclude, any action or proceeding specified in, or
15 involving claims encompassed by, this Release. Class Members who do not opt out shall not now
16 or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution,
17 commencement, filing or prosecution of any suit, action, and/or other proceeding, against the
18 Released Parties with respect to the claims, causes of action and/or any other matters subject to
19 this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or
20 proceeding not already encompassed by the Action, Class Members who do not opt out shall
21 cause such suit, action, or proceeding to be dismissed with prejudice. If a Class Member who
22 does not opt out commences, files, initiates, or institutes any new legal action or other proceeding
23 for any Released Claim against any Released Party in any federal or state court, arbitral tribunal,
24 or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with
25 prejudice and at that Class Member's cost; and (2) the respective Released Party shall be entitled
26 to recover any and all reasonable related costs and expenses from that Class Member arising as a
27 result of that Class Member's breach of his, her, or its obligations under this Release.

28 **9.9. Ownership of Released Claims.** Class Representatives shall represent and

1 warrant that they are the sole and exclusive owners of any and all claims that they personally are
2 releasing under this Class Action Agreement. Class Representatives further acknowledge that
3 they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or
4 encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to
5 the 2.0-liter TDI Matter, including without limitation, any claim for benefits, proceeds or value
6 under the Action, and that Class Representatives are not aware of anyone other than themselves
7 claiming any interest, in whole or in part, in any benefits, proceeds or values to which Class
8 Representatives may be entitled as a result of the 2.0-liter TDI Matter. Class Members submitting
9 a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all
10 claims that they personally are releasing under the Class Action Agreement and that they have not
11 assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any
12 right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions,
13 including without limitation, any claim for benefits, proceeds or value under the Actions, and that
14 such Class Members are not aware of anyone other than themselves claiming any interest, in
15 whole or in part, in any benefits, proceeds or values to which those Class Members may be
16 entitled as a result of the 2.0-liter TDI Matter.

17 **9.10. Total Satisfaction of Released Claims.** Any benefits pursuant to the Class
18 Action Agreement are in full, complete, and total satisfaction of all of the Released Claims
19 against the Released Parties, that the Benefits are sufficient and adequate consideration for each
20 and every term of this Release, and that this Release shall be irrevocably binding upon Class
21 Representatives and Class Members who do not opt out of the Class.

22 **9.11. Release Not Conditioned on Claim or Payment.** The Release shall be effective
23 with respect to all Releasing Parties, including all Class Members who do not opt out, regardless
24 of whether those Class Members ultimately file a Claim or receive compensation under this Class
25 Action Agreement.

26 **9.12. Basis for Entering Release.** Class Counsel acknowledge that they have
27 conducted sufficient independent investigation and discovery to enter into this Class Action
28 Agreement and that they execute this Class Action Agreement freely, voluntarily, and without

1 being pressured or influenced by, or relying on any statements, representations, promises, or
2 inducements made by the Released Parties or any person or entity representing the Released
3 Parties, other than as set forth in this Class Action Agreement. Class Representatives
4 acknowledge, agree, and specifically represent and warrant that they have discussed with Class
5 Counsel the terms of this Class Action Agreement and have received legal advice with respect to
6 the advisability of entering into this Class Action Agreement and the Release, and the legal effect
7 of this Class Action Agreement and the Release. The representations and warranties made
8 throughout the Class Action Agreement shall survive the execution of the Class Action
9 Agreement and shall be binding upon the respective heirs, representatives, successors and assigns
10 of the Parties.

11 **9.13. Material Term.** Class Representatives and Class Counsel hereby agree and
12 acknowledge that this Section 9 was separately bargained for and constitutes a key, material term
13 of the Class Action Agreement that shall be reflected in the Final Approval Order.

14 **9.14. Reservation of Claims.** This Class Action Agreement shall resolve the claims of
15 Class Members who do not opt out only as they relate to the 2.0-liter TDI Matter. The Parties
16 reserve all rights to litigate liability and equitable relief of any sort for any subset of vehicles,
17 purchasers, or lessees not expressly covered by this Class Action Agreement. For avoidance of
18 doubt, this carve-out includes, but is not limited to, claims related to 3.0-liter TDI vehicles.

