

Stephen D. Bell (S.D. #3488)
DORSEY & WHITNEY LLP
Millennium Building
125 Bank Street, Suite 600
Missoula, Montana 59802-4407
Tel: 406-721-6025
Fax: 406-543-0863
bell.steve@dorsey.com

Dan R. Larsen (*pro hac vice to be filed*)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
larsen.dan@dorsey.com

Attorneys for Defendant Volkswagen Group of America, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION**

ALLEN AND JENNIFER PICKARD

Plaintiff,

vs.

VOLKSWAGEN GROUP OF AMERICA
INC.,

Defendant.

NOTICE OF REMOVAL

Case No.: 18-4107

Judge:

Defendant Volkswagen Group of America Inc. (VWGoA), hereby removes this action from the Minnehaha County Circuit Court, State of South Dakota pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446. In support of its removal, defendant states as follows:

STATEMENT OF JURISDICTION

1. This is a civil action for which this Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1332 and that may be removed to this Court, pursuant to 28 U.S.C. §§ 1441 and 1446 for the reasons below.

THE REMOVED ACTION

2. On July 30, 2018, defendant VWGoA was served with the attached Summons and Complaint captioned in the Circuit Court, Second Judicial Circuit, County of Minnehaha, State of South Dakota. *See* Summons and Notice of Service of Process, Exhibit A; Complaint, Exhibit B (including exhibits A through D attached to the Complaint).

3. To date, plaintiffs have not yet filed the Complaint in South Dakota state court.

4. Other than the documents attached as Exhibits, no pleadings, process, orders or other documents in the case have been served or otherwise received by VWGoA or, to VWGoA's knowledge, are presently on file in the state court. In the event that such filings come to VWGoA's attention, it will immediately file copies in this Court.

5. This action is based on allegations concerning the widely-publicized EPA Notices of Violation (NOVs), dated September 18, 2015, and November 2, 2015, alleging that VWGoA and certain of its affiliates installed emissions testing "defeat devices" in certain Volkswagen-branded diesel vehicles.

6. In the wake of issuance of the NOVs, owners and lessees of the affected diesel vehicles filed hundreds of actions in federal and state courts across the United States against VWGoA and others based on allegations regarding the use of undisclosed software in the emissions control systems of the affected diesel vehicles, which circumvented the emissions tests established by the federal EPA.

7. On December 8, 2015, the Judicial Panel on Multidistrict Litigation (“JPML”) issued an order transferring hundreds of then-pending actions raising common issues of fact to MDL No. 2672 before Judge Charles R. Breyer for coordinated or consolidated pre-trial proceedings. In its order, the JPML noted that “the actions in this litigation involve common questions of fact, and . . . centralization in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” Subsequently filed actions making similar assertions have been filed—and routinely transferred to the MDL by the JPML.

8. To date, the MDL has overseen several class-wide settlements. This action relates to one of those settlements.

9. The relevant settlement agreement to this action states that the MDL shall retain exclusive jurisdiction over any dispute regarding the agreement. *See* Consumer Class Action Settlement Agreement and Release (Amended) ¶ 9.16, attached as Exhibit C (stating “The Court shall retain exclusive and continuing jurisdiction over all Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise regarding this Class Action Agreement or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Class Action Agreement and no Party shall oppose the reopening and reinstatement of the Action on the MDL Court’s active docket for the purposes of effecting this Section.”).

10. The present state court lawsuit brings two claims on behalf of a putative class for breach of implied warranty of merchantability and breach of contract. Plaintiffs purport to bring this class action “on behalf of themselves and all persons owning a Volkswagen—eligible to participate in the 2.0-Liter Settlement Claims Program—who live in an area where the climate

has rendered the ." Complaint ¶ 5. While the Complaint does not finish this sentence, defendant understands that the sentence should end with the words "car inoperable." See Declaration of Dan R. Larsen, attached as Exhibit D.

11. The Complaint further alleges that after purchasing a 2012 Volkswagen Passat and 2013 Volkswagen Passat in early 2016, plaintiffs received offers of compensation as part of the "2.0-Liter Settlement Claims Program" (hereafter, "Program").

12. The offer letters, attached to the Complaint as exhibits, state that plaintiffs had two options under the Program. The first option allowed plaintiffs to receive an emissions modification and a cash settlement. *See* Exhibit A to the Complaint at 1–2; *see also* Exhibit B to the Complaint at 1–2. The second option provided that their vehicles would be bought back and that they would receive a cash settlement. *See* Exhibit A to the Complaint at 3; *see also* Exhibit B to the Complaint at 3.

13. Plaintiffs chose the first option, submitting a signed and notarized acceptance of the terms of the emissions modification for both their vehicles. *See* Exhibits C and D to the Complaint.

14. Though not alleged, plaintiffs apparently fulfilled their responsibility to take both vehicles to an authorized Volkswagen dealer to perform an approved emissions modification.

15. Plaintiffs allege that the emissions modifications have not been successful: both cars have "been in the custody of an authorized Volkswagen mechanic for months because the emission modification, pursuant to the Volkswagen agreement, has caused both vehicles to not start. Despite numerous attempts, no authorized Volkswagen mechanic has been able to correct the defects despite Defendant's warranty and settlement contract." Complaint ¶¶ 13–14.

16. Plaintiffs then allege that they attempted to trade in one of the cars, to choose the second option, but “were told that the value of the car was \$0 because it has to be fixed first.” *Id.* ¶ 15.

17. Plaintiffs pray for “an award to Plaintiffs and all class members of compensatory, general, and special damages in an amount which may be proven at trial, together with prejudgment interest at the maximum rate allowed by law.” *Id.* at 4. In the alternative, plaintiffs seek “a mandatory injunction requiring Volkswagen to specifically perform the terms of the Emissions Modification Offer.” *Id.* at 5. Plaintiffs also seek recovery of “reasonable attorney’s fees, costs, and disbursements; and for such other and further relief as the Court deems appropriate in the circumstances.” *Id.*

18. In their statement justifying class status, plaintiffs state that their claims are “typical of the claims of other members” of the putative class. And they allege that although “the number of class members cannot be properly determined without further discovery,” “the class has over 100 members and that the members’ identities can be ascertained from Defendants’ records.” *Id.* ¶ 6a.

PROCEDURAL ISSUES

19. VWGoA is filing this notice of removal within 30 days after service of summons upon VWGoA, rendering this notice timely. See 28 U.S.C. § 1446(b)(2)(B).

20. Venue is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division where the state court case would be pending when filed. The Minnehaha County Circuit Court is located within the United States District Court for the District of South Dakota.