19 **9.15. Released Parties' Releases of Class Representatives, the Class, and Class**
20 **Counsel.** Upon the Effective Date, Released Parties absolutely and unconditionally release and
21 forever discharge the Class Representatives, Class Members, and Class Counsel from any and all
22 claims relating to the institution or prosecution of the Action.

23 **9.16. Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over all
24 Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise
25 regarding this Class Action Agreement or in relation to this Action, including any dispute
26 regarding validity, performance, interpretation, administration, enforcement, enforceability, or
27 termination of the Class Action Agreement and no Party shall oppose the reopening and
28 reinstatement of the Action on the MDL Court's active docket for the purposes of effecting this

1 Section.

2 **10. ESCROW ACCOUNT**

3 10.1. Within ten (10) business days after the Court enters the Final Approval Order,
4 Volkswagen shall fund the Escrow Account with the “Funding Amount,” which funds shall be
5 used, as necessary, to compensate Class Members who submit valid Claims pursuant to this Class
6 Action Agreement. The initial Funding Amount shall be \$1,500,000,000. If and when the
7 funding level of the Escrow Account reaches the “Minimum Balance,” which shall initially be set
8 at \$1,250,000,000, the Escrow Agent shall alert Volkswagen, and Volkswagen shall, within seven
9 (7) business days, deposit such funds in the Escrow Account as are necessary to bring the balance
10 of the Escrow Account back to the Funding Amount.

11 10.2. Every six (6) months after the Escrow Account is first funded, the Funding
12 Amount shall be adjusted to the lower of (i) the initial amount of \$1,500,000,000 or (ii) twenty-
13 five (25) percent of the amount of the total Funding Pool that has not yet been spent, as verified
14 by the Claims Supervisor. In the event that the Funding Amount is adjusted, the Minimum
15 Balance shall be adjusted proportionately. For example, if the Funding Amount is adjusted to
16 \$900,000,000, the Minimum Balance shall be adjusted to \$750,000,000.

17 10.3. Within thirty (30) days of the conclusion of the Claim Period, any funds in the
18 Escrow Account, including all interest accrued, shall revert to Volkswagen.

19 10.4. In the event that the Class Action Settlement is terminated or invalidated for any
20 reason prior to the conclusion of the Claim Period, any funds in the Escrow Account, including
21 all interest accrued, shall revert to Volkswagen.

22 **11. ATTORNEYS’ FEES AND EXPENSES**

23 11.1. Volkswagen agrees to pay reasonable attorneys’ fees and costs for work performed
24 by Class Counsel in connection with the Action as well as the work performed by other attorneys
25 designated by Class Counsel to perform work in connection with the Action in an amount to be
26 negotiated by the Parties and that must be approved by the Court. Volkswagen and Class Counsel
27 represent that they have not discussed the amount of fees and costs to be paid prior to agreement
28 on the terms of this Class Action Agreement. Class Counsel and counsel for Volkswagen will

1 attempt to negotiate the amount of attorneys' fees and costs to be paid after the execution of this
2 Class Action Agreement and any settlement agreement related to claims involving TDI vehicles
3 with 3.0-liter engines. If a settlement agreement related to 3.0-liter TDI vehicles is not reached
4 by August 12, 2016, Class Counsel and counsel for Volkswagen will attempt to negotiate the
5 amount of attorneys' fees and costs to be paid in connection with claims involving Eligible
6 Vehicles (*i.e.*, TDI vehicles with 2.0-liter engines). If the Parties reach an agreement about the
7 amount of attorneys' fees and costs, Class Counsel will submit the negotiated amount to the Court
8 for approval. If the Parties do not reach an agreement as to the amount of attorneys' fees and
9 costs, the parties will litigate the fee issues, and each party will present its respective position to
10 the Court for determination. The litigation of the fee issues will be subject to the Parties'
11 agreement that: (1) the attorneys' fees and costs will be paid by Volkswagen in addition to the
12 compensation provided to Class Members under this Class Action Agreement; (2) each party will
13 be free to argue for what it believes is a reasonable fee; and (3) Volkswagen and Class Counsel
14 will request that the Court issue an Order setting forth the amount to be paid in attorneys' fees
15 and costs to be paid by Volkswagen in this action, and providing that Class Counsel will not be
16 permitted to seek additional fees and costs after the Court makes its award. The Parties shall have
17 the right to appeal the Court's determination as to the amount of attorneys' fees and costs.
18 Volkswagen reserves all rights to object to an award of attorney's fees and/or costs beyond what
19 it believes to be reasonable.

20 **12. PROPOSED SCHEDULE FOR APPROVAL OF SETTLEMENT**

21 **12.1. Preliminary Approval Order.** As set forth in Section 3.1, on or before June 28,
22 2016, the Parties shall file with the Court a Motion for Preliminary Approval of the Class Action
23 Agreement and Approval of Class Notice.

24 **12.2. Final Settlement Approval Order and Judgment.** On or before August 26,
25 2016, or any subsequently mutually agreed upon date, Class Counsel shall file with the Court a
26 motion seeking a Final Judgment Approving and Providing for the Enforcement of the Class
27 Action Settlement.

28 **12.3. Proposed Schedule.** A comprehensive potential schedule for the approval of this

1 Settlement is set forth below, subject, of course, to the views of the Court. The Parties will use
 2 their best efforts to advance the Settlement along the lines outlined in the proposed schedule set
 3 forth below, recognizing it is subject to change, as required by Court order and/or agreed to by the
 4 Parties.

Date	Event
June 28, 2016	Class Representatives file Motion for Preliminary Approval of Settlement
June 30, 2016	Status Conference with the Court
July 5, 2016	Volkswagen provides Class Action Fairness Act Notice to State Attorneys General
July 26, 2016	Preliminary Approval Hearing [Remainder of schedule assumes entry of Preliminary Approval Order on this date]
July 27, 2016	Class Notice Program begins
August 19, 2016	Class Notice Program ends
August 26, 2016	Motion for Final Approval filed
September 16, 2016	Objection and Opt-Out Deadline
September 16, 2016	End of Eligible Seller Identification Period
September 29, 2016	Deadline for State Attorneys General to file Comments/Objections to this Class Action Agreement
September 30, 2016	Reply Memorandum in Support of Final Approval filed
October 3, 2016 – October 7, 2016	Final Approval Hearing. While the timing and outcome of every determination is at the Court's discretion, the Parties to this Class Action Agreement request and anticipate that the Court would enter the DOJ Consent Decree and FTC Consent Order at the same time as the Final Approval Order. The Buyback and Lease Termination program under this Class Action Agreement will begin expeditiously upon Final Approval. To the extent available, the Approved Emissions Modification Option under this Class Action Agreement will begin at the same time.

13. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

13.1. Counsel for all Parties warrant and represent that they are expressly authorized by

1 the Parties whom they represent to negotiate this Class Action Agreement. The persons signing
2 this Class Action Agreement on behalf of each Party warrants that he/she is authorized to sign
3 this Class Action Agreement on behalf of that Party.

4 13.2. The Parties and their respective counsel will cooperate with each other, act in good
5 faith, and use their best efforts to effect the implementation of the Class Action Agreement and
6 advance the Settlement Claims Program. In the event the Parties are unable to reach agreement
7 on the form or content of any document needed to implement the Class Action Agreement, or on
8 any supplemental provisions that may become necessary to effectuate the terms of this Class
9 Action Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

10 13.3. The Parties further agree to make all reasonable efforts to ensure the timely and
11 expeditious administration and implementation of the Class Action Agreement and to minimize
12 the costs and expenses incurred therein.

13 **14. MODIFICATION OR TERMINATION OF THIS CLASS ACTION AGREEMENT**

14 14.1. The terms and provisions of this Class Action Agreement may be amended,
15 modified, or expanded by written agreement of the Parties and approval of the Court; provided,
16 however, that after entry of the Final Approval Order, the Parties may by written agreement effect
17 such amendments, modifications, or expansions of this Class Action Agreement and its
18 implementing documents (including all exhibits hereto) without further notice to the Class or
19 approval by the Court if such changes are consistent with the Court's Final Approval Order and
20 do not limit the rights of Class Members under this Class Action Agreement.

21 14.2. Any unintended conflicts between the Class Action Agreement, the DOJ Consent
22 Decree, and/or the FTC Consent Order shall not be held against any of the Parties, but shall
23 instead be resolved by mutual agreement of the Parties, with the aid of the Settlement Master and,
24 if necessary, the Court.