JURISDICTION IS PROPER UNDER § 1332

21. Defendant VWGoA is incorporated under the laws of the state of New Jersey and maintains its principal place of business in the state of Virginia. Accordingly, for jurisdictional purposes, VWGoA is a citizen of New Jersey and Virginia.

22. As alleged in the Complaint, and on information and belief, the named plaintiffs are citizens of South Dakota. *See* Complaint ¶ 1.

23. Therefore, diversity exists under 28 U.S.C. 1332(d)(2) because “any member of a class of plaintiffs is a citizen of a State different from any defendant.”

24. Although VWGoA denies that it is liable to Plaintiff in any amount, it is clear from the face of the Complaint that the amount in controversy in this action exceeds the jurisdictional minimum of \$5,000,000.00, set forth in 28 U.S.C. § 1332(d)(2).

25. In *In re Volkswagen “Clean Diesel” Mktg.*, 264 F. Supp. 3d 1040 (N. D. Cal. 2017) the MDL court stated that the relevant timeframe for eligible vehicles is from “approximately May 2006 to November 2015.” *Id.* at 1042.

26. Regarding the geographic scope of the alleged putative class, it is difficult to determine the “persons owning a Volkswagen--eligible to participate in the 2.0 Liter Settlement Claims Program--who live in an area where the climate has rendered the” cars inoperable. *See* Complaint ¶5. The Complaint is unclear regarding the climate effect on the efficacy of the approved emissions modification. Plaintiffs’ decision to define the class by climate area, not state boundaries, suggests that the putative class includes persons with vehicles from states with a climate similar to South Dakota.

27. According to the National Centers for Environmental Information, there are nine climate regions in the United States. *See* <https://www.ncdc.noaa.gov/monitoring->

[references/maps/us-climate-regions.php](#). A climate region consists of states with similar climates. South Dakota belongs to the Northern Rockies and Plains region, which is composed of Montana, North Dakota, South Dakota, Nebraska and Wyoming. *Id.* Additionally, South Dakota shares similarities to the climate of states located in the Upper Midwest climate region, which includes Minnesota, Wisconsin, Michigan, and Iowa. *Id.* There may, of course, be other states that share similar climate characteristics to South Dakota's climate (*e.g.*, Maine, Vermont, New Hampshire or New York). Given the broadly defined climate class, it is difficult to say whether the putative class would include persons living in these other defined climate regions. Accordingly, for jurisdictional purposes, VWGoA will confine the potential geographic scope to include those states within the Northern Rockies, Plains and Upper Midwest climate regions.

28. In those nine states¹ that share a climate similar to South Dakota's, there are (on information and belief) over 9,000 vehicles that could compose the putative class. The following table reflects the most up-to-date records of vehicles that participated in the program, either by choosing option one and receiving the emissions modification or by choosing option two and having their vehicle bought back:

State	Emissions Mod.	Resale ²	Total
Iowa	488	254	742
Michigan	1,190	775	1,965
Minnesota	1,120	1,350	2,470
Montana	309	175	484
Nebraska	377	189	566
North Dakota	139	63	202
South Dakota	191	73	264
Wisconsin	1,272	1,245	2,517
Wyoming	52	19	71
Total	5,138	4,143	9,281

¹ Montana, North Dakota, South Dakota, Nebraska, Wyoming, Minnesota, Wisconsin, Michigan and Iowa.

² This column represents all vehicles that were bought back, received emissions modifications, and were then resold in each state.

29. Plaintiffs' vehicles currently have a typical listing price under Kelley Blue Book of \$11,282 for the 2012 model and \$12,854 for the 2013 model. *See* Copy of Blue Book quote for each vehicle, attached as Exhibit E. Plaintiffs pray for compensatory damages, and allege that they are seeking vehicles of comparable value and quality. *See* Complaint ¶ 15.

Conservatively, to account for the range of values, VWGoA assumes a value \$10,000 per vehicle across the putative class. Therefore, on information and belief, the potential compensatory damages for the putative class would exceed \$5,000,000 (9,281 vehicles x \$10,000 = \$92,810,000).

30. The required amount in controversy of \$5,000,000 is met without including other potential damage claims.

31. Therefore, under 28 U.S.C. 1332(d)(2) the district court has original jurisdiction; the parties are diverse, and the amount in controversy has been met.

JURISDICTION IS PROPER UNDER § 1331

32. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which gives district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Federal question jurisdiction exists over state law claims where, *inter alia*, "plaintiff's right to relief depends on the resolution of a substantial question of federal law." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 27–28 (1983); *see also Grable & Sons Metal Prods., Inc. v. Darue Eng'r & Mfnr.*, 545 U.S. 308, 314 (2005) (explaining that a complaint alleging only violations of state law does not bar removal to federal court under federal question jurisdiction if "a state-law claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may

entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.”).

33. The Complaint alleges that the putative class encompasses all those “persons owning a Volkswagen—eligible to participate in the 2.0-Liter Settlement Claims Program—who live in an area where the climate has rendered the [cars inoperable].” As discussed above, plaintiffs’ allegations encompass all eligible Program vehicles from at least nine states within a similar climate region.

34. The Complaint directly challenges the efficacy of the emissions modification Program, which was the product of the court-approved settlement agreement. Actual liability aside, the MDL court approved the Program as part of a coordinated and balanced effort to address concerns of owners who may be affected by any alleged issues with their emissions control systems *and* the concerns of federal regulatory agencies *vis a vis* the Clean Air Act and its related regulations. Any litigation challenging the adequacy of the Program in certain climate regions would require the court to decide—and effectively re-litigate—the federal questions addressed in the MDL actions, of which the Program is the product. In other words, signing a settlement agreement to participate in the Program does not confine plaintiffs’ action to contract (*i.e.*, state) law. The Program is a creature born from, and intensely bound up in, federal law.

35. Indeed, the parties recognized that it was essential for the MDL to address any alleged deficiency in the terms of the settlement agreement. For that reason, they included in the court-approved settlement agreement that the MDL “shall retain exclusive and continuing jurisdiction over all Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise regarding this Class Action Agreement or in relation to this Action, including *any* dispute regarding validity, performance, interpretation, administration, enforcement,

enforceability, or termination of the Class Action Agreement.” See Exhibit C ¶ 9.16.

36. Thus, regardless of how plaintiffs may attempt to prove liability under state law, their damage theories hinge on the resolution of important federal issues. In particular, whether the subject vehicles (those participating in or that are *eligible* to participate in) can be effectively “fixed” in accordance with the emissions modification Program approved by the EPA and the negotiated class settlement adopted by the federal MDL court overseeing the coordinated and consolidated litigation.