25 14.3. This Class Action Agreement shall terminate at the discretion of either
26 Volkswagen or the Class Representatives, through Class Counsel, if: (1) the Court, or any
27 appellate court(s), rejects, modifies, or denies approval of any portion of this Class Action
28 Agreement or the proposed Settlement that the terminating Party in its (or their) sole judgment

1 and discretion reasonably determine(s) is material, including, without limitation, the terms of
2 relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of
3 the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not
4 enter or completely affirm, or alters, narrows or expands, any portion of the Final Approval
5 Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its
6 (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party
7 must exercise the option to withdraw from and terminate this Class Action Agreement, as
8 provided in this Section 14, by a signed writing served on the other Parties no later than twenty
9 days after receiving notice of the event prompting the termination. The Parties will be returned to
10 their positions status quo ante.

11 14.4. If an option to withdraw from and terminate this Class Action Agreement arises
12 under Section 14.3 above, neither Volkswagen nor Class Representatives are required for any
13 reason or under any circumstance to exercise that option and any exercise of that option shall be
14 in good faith.

15 14.5. If, but only if, this Class Action Agreement is terminated pursuant to Section 14.3,
16 above, then:

17 14.5.1. This Class Action Agreement shall be null and void and shall have no
18 force or effect, and no Party to this Class Action Agreement shall be
19 bound by any of its terms, except for the terms of Section 14.5 herein;

20 14.5.2. The Parties will petition the Court to have any stay orders entered
21 pursuant to this Class Action Agreement lifted;

22 14.5.3. All of the provisions of this Class Action Agreement, and all negotiations,
23 statements, and proceedings relating to it, shall be without prejudice to
24 the rights of Volkswagen, Class Representatives, or any Class Member,
25 all of whom shall be restored to their respective positions existing
26 immediately before the execution of this Class Action Agreement, except
27 that the Parties shall cooperate in requesting that the Court set a new
28

- 1 scheduling order such that no Party's substantive or procedural rights are
2 prejudiced by the settlement negotiations and proceedings;
- 3 14.5.4. Released Parties expressly and affirmatively reserve all defenses,
4 arguments, and motions as to all claims that have been or might later be
5 asserted in the Action, including, without limitation, the argument that the
6 Action may not be litigated as a class action;
- 7 14.5.5. Class Representatives and all other Class Members, on behalf of
8 themselves and their heirs, assigns, executors, administrators,
9 predecessors, and successors, expressly and affirmatively reserve and do
10 not waive all motions as to, and arguments in support of, all claims,
11 causes of action or remedies that have been or might later be asserted in
12 the Action including, without limitation, any argument concerning class
13 certification, and treble or other damages;
- 14 14.5.6. Volkswagen expressly and affirmatively reserves and does not waive all
15 motions and positions as to, and arguments in support of, all defenses to
16 the causes of action or remedies that have been sought or might be later
17 asserted in the Action, including without limitation, any argument or
18 position opposing class certification, liability, damages, or injunctive
19 relief;
- 20 14.5.7. Neither this Class Action Agreement, the fact of its having been entered
21 into, nor the negotiations leading to it shall be admissible or entered into
22 evidence for any purpose whatsoever;
- 23 14.5.8. Any settlement-related order(s) or judgment(s) entered in this Action after
24 the date of execution of this Class Action Agreement shall be deemed
25 vacated and shall be without any force or effect;
- 26 14.5.9. Volkswagen shall bear all reasonable and necessary costs incurred by the
27 Claims Supervisor and Notice Administrator in connection with the
28 implementation of this Class Action Settlement up until its termination.

1 Neither the Class Representatives nor Class Counsel shall be responsible
2 for any such settlement-related costs; and

3 14.5.10. Within five (5) business days, any funds in the Escrow Account,
4 including any interest accrued, shall revert to Volkswagen.

5 14.6. Notwithstanding the terms of Sections 14.5.1 through 14.5.10 above, if a Class
6 Member has (i) received compensation under the Class Action Agreement prior to its termination
7 or invalidation and (ii) executed an Individual Release, such a Class Member and Volkswagen
8 shall be bound by the terms of the Individual Release, which terms shall survive termination or
9 invalidation of the Class Action Agreement.