37. Moreover, these questions are substantial and touch on a distinctly federal interest. A primary indicium of “interest to the federal system as a whole” is where “[d]etermination of the federal issues in this case could heal or injure [a] complex regulatory scheme” that has “the potential to affect many people” subject to its regulations. *Cty. of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d, 1028 (N.D. Cal. 2005); see also *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. at 1027–28 (focusing on the importance of the federal issue” (collecting cases)). Such a “complex federal regulatory scheme”—namely, the EPA’s comprehensive regulation of motor-vehicle emissions—is at stake here. It is not difficult to envision the chaos that could result from different state courts reaching different conclusions about whether the affected vehicles should or should not be eligible for the emissions remediation or whether the terms of the settlement agreement affectively address the concerns of the EPA. And unlike their state-court counterparts, “federal courts are particularly familiar with the federal regulatory scheme” governing environmental compliance. *Bd. of Comm’rs of Se. La. Flood Prot. Auth.-E. v. Tenn. Gas Pipeline Co.*, 29 F. Supp. 3d 808, 863 (E.D. La. 2014). Thus there is a strong federal interest—and no countervailing state interest—in hosting this litigation.

38. This Court can exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 as

to any state-law claims due to the presence of independent federal subject matter jurisdiction.

NOTICE TO ADVERSE PARTY AND STATE COURT

39. Pursuant to 28 U.S.C. § 1446(d), VWGoA is serving written notification of the removal of this case on plaintiffs' counsel (identified below):

Shawn M. Nichols
Joseph A. Meader
200 East 10th Street, Suite 200
Sioux Falls, SD 57104

40. Pursuant to 28 U.S.C. § 1446(d), VWGoA promptly will file a Notification of Removal, attaching a copy of this Notice of Removal, with the Clerk of the Minnehaha County Circuit Court, state of South Dakota.

CONCLUSION

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, VWGoA hereby removes this action from the Minnehaha County Circuit Court, state of South Dakota, to the United States District Court for the District of South Dakota.

DATED this 29th day of August, 2018

Respectfully submitted,

/s/ Stephen D. Bell
Attorney for Volkswagen Group of America, Inc.

Exhibit A



Notice of Service of Process

Transmittal Number: 18499196
Date Processed: 07/30/2018

Primary Contact: Stevi Honaker
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171-5884

Entity: Volkswagen Group of America, Inc.
Entity ID Number 0456194

Entity Served: Volkswagen Group of America Inc.

Title of Action: Allen Pickard vs. Volkswagen Group of America Inc.

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Minnehaha County Circuit Court, South Dakota

Case/Reference No: Not Shown

Jurisdiction Served: South Dakota

Date Served on CSC: 07/30/2018

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Joseph A. Meader
605-336-0828

Notes: Document matches the original as it was received. Please note that all pages served are present.

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

:SS

COUNTY OF MINNEHAHA)

SECOND JUDICIAL CIRCUIT

ALLEN AND JENNIFER PICKARD,

Plaintiff,

vs.

VOLKSWAGEN GROUP OF AMERICA INC.,

Defendant.

CIV. 18-

SUMMONS

TO THE ABOVE-NAMED DEFENDANT.

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon Cadwell Sanford Deibert & Garry LLP, attorneys for the Plaintiff, whose office address is 200 East 10th Street, Suite 200, Sioux Falls, South Dakota 57104, an Answer to the Complaint which will be filed in the office of the Clerk of the Circuit Court of the Second Judicial Circuit in and for the County of Minnehaha, State of South Dakota, within thirty (30) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 18th day of July, 2018.

CADWELL SANFORD DEIBERT & GARRY LLP

By:

Joseph Meader

Shawn M. Nichols
Joseph A. Meader
200 East 10th Street, Suite 200
Sioux Falls SD 57104
Telephone: (605) 336-0828
Fax: (605) 336-6036
Email: snichols@cadlaw.com
jmeader@cadlaw.com
Attorneys for Plaintiff

Exhibit B

STATE OF SOUTH DAKOTA)		IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA)		SECOND JUDICIAL CIRCUIT

ALLEN AND JENNIFER PICKARD,

Plaintiff,

vs.

VOLKSWAGEN GROUP OF
AMERICA INC.,
Defendant.

CIV. 18-

COMPLAINT

The Plaintiffs, Allen and Jennifer Pickard (hereinafter “Plaintiffs”), on behalf of themselves and others similarly situated, and for their Complaint against the above-named Defendant, do hereby state and allege as follows:

PARTIES

1. Plaintiffs are residents of Brookings County, South Dakota
2. Defendant is a corporation engaged in South Dakota and other states in the manufacture, distribution, and sale of Volkswagen motor vehicles and is a “merchant” as defined in SDCL § 57A-2-104(1).

JURISDICTION AND VENUE

3. This Honorable Court had jurisdiction over this action pursuant to S.D. Const. Art. V § 5 and SDCL § 16-6-9.
4. Venue is proper within the indicated judicial circuit under SDCL §§ 15-5-6, 8.
5. Pursuant to SDCL § 15-6-23, Plaintiffs bring this class action on behalf of themselves and all persons owning a Volkswagen—eligible to participate in the 2.0-Liter

Settlement Claims Program—who live in an area where the climate has rendered the .

6. This action may be properly maintained as a class action under SDCL § 15-6-23(a) in that:

- a. The members of the class are so numerous that their individual joinder in a single action is impracticable. Although the number of class members cannot be properly determined without further discovery, Plaintiffs are informed and believe, and on that basis allege, that the class has over 100 members and that the members' identities can be ascertained from the Defendants' records.
- b. The central questions of law and fact involved in this actions are common or general interest to the class. Common legal and factual issue predominate over any questions affecting only individual members of the class.
- c. The claims of the named representative Plaintiffs are typical of the claims of other members of the class. The named Plaintiffs share the same interests as other members of the class in this action because, like other class members, they have each suffered a financial loss of thousands of dollars due to the Defendants' actions and inaction complained of herein. Given the significance of their losses, they have the incentive, and are committed, to vigorously prosecute this action. They have retained competent and experienced counsel, who specialize in litigation, to represent themselves and the propose class.
- d. The named representative Plaintiff will fairly and adequately protect the interests of the class. The named Plaintiffs own two Volkswagen Passats eligible for the 2.0-Liter Settlement Claims Program and suffered damage as a result of the Defendants' actions and inaction complained of herein.
- e. Class action treatment is superior to alternatives, if any, for the fair and efficient adjudication of this controversy because it permits a large number of injured Volkswagen owners to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court. The prosecution of separate actions would also create the risk of inconsistent rulings, which may be dispositive of the interest of class members who are not parties to the adjudication or may substantially impede class members' ability to protect their interests, and therefore would be contrary to the interest of justice and equity.

FACTUAL ALLEGATIONS

7. On April 13, 2016, Plaintiffs purchased a 2012 Volkswagen Passat, Serial No. 1VWBN7A34CC066028 ("Car 1"), manufactured, distributed, and sold by Defendant.

8. On February 26, 2016, Plaintiffs purchased a 2013 Volkswagen Passat, Serial No.

1VWBN7A38DC145526 (“Car 2”), manufactured, distributed, and sold by Defendant.

9. On December 9, 2016, Volkswagen sent an offer to receive compensation in the “2.0-Liter Settlement Claims Program,” which made Car 1 eligible for participation. A copy of such an offer is attached hereto as Exhibit A.

10. On December 21, 2016, Volkswagen sent an offer to receive compensation in the “2.0-Liter Settlement Claims Program,” which made Car 2 eligible for participation. A copy of such an offer is attached hereto as Exhibit B.

11. On December 29, 2016, Plaintiffs accepted the “Emissions Modification Offer” for Car 1. A copy of such an acceptance is attached hereto as Exhibit C.

12. On August 20, 2017, Plaintiffs accepted the “Emissions Modification Offer” for Car 2. A copy of such an acceptance is attached hereto as Exhibit D.

13. Car 1 and Car 2 has been in the custody of an authorized Volkswagen mechanic for months because the emission modification, pursuant to the Volkswagen agreement, has caused both vehicles to not start.

14. Despite numerous attempts, no authorized Volkswagen mechanic has been able to correct the defects despite Defendant’s warranty and settlement contract.

15. Plaintiffs attempted to trade in car 2 but were told that the value of the car was \$0 because it has to be fixed first.

COUNT I

Breach of Implied Warranty of Merchantability

16. Plaintiffs hereby reallege the above paragraphs of this complaint and incorporate them as fully set forth herein.

17. As a proximate result of the foregoing, Plaintiffs have incurred damage and

detriment in the form of substantial impairment of value, loss of use, and loss of market value and other incidental and consequential damages, all in amounts not yet fully determinable.

When the amount of such damages are determined, Plaintiffs will amend this Complaint or will amend according to proof at trial.

18. In addition to the foregoing damages, plaintiffs are entitled to attorney's fees and expenses pursuant to 15 U.S.C. § 2310(d)(2).

COUNT II

Breach of Contract

19. Plaintiffs hereby reallege the above paragraphs of this complaint and incorporate them as fully set forth herein.

20. Plaintiffs have properly revoked acceptance in conformity with the requirements of SDCL § 57A-2-608.

21. As a proximate result of the foregoing, Plaintiffs have incurred damage and detriment in the form of substantial impairment of value, loss of use, and loss of market value and other incidental and consequential damages, all in amounts not yet fully determinable. When the amount of such damages are determined, Plaintiffs will amend this Complaint or will amend according to proof at trial.

WHEREFORE, Plaintiff prays for the following relief:

1. To certify a class as set forth in Paragraphs 5 and 6 above;
2. For an award to Plaintiffs and all class members of compensatory, general, and specials damages in an amount which may be proven at trial, together with prejudgment interest at the maximum rate allowed by law arising from Volkswagen's breach of the Emissions Modification Offer;

3. In the alternative, a mandatory injunction requiring Volkswagen to specifically perform the terms of the Emissions Modification Offer.

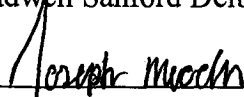
4. For reasonable attorney's fees, costs, and disbursements herein; and

5. For such other and further relief as the Court deems appropriate in the circumstances.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated this 18th day of July, 2018.

Cadwell Sanford Deibert & Garry, LLP



Shawn M. Nichols
Joseph A. Meader
200 E. 10th Street, Ste. 200
Sioux Falls, South Dakota 57104
Telephone: (605) 336-0828
Telecopier: (605) 336-6036
Email: snichols@cadlaw.com
jmeader@cadlaw.com
Attorneys for Plaintiff

VOLKSWAGEN

GROUP OF AMERICA

December 9, 2016

ALLEN ROY PICKARD
47104 201ST ST
BROOKINGS, SD 57006

Volkswagen Group of America
3800 Hamlin Rd
Auburn Hills, MI 48326
Telephone 1-844-982-5246
Fax 1-248-754-6602

RE: 2012 Passat Sedan 4D SE TDI
VIN: 1VWBN7A34CC066028
Claim: 161643683

Dear ALLEN ROY PICKARD:

Based on the information you have provided, you are **eligible** to participate in the 2.0-Liter Settlement Claims Program. This letter is your formal offer of settlement benefits. As detailed below, this letter is only an offer; to receive settlement compensation you must first accept the offer by signing below, signing a notarized release, and sending them both to Volkswagen Group of America, Inc.

You have indicated preliminary interest in receiving an **approved emissions modification** and receiving the **restitution payment**, which is calculated using two components: 1) a percentage of the September 2015 NADA Used Car Guide Clean Trade value, or a percentage of MSRP for 2015 Model Year vehicles, with adjustments for mileage and manufacturer-installed options; and 2) a flat dollar amount. Vehicles receiving an approved emissions modification will also receive disclosures about the effects of the modification on performance and durability, an extended emissions warranty, and a Lemon Law-type remedy to protect against the possibility of the modification causing subsequent problems.

SELECTED OPTION (Preliminary) – APPROVED EMISSIONS MODIFICATION. Under the approved emissions modification option, a licensed Volkswagen or Audi Dealer of your choosing will perform an approved emissions modification on your vehicle, free of charge, and you will also receive an extended emissions warranty covering the emissions system of the vehicle. In addition, you will receive a restitution payment in the amount set forth below:

\$4,490.55 Amount VW Will Pay You

If your vehicle is a Model Year 2015 Eligible Vehicle, the approved emissions modification will be completed in two steps. Upon completion of the first stage of the approved emissions modification, you will receive 2/3 of the payment amount shown above. Upon completion of the second stage of the approved emissions modification, you will receive the last 1/3 of the payment amount shown above. If you sell or otherwise transfer ownership of your vehicle before the second stage of the approved emissions modification can be completed, you will not be eligible to receive the last 1/3 of the payment, but the new owner will be able to complete the second stage of the approved emissions modification and receive the last 1/3 of the payment.

The offer amount reflected above is based, in part, on the purchase date that you entered into the Online Claims Portal, which is after September 18, 2015. If you believe this is incorrect, please contact us at 1 844-98-CLAIM.