10 **15. REPRESENTATIONS AND WARRANTIES**

11 15.1. Class Counsel represents that: (1) they are authorized by the Class Representatives
12 to enter into this Class Action Agreement with respect to the claims asserted in the Action and
13 any other claims covered by the Release; and (2) they are seeking to protect the interests of the
14 Class.

15 15.2. Class Counsel further represents that the Class Representatives: (1) have agreed to
16 serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and
17 ready to perform all of the duties and obligations of representatives of the Class; (3) have read the
18 pleadings in the Action, including the Complaint, or have had the contents of such pleadings
19 described to them; (4) have consulted with Class Counsel about the obligations imposed on
20 representatives of the Class; (5) understand that they are entitled only to the rights and remedies
21 of Class Members under this Class Action Agreement and not to any additional compensation by
22 virtue of their status as Class Representatives; and (6) shall remain and serve as representatives of
23 the Class until the terms of this Class Action Agreement are effectuated, this Class Action
24 Agreement is terminated in accordance with its terms, or the Court at any time determines that
25 said Class Representatives cannot represent the Class.

26 15.3. Volkswagen represents and warrants that the individual(s) executing this Class
27 Action Agreement are authorized to enter into this Class Action Agreement on behalf of
28 Volkswagen.

1 15.4. The Parties acknowledge and agree that no opinion concerning the tax
2 consequences of the proposed Settlement to Class Members is given or will be given by the
3 Parties, nor are any representations or warranties in this regard made by virtue of this Class
4 Action Agreement. Each Class Member's tax obligations, and the determination thereof, are the
5 sole responsibility of the Class Member, and it is understood that the tax consequences may vary
6 depending on the particular circumstances of each individual Class Member.

7 **16. GENERAL MATTERS AND RESERVATIONS**

8 16.1. This Class Action Agreement will be binding upon, and inure to the benefit of, the
9 successors, transferees, and assigns of Volkswagen, the Class Representatives, and Class
10 Members.

11 16.2. Volkswagen's obligation to implement the Class Action Settlement Program
12 described in this Class Action Agreement is and shall be contingent upon each of the following:

13 16.2.1. Entry by the Court of the Final Approval Order approving the Class
14 Action Settlement;

15 16.2.2. The occurrence of the Effective Date; and

16 16.2.3. The satisfaction of any other conditions set forth in this Class Action
17 Agreement.

18 16.3. The Parties and their counsel agree to keep the existence and contents of this Class
19 Action Agreement confidential until the date on which the Motion for Preliminary Approval is
20 filed; provided, however, that this Section shall not prevent Volkswagen from disclosing such
21 information, prior to the date on which the Motion for Preliminary Approval is filed, to state and
22 federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, or
23 lawyers. The Parties and their counsel may also disclose the existence and contents of this Class
24 Action Agreement to persons or entities (such as experts, courts, co-counsel, and/or
25 administrators) to whom the Parties agree disclosure must be made in order to effectuate the
26 terms and conditions of this Class Action Agreement.

27 16.4. Class Representatives and Class Counsel agree that confidential information made
28 available to them solely through the settlement process was made available on the condition that

1 it not be disclosed to third parties (other than experts or consultants retained by Class
2 Representatives in connection with the Action). Nevertheless, nothing contained herein shall
3 prohibit Class Representatives from seeking certain confidential information pertinent to this
4 Class Action Agreement through informal confirmatory discovery, even if not previously
5 requested through formal discovery.

6 16.5. Information provided by Volkswagen, Volkswagen's Negotiating Counsel, and/or
7 the Settlement Master to Class Representatives, Class Counsel, any individual Class Member,
8 counsel for any individual Class Member, and/or administrators, pursuant to the negotiation and
9 implementation of this Class Action Agreement, includes trade secrets and highly confidential
10 and proprietary business information and shall be deemed "Highly Confidential" pursuant to the
11 protective orders that have been or will be entered in the Action, and shall be subject to all of the
12 provisions thereof. Any materials inadvertently produced shall, upon Volkswagen's request, be
13 promptly returned to Volkswagen's Negotiating Counsel, and there shall be no implied or express
14 waiver of any privileges, rights and defenses.