EXHIBIT A



VOLKSWAGEN

GROUP OF AMERICA

Please note that the total payment may change based on updated mileage at the time of your approved emissions modification appointment. Continuing to drive your car an average of 12,500 miles per year (around 1,000 miles per month) or fewer will not reduce your compensation under the Class Action Settlement. Driving your car more than an average of 12,500 miles per year might reduce your compensation.

If you choose to receive the approved emissions modification, we will inform you when the modification has been approved through the Online Claims Portal, email and/or U.S. mail, depending on your stated preference, which may not be until May 1, 2018. Once you have been notified, you may schedule an appointment for your vehicle to receive the approved emissions modification via the Online Claims Portal through www.VWCourtSettlement.com or by contacting your preferred Volkswagen or Audi Dealer directly.

Accepting the Offer: You may accept the approved emissions modification offer by signing this letter on the last page and signing and notarizing the enclosed release form. You must then return both the signed letter and the notarized release by uploading a copy to the Online Claims Portal that can be accessed through www.VWCourtSettlement.com, faxing a copy to 248-754-6602 or mailing a copy to VW / Audi Emissions Settlement Claims Processing, P.O. Box 214500, Auburn Hills, MI 48321. **You must send both this letter and the enclosed notarized release before your acceptance is considered complete. The release only becomes effective and binding after you receive a benefit under the Class Action Agreement.**

Scheduling an Appointment: After we receive your fully executed acceptance of this offer along with the signed and notarized release, we will notify you by email and/or by U.S. mail (depending on your indicated preference) that we have received your documents. Once you have been notified, you do not have to take any next steps until the EPA/CARB approve an emissions modification for your vehicle. If the EPA/CARB approve an emissions modification for your vehicle, we will notify you and then you may schedule an appointment for your approved emissions modification using the Online Claims Portal that can be accessed through www.VWCourtSettlement.com or by contacting your preferred Volkswagen or Audi Dealer directly. If your vehicle is a Volkswagen, you will be able to select from any Volkswagen Dealer or authorized repair facility. If your vehicle is an Audi, you will be able to select from any Audi Dealer or authorized repair facility. You also will be able to complete the approved emissions modification within 90 days of your acceptance of this offer and scheduling an appointment. You should bring your vehicle to the selected Volkswagen or Audi Dealer at the appointed time. If your approved emissions modification is expected to take longer than three (3) hours to complete, you will be offered a loaner vehicle free of charge.

If the emissions modification is not approved by May 1, 2018 and you still own your vehicle, then you will have an opportunity to change your selection to a buyback or you may withdraw from the class action settlement completely. If you sell your vehicle before an approved emissions modification becomes available, you are bound by the Class Action Settlement but are not eligible for settlement benefits.

Payment Method: You may receive your restitution payment via electronic fund transfer or by check. Please visit the Online Claims Portal via www.VWCourtSettlement.com or call 1-844-98-CLAIM to provide information on your preferred payment method or to change your payment preference. Funds will be made payable to the addressee of this letter only. If there are multiple owners of this vehicle and they are not both listed on page 1 of this letter, please contact us at 1-844-98-CLAIM.



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ALTERNATE OFFER: You may change your selected remedy at any time before the approved emissions modification is complete. If you decide to change your selected remedy, you will need to submit additional documentation to verify your eligibility. Once your eligibility is confirmed, you may return your vehicle and accept the buyback payment. The total buyback offer includes two components: 1) your vehicle return amount derived from the September 2015 NADA Used Car Guide Clean Trade value, or a percentage of MSRP for 2015 Model Year vehicles, with adjustments for mileage and manufacturer-installed options; plus 2) additional restitution, which is the sum of a set percentage of the vehicle return amount and a flat dollar amount.

Please note that the total payment may change based on your mileage and the outstanding balance on your loan at the time of your buyback appointment. Continuing to drive your car an average of 12,500 miles per year (around 1,000 miles per month) or fewer will not reduce your compensation under the Class Action Settlement. Driving your car more than an average of 12,500 miles per year might reduce your compensation. You should continue to make any payments on your loan during this period. Volkswagen will not be responsible for any late payments or penalties associated with failure to make loan payments.

If you select the buyback option, you agree to surrender the vehicle to Volkswagen and to sign the necessary paperwork to provide Volkswagen Group of America, Inc. with a clear certificate of title at the time of your appointment. You, and each listed title holder, must present a government issued ID at the time of your appointment. If each title holder cannot be present at the appointment, you must present a notarized power of attorney for each title holder as well as a copy of a government issued ID for each title holder. If you have an outstanding loan on your vehicle and it is determined that your buyback amount, including loan forgiveness, will not be sufficient to cover the balance of your loan, you will also need to bring a certified check, made out to Volkswagen Group of America, Inc. for the balance of your loan less your total buyback payment.

Changing Your Selected Remedy: If you would like to change the option you have preliminarily selected to the buyback option, please call 1-844-98-CLAIM for further information about the additional documents needed to confirm your eligibility. You may also indicate that you are now choosing the buyback option at the end of this letter just above your signature line and someone will contact you about your new selection.

Loan Payments: Regardless of which option you choose, please note that you are expected to continue to make your loan payments until you accept your offer, schedule an appointment, and complete your remedy. Deficient payments and associated fees incurred after June 28, 2016 are not part of the loan forgiveness portion of the Settlements.

For any questions or to learn more about the approved emissions modification option or the buyback option, including how vehicle mileage and loan obligations will impact your payment amount if you select the buyback option, please visit www.VWCourtSettlement.com or call 1-844-98-CLAIM.



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December 21, 2016

ALLEN ROY PICKARD
47104 201ST ST
BROOKINGS, SD 57006

Call
Spam mail
Chase Payment
Confirm

Volkswagen Group of America
3800 Hamlin Rd
Auburn Hills, MI 48326
Telephone 1-844-982-5246
Fax 1-248-754-6602

RE: 2013 Passat Sedan 4D SE TDI 14
VIN: 1VWBN7A38DC145526
Claim: 161642893

Dear ALLEN ROY PICKARD:

Based on the information you have provided, you are **eligible** to participate in the 2.0-Liter Settlement Claims Program. This letter is your formal offer of settlement benefits. As detailed below, this letter is only an offer; to receive settlement compensation you must first accept the offer by signing below, signing a notarized release, and sending them both to Volkswagen Group of America, Inc.