15 16.6. This Class Action Agreement, complete with its exhibits and all documents filed
16 with the Court, sets forth the entire agreement among the Parties with respect to its subject matter,
17 and it may not be altered, amended, or modified except by written instrument executed by Class
18 Counsel and Volkswagen's Negotiating Counsel on behalf of Volkswagen. The Parties expressly
19 acknowledge that no other agreements, arrangements, or understandings not expressed in this
20 Class Action Agreement or the documents filed with the Court exist among or between them, and
21 that in deciding to enter into this Class Action Agreement, they have relied solely upon their own
22 judgment and knowledge. This Class Action Agreement and the accompanying documents filed
23 with the Court supersede any prior agreements, understandings, or undertakings (written or oral)
24 by and between the Parties regarding the subject matter of this Class Action Agreement.

25 16.7. This Class Action Agreement and any amendments thereto, and any dispute
26 arising out of or related to this Class Action Agreement, shall be governed by and interpreted
27 according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto,
28 and the laws of the State of California notwithstanding its conflict of law provisions.

1 16.8. Any disagreement and/or action to enforce this Class Action Agreement shall be
2 commenced and maintained only in the United States District Court for the Northern District of
3 California.

4 16.9. Whenever this Class Action Agreement requires or contemplates that one of the
5 Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day
6 (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

7 If to Volkswagen, then to:

8 Sharon L. Nelles
9 SULLIVAN & CROMWELL LLP
10 125 Broad Street
11 New York, New York 10004
12 Email: nelless@sullcrom.com

13 If to the Class, then to:

14 Elizabeth J. Cabraser
15 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
16 275 Battery Street, 29th Floor
17 San Francisco, CA 94111

18 16.10. All time periods in this Class Action Agreement shall be computed in calendar
19 days unless otherwise expressly provided. In computing any period of time in this Class Action
20 Agreement or by order of the Court, the day of the act or event shall not be included. The last day
21 of the period shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when
22 the act to be done is the filing of a paper in court, a day on which the court is closed, in which
23 case the period shall run until the end of the next day that is not one of the aforementioned days.
24 As used in this Class Action Agreement, "Federal Holiday" includes holidays designated in Fed.
25 R. Civ. P. 6(a) or by the Clerk of the United States District Court for the Northern District of
26 California.

27 16.11. The Parties reserve the right, subject to the Court's approval, to agree to any
28 reasonable extensions of time that might be necessary to carry out any of the provisions of this
Class Action Agreement.

 16.12. The Class, Class Representatives, Class Counsel, Volkswagen, and/or
Volkswagen's Lead Counsel shall not be deemed to be the drafter of this Class Action Agreement

1 or of any particular provision, nor shall they argue that any particular provision should be
2 construed against its drafter. All Parties agree that this Class Action Agreement was drafted by
3 counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence
4 may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or
5 their counsel, or the circumstances under which this Class Action Agreement was made or
6 executed.

7 16.13. The Parties expressly acknowledge and agree that this Class Action Agreement
8 and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations,
9 related notes, and correspondence, constitute an offer of compromise and a compromise within
10 the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or
11 territory.

12 16.14. The Class Representatives expressly affirm that the allegations contained in the
13 Complaint were made in good faith, but consider it desirable for the Action to be settled and
14 dismissed as to the Eligible Vehicles only because of the substantial benefits that the Settlement
15 will provide to Class Members.

16 16.15. The Parties agree that the Class Action Agreement was reached voluntarily after
17 consultation with competent legal counsel.

18 16.16. Neither this Class Action Agreement nor the Class Action Settlement Program, nor
19 any act performed or document executed pursuant to or in furtherance of this Class Action
20 Agreement or the Class Action Settlement Program is or may be deemed to be or may be used as
21 an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing
22 or liability of any Released Parties; or is or may be deemed to be or may be used as an admission
23 of, or evidence of, any fault or omission of any Released Parties in any civil, criminal, regulatory,
24 or administrative proceeding in any court, administrative agency or other tribunal. Nor shall this
25 Class Action Agreement or the Class Action Settlement Program be deemed an admission by any
26 Party as to the merits of any claim or defense.