You have indicated preliminary interest in receiving an **approved emissions modification** and receiving the **restitution payment**, which is calculated using two components: 1) a percentage of the September 2015 NADA Used Car Guide Clean Trade value, or a percentage of MSRP for 2015 Model Year vehicles, with adjustments for mileage and manufacturer-installed options; and 2) a flat dollar amount. Vehicles receiving an approved emissions modification will also receive disclosures about the effects of the modification on performance and durability, an extended emissions warranty, and a Lemon Law-type remedy to protect against the possibility of the modification causing subsequent problems.

SELECTED OPTION (Preliminary) – APPROVED EMISSIONS MODIFICATION. Under the approved emissions modification option, a licensed Volkswagen or Audi Dealer of your choosing will perform an approved emissions modification on your vehicle, free of charge, and you will also receive an extended emissions warranty covering the emissions system of the vehicle. In addition, you will receive a restitution payment in the amount set forth below:

\$4,881.25 ESTIMATED Amount VW Will Pay You**

If your vehicle is a Model Year 2015 Eligible Vehicle, the approved emissions modification will be completed in two stages. Upon completion of the first stage of the approved emissions modification, you will receive 2/3 of the payment amount shown above. Upon completion of the second stage of the approved emissions modification, you will receive the last 1/3 of the payment amount shown above. If you sell or otherwise transfer ownership of your vehicle before the second stage of the approved emissions modification can be completed, you will not be eligible to receive the last 1/3 of the payment, but the new owner will be able to complete the second stage of the approved emissions modification and receive the last 1/3 of the payment.

The offer amount reflected above is based, in part, on the purchase date that you entered into the Online Claims Portal, which is after September 18, 2015. If you believe this is incorrect, please contact us at 1 844-98-CLAIM.



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**** Please note that the actual payment amount at your closing appointment may differ from the above amount.**
The above offer is based on the information that you entered in the beginning of the claims process for your mileage, estimated monthly mileage, and estimated vehicle return date. The total payment may change based on the actual mileage at the time of your approved emissions modification appointment, which may be different from the mileage, estimated monthly mileage, and estimated vehicle return date that you entered in your claim.
Payment Adjustment Based Upon Mileage: Continuing to drive your car an average of 12,500 miles per year (around 1,000 miles per month) or fewer will not reduce your compensation under the Class Action Settlement. Driving your car more than an average of 12,500 miles per year might reduce your compensation.

If you choose to receive the approved emissions modification, we will inform you when the modification has been approved through the Online Claims Portal, email and/or U.S. mail, depending on your stated preference, which may not be until May 1, 2018. Once you have been notified, you may schedule an appointment for your vehicle to receive the approved emissions modification via the Online Claims Portal through www.VWCourtSettlement.com or by contacting your preferred Volkswagen or Audi Dealer directly.

Accepting the Offer: You may accept the approved emissions modification offer by signing this letter on the last page and signing and notarizing the enclosed release form. You must then return both the signed letter and the notarized release by uploading a copy to the Online Claims Portal that can be accessed through www.VWCourtSettlement.com, faxing a copy to 248-754-6602 or mailing a copy to VW / Audi Emissions Settlement Claims Processing, P.O. Box 214500, Auburn Hills, MI 48321. **You must send both this letter and the enclosed notarized release before your acceptance is considered complete. The release only becomes effective and binding after you receive a benefit under the Class Action Agreement.**

Scheduling an Appointment: After we receive your fully executed acceptance of this offer along with the signed and notarized release, we will notify you by email and/or by U.S. mail (depending on your indicated preference) that we have received your documents. Once you have been notified, you do not have to take any next steps until the EPA/CARB approve an emissions modification for your vehicle. If the EPA/CARB approve an emissions modification for your vehicle, we will notify you and then you may schedule an appointment for your approved emissions modification using the Online Claims Portal that can be accessed through www.VWCourtSettlement.com or by contacting your preferred Volkswagen or Audi Dealer directly. If your vehicle is a Volkswagen, you will be able to select from any Volkswagen Dealer or authorized repair facility. If your vehicle is an Audi, you will be able to select from any Audi Dealer or authorized repair facility. You also will be able to complete the approved emissions modification within 90 days of your acceptance of this offer and scheduling an appointment. You should bring your vehicle to the selected Volkswagen or Audi Dealer at the appointed time. If your approved emissions modification is expected to take longer than three (3) hours to complete, you will be offered a loaner vehicle free of charge.

If the emissions modification is not approved by May 1, 2018 and you still own your vehicle, then you will have an opportunity to change your selection to a buyback or you may withdraw from the Class Action Settlement completely. If you sell your vehicle before an approved emissions modification becomes available, you are bound by the Class Action Settlement but are not eligible for settlement benefits.

Payment Method: You may receive your restitution payment via electronic fund transfer or by check. Please visit the Online Claims Portal via www.VWCourtSettlement.com or call 1-844-98-CLAIM to provide information on your preferred payment method or to change your payment preference. Funds will be made payable to the addressee of this letter only. If there are multiple owners of this vehicle and they are not both listed on page 1 of this letter, please contact us at 1-844-98-CLAIM.



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ALTERNATE OFFER: You may change your selected remedy at any time before the approved emissions modification is complete. If you decide to change your selected remedy, you will need to submit additional documentation to verify your eligibility. Once your eligibility is confirmed, you may return your vehicle and accept the buyback payment. The total buyback offer includes two components: 1) your vehicle return amount derived from the September 2015 NADA Used Car Guide Clean Trade value, or a percentage of MSRP for 2015 Model Year vehicles, with adjustments for mileage and manufacturer-installed options; plus 2) additional restitution, which is the sum of a set percentage of the vehicle return amount and a flat dollar amount.

Please note that the total payment may change based on your mileage and the outstanding balance on your loan at the time of your buyback appointment. Continuing to drive your car an average of 12,500 miles per year (around 1,000 miles per month) or fewer will not reduce your compensation under the Class Action Settlement. Driving your car more than an average of 12,500 miles per year might reduce your compensation.

If you select the buyback option, you agree to surrender the vehicle to Volkswagen and to sign the necessary paperwork to provide Volkswagen Group of America, Inc. with a clear certificate of title at the time of your appointment. You, and each listed title holder, must present a government issued ID at the time of your appointment. If each title holder cannot be present at the appointment, you must present a notarized power of attorney for each title holder as well as a copy of a government issued ID for each title holder. If you have an outstanding loan on your vehicle and it is determined that your buyback amount, including loan forgiveness, will not be sufficient to cover the balance of your loan, you will also need to bring a certified check, made out to Volkswagen Group of America, Inc. for the balance of your loan less your total buyback payment.

Changing Your Selected Remedy: If you would like to change the option you have preliminarily selected to the buyback option, please call 1-844-98-CLAIM for further information about the additional documents needed to confirm your eligibility. You may also indicate that you are now choosing the buyback option at the end of this letter just above your signature line and someone will contact you about your new selection.