27 16.17. Nothing in this Class Action Agreement limits or expands any existing rights of
28 the Class or any Class Member or third party to: (i) challenge any action or decision made by

1 EPA or CARB pursuant to, or during the implementation of, the DOJ Consent Decree; or
2 (ii) assert a claim based upon an allegation of excessive emissions or OBD deficiencies from a
3 vehicle that has undergone an Emission Modification approved by EPA and CARB under the
4 DOJ Consent Decree.

5 16.18. Any of the Released Parties may file this Class Action Agreement and/or the Final
6 Approval Order in any action that may be brought against it in order to support any defense or
7 counterclaim, including without limitation those based on principles of *res judicata*, collateral
8 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
9 preclusion or issue preclusion or similar defense or counterclaim.

10 16.19. The Parties, their successors and assigns, and their counsel undertake to implement
11 the terms of this Class Action Agreement in good faith, and to use good faith in resolving any
12 disputes that may arise in the implementation of the terms of this Class Action Agreement.

13 16.20. The waiver by one Party of any breach of this Class Action Agreement by another
14 Party shall not be deemed a waiver of any prior or subsequent breach of this Class Action
15 Agreement.

16 16.21. If one Party to this Class Action Agreement considers another Party to be in
17 breach of its obligations under this Class Action Agreement, that Party must provide the
18 breaching Party with written notice of the alleged breach and provide a reasonable opportunity to
19 cure the breach before taking any action to enforce any rights under this Class Action Agreement.

20 16.22. The Parties, their successors and assigns, and their counsel agree to cooperate fully
21 with one another in seeking Court approval of this Class Action Agreement and to use their best
22 efforts to implement this Class Action Agreement and the proposed Class Action Settlement
23 Program.

24 16.23. This Class Action Agreement may be signed with an electronic or facsimile
25 signature and in counterparts, each of which shall constitute a duplicate original.

26 16.24. In the event any one or more of the provisions contained in this Class Action
27 Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect,
28 such invalidity, illegality, or unenforceability shall not affect any other provision if Volkswagen,

1 on behalf of Defendants, and Class Counsel, on behalf of Class Representatives and Class
2 Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable
3 provision had never been included in this Class Action Agreement. Any such agreement shall be
4 reviewed and approved by the Court before it becomes effective.

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List of Exhibits

Ex. #	Title
1	Settlement Benefits to Class Members
2	Short Form Notice
3	Long Form Notice
4	Class Claims Program and Administration
5	Individual Release of Claims
6	Estimated Settlement Payments to Owners and Lessees

1 FOR CLASS COUNSEL

2

Date: June 28, 2016

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Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111

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FOR VOLKSWAGEN AG:

Date: June 28, 2016



/s/ Francisco Javier Garcia Sanz
FRANCISCO JAVIER GARCIA SANZ
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany



Date: June 28, 2016

MANFRED DOESS
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany


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FOR AUDI AG:

Date: June 28, 2016



/s/ Francisco Javier Garcia Sanz
FRANCISCO JAVIER GARCIA SANZ
VOLKSWAGEN AG
P.O. Box 1849
D-38436 Wolfsburg, Germany



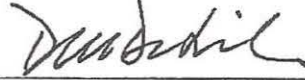
Date: June 28, 2016

MANFRED DOESS
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FOR VOLKSWAGEN GROUP OF AMERICA, INC.:

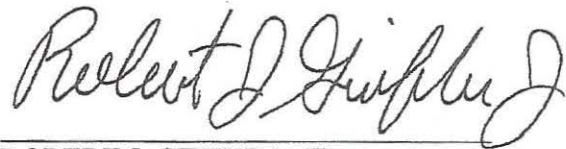
Date: June 28, 2016



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

1 COUNSEL FOR VOLKSWAGEN AG, AUDI AG, AND VOLKSWAGEN GROUP OF
2 AMERICA, INC.:

3
4
5
6 Date: June 28, 2016



7 ROBERT J. GIUFFRA, JR.
8 SHARON L. NELLES
9 WILLIAM B. MONAHAN
10 SULLIVAN & CROMWELL LLP
11 125 Broad Street
12 New York, New York 10004
13 Telephone: (212) 558-4000
14 Facsimile: (212) 558-3358
15 giuffrar@sullcrom.com
16 nelless@sullcrom.com
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