Loan Payments: Regardless of which option you choose, please note that you are expected to continue to make your loan payments until you accept your offer, schedule an appointment, and complete your remedy. Deficient payments and associated fees incurred after June 28, 2016 are not part of the loan forgiveness portion of the Settlements. Volkswagen will not be responsible for any late payments or penalties associated with failure to make loan payments.

For any questions or to learn more about the approved emissions modification option or the buyback option, including how vehicle mileage and loan obligations will impact your payment amount if you select the buyback option, please visit www.VWCourtSettlement.com or call 1-844-98-CLAIM.



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This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

I agree to and accept (check only one):

Emissions Modification Offer

I would like to change my selection, which I understand is subject to submitting additional documentation to confirm my eligibility:

Buyback Offer

I agree to the terms and conditions outlined in this letter agreement. By signing below, I further certify that I have the full authority to accept this offer and execute the emissions modification transaction in exchange for the settlement benefits. In the event that the settlement benefits are distributed to me and it is later determined that I did not have the complete authority to claim and/or receive the settlement benefits, I agree to hold Volkswagen Group of America, Inc., the Claims Administrator, Ankura Consulting Group, and Settlement Class Counsel harmless with respect to any claims relating to my receipt of the settlement benefits. This paragraph only becomes effective and binding after I receive benefits under the Class Action Agreement.

Claimant Signature

12-29-16

Date

Co-Claimant Signature, if applicable

Date

Please note: To accept this offer, you must also complete, sign, date and notarize the enclosed release form. If you are changing your selection to the Buyback Offer, you do not need to enclose the notarized release until you receive and accept your revised offer.



INDIVIDUAL RELEASE OF CLAIMS

*In re Volkswagen "Clean Diesel" Marketing,
Sales Practices, and Products Liability Litigation,
MDL No. 15-2672 (N.D. Cal.)*

**MUST BE COMPLETED BY CLAIMANT PRIOR TO RECEIVING BUYBACK,
LEASE TERMINATION AND/OR RESTITUTION PAYMENT**

1. In exchange for benefits that (i) the Claims Administrator has determined I am eligible to receive under the class action settlement agreement in this case (the "Class Action Agreement") and (ii) Volkswagen has agreed to provide to me, the sufficiency of which I hereby acknowledge, I, on behalf of myself and my agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through or under me, hereby fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that I may have, purport to have, or may hereafter have against any Released Party arising out of or in any way related to the 2.0-liter TDI Matter, except for claims of personal injury or wrongful death. This Individual Release is effective and binding when I receive a benefit under the Class Action Agreement.
 2. This Individual Release incorporates by reference the release and associated provisions set forth in Section 9 of the Class Action Agreement as if set forth fully herein, and, as to those provisions, shall have the same scope and effect as the Class Action Agreement. This Individual Release supplements the release and associated provisions set forth in Section 9 of the Class Action Agreement. It does not supersede them.
 3. I expressly understand and acknowledge that this Individual Release applies to claims of which I am not presently aware. I expressly understand and acknowledge Section 1542 of the California Civil Code, which provides: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I acknowledge that I am aware of the contents and effect of Section 1542 and have considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Individual Release is interpreted fully in accordance with its terms, I expressly waive and relinquish any and all rights and benefits that I may have under Section 1542 to the extent that such section may be applicable to the Individual Release and likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to the Individual Release.
- 1 The terms "2.0-liter TDI Matter," "Claims Administrator," "Final Approval Order," "Action," and "Released Party" have the meanings given to them in Sections 2 and 9 of the Class Action Agreement.
- 2 A copy of the Class Action Agreement is available at www.VWCourtSettlement.com.
4. **For the avoidance of doubt, I expressly understand and acknowledge that I may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that I now know or believe to be true, related to the 2.0-liter TDI Matter, the Action and/or the Individual Release herein. Nevertheless, it is my intention in executing this Individual Release to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the 2.0-liter TDI Matter in accordance with the terms of the Class Action Agreement. This includes, without limitation, any claims I have or may have with respect to the 2.0-liter TDI Matter under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16 C.F.R. §433.2 (the "Holder Rule").**



5. The Individual Release shall remain effective regardless of any judicial, quasi-judicial, arbitral, administrative, regulatory, or other decision relating to the liability of any Released Party in connection with the 2.0-liter TDI Matter. For the avoidance of doubt, this Individual Release shall remain effective even if the Final Approval Order is reversed and/or vacated on appeal, or if the Class Action Agreement is abrogated or otherwise voided in whole or in part.
6. This Release is not intended to and expressly does not release Robert Bosch GmbH or Robert Bosch, LLC and any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors (the "Bosch Entities"). If I elect to pursue a claim against any Bosch Entity related to the 2.0-liter TDI Matter (either individually or as a member of a class) and obtain a final, non-appealable adversary judgment against that Bosch Entity for damages as to which any Bosch Entity seeks indemnification from one or more of the Released Parties, I will waive enforcement of my judgment against that Bosch Entity by the amount of the damages that such Released Parties are held to be responsible for by way of indemnification of any Bosch Entity, but not more than the Restitution Payment amount that I receive from all Released Parties. However, I shall have no obligation to reduce my judgment against any Bosch Entity unless and until any Bosch Entity has obtained—in the face of a vigorously litigated defense—a final, non-appealable adversary judgment for indemnification against one or more of the Released Parties based on such party's legal obligation to indemnify any Bosch Entity that existed prior to September 18, 2015. In the event that any Bosch Entity obtains such a judgment against a Released Party after I have recovered on a judgment against that Bosch Entity, I will return to the Bosch Entity the amount of the judgment against it by which I agree herein to have reduced that judgment, which amount will not exceed the Restitution Payment amount that I receive from all Released Parties. In addition, I agree not to enter into any agreement to settle any claim I may have against any Bosch Entity unless such agreement expressly provides that the Released Parties shall be released from any claim for indemnification by a Bosch Entity against any Released Party that relates to my claim against the Bosch Entity.
7. This Individual Release, and any dispute arising out of or related to this Individual Release, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto, and the laws of the State of California notwithstanding its conflict of law provisions. This Individual Release will be binding upon my successors, transferees, and assigns.
8. Any disagreement concerning and/or action to enforce this Individual Release shall be commenced and maintained only in the United States District Court for the Northern District of California.
9. I represent and warrant that I have carefully read and understand this Individual Release and that I execute it freely, voluntarily, and without being pressured or influenced by, or relying on, any statement or representation made by any person or entity acting on behalf of any Released Party. I certify that I understand that I have the right to consult with an attorney of my choice before signing this Individual Release.
10. I represent and warrant that I have authority to execute this Individual Release and that I am the sole and exclusive owner of all claims that I am releasing pursuant to this Individual Release. I acknowledge that I have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the 2.0-liter TDI Matter.

*****SIGNATURE PAGE FOLLOWS*****



I acknowledge that I have read and understood this Release and that I have freely executed it by signing below.

12-29-16

Date

Allen Pickard

Printed Name

Signature

WITNESS:

State of South Dakota)

) SS

County of Brookings)

I, Gene Bjorklund, a Notary Public in and for said County in the State aforesaid, do hereby certify that Allen Pickard, who is personally known to me and the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same instrument as their free and voluntary act for the uses and purposes therein set forth.

My seal:



Gene Bjorklund
NOTARY PUBLIC Com exp: 8-21-19

Date

Co-Registrant Printed Name

Co-Registrant Signature

WITNESS:

State of _____)

) SS

County of _____)

I, _____, a Notary Public in and for said County in the State aforesaid, do hereby certify that _____, who is personally known to me and the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same instrument as their free and voluntary act for the uses and purposes therein set forth.

My seal:

NOTARY PUBLIC



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This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

I agree to and accept (check only one):

Emissions Modification Offer

I would like to change my selection, which I understand is subject to submitting additional documentation to confirm my eligibility:

Buyback Offer

I agree to the terms and conditions outlined in this letter agreement. By signing below, I further certify that I have the full authority to accept this offer and execute the emissions modification transaction in exchange for the settlement benefits. In the event that the settlement benefits are distributed to me and it is later determined that I did not have the complete authority to claim and/or receive the settlement benefits, I agree to hold Volkswagen Group of America, Inc., the Claims Administrator, Ankura Consulting Group, and Settlement Class Counsel harmless with respect to any claims relating to my receipt of the settlement benefits. This paragraph only becomes effective and binding after I receive benefits under the Class Action Agreement.



Claimant Signature

8-20-17

Date

Co-Claimant Signature, if applicable

Date

Please note: To accept this offer, you must also complete, sign, date and notarize the enclosed release form. If you are changing your selection to the Buyback Offer, you do not need to enclose the notarized release until you receive and accept your revised offer.

INDIVIDUAL RELEASE OF CLAIMS

*In re Volkswagen "Clean Diesel" Marketing,
Sales Practices, and Products Liability Litigation,
MDL No. 15-2672 (N.D. Cal.)*

**MUST BE COMPLETED BY CLAIMANT PRIOR TO RECEIVING BUYBACK,
LEASE TERMINATION AND/OR RESTITUTION PAYMENT**

1. In exchange for benefits that (i) the Claims Administrator has determined I am eligible to receive under the class action settlement agreement in this case (the "Class Action Agreement") and (ii) Volkswagen has agreed to provide to me, the sufficiency of which I hereby acknowledge, I, on behalf of myself and my agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through or under me, hereby fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that I may have, purport to have, or may hereafter have against any Released Party arising out of or in any way related to the 2.0-liter TDI Matter, except for claims of personal injury or wrongful death. This Individual Release is effective and binding when I receive a benefit under the Class Action Agreement.
2. This Individual Release incorporates by reference the release and associated provisions set forth in Section 9 of the Class Action Agreement as if set forth fully herein, and, as to those provisions, shall have the same scope and effect as the Class Action Agreement. This Individual Release supplements the release and associated provisions set forth in Section 9 of the Class Action Agreement. It does not supersede them.
3. I expressly understand and acknowledge that this Individual Release applies to claims of which I am not presently aware. I expressly understand and acknowledge Section 1542 of the California Civil Code, which provides: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I acknowledge that I am aware of the contents and effect of Section 1542 and have considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Individual Release is interpreted fully in accordance with its terms, I expressly waive and relinquish any and all rights and benefits that I may have under Section 1542 to the extent that such section may be applicable to the Individual Release and likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to the Individual Release.

¹ The terms "2.0-liter TDI Matter," "Claims Administrator," "Final Approval Order," "Action," and "Released Party" have the meanings given to them in Sections 2 and 9 of the Class Action Agreement.

² A copy of the Class Action Agreement is available at www.VWCourtSettlement.com.

4. **For the avoidance of doubt, I expressly understand and acknowledge that I may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that I now know or believe to be true, related to the 2.0-liter TDI Matter, the Action and/or the Individual Release herein. Nevertheless, it is my intention in executing this Individual Release to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the 2.0-liter TDI Matter in accordance with the terms of the Class Action Agreement. This includes, without limitation, any claims I have or may have with respect to the 2.0-liter TDI Matter under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses 16 C.F.R. §433.2 (the "Holder Rule").**



5. The Individual Release shall remain effective regardless of any judicial, quasi-judicial, arbitral, administrative, regulatory, or other decision relating to the liability of any Released Party in connection with the 2.0-liter TDI Matter. For the avoidance of doubt, this Individual Release shall remain effective even if the Final Approval Order is reversed and/or vacated on appeal, or if the Class Action Agreement is abrogated or otherwise voided in whole or in part.
6. This Release is not intended to and expressly does not release Robert Bosch GmbH or Robert Bosch, LLC and any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors (the "Bosch Entities"). If I elect to pursue a claim against any Bosch Entity related to the 2.0-liter TDI Matter (either individually or as a member of a class) and obtain a final, non-appealable adversary judgment against that Bosch Entity for damages as to which any Bosch Entity seeks indemnification from one or more of the Released Parties, I will waive enforcement of my judgment against that Bosch Entity by the amount of the damages that such Released Parties are held to be responsible for by way of indemnification of any Bosch Entity, but not more than the Restitution Payment amount that I receive from all Released Parties. However, I shall have no obligation to reduce my judgment against any Bosch Entity unless and until any Bosch Entity has obtained—in the face of a vigorously litigated defense—a final, non-appealable adversary judgment for indemnification against one or more of the Released Parties based on such party's legal obligation to indemnify any Bosch Entity that existed prior to September 18, 2015. In the event that any Bosch Entity obtains such a judgment against a Released Party after I have recovered on a judgment against that Bosch Entity, I will return to the Bosch Entity the amount of the judgment against it by which I agree herein to have reduced that judgment, which amount will not exceed the Restitution Payment amount that I receive from all Released Parties. In addition, I agree not to enter into any agreement to settle any claim I may have against any Bosch Entity unless such agreement expressly provides that the Released Parties shall be released from any claim for indemnification by a Bosch Entity against any Released Party that relates to my claim against the Bosch Entity.
7. This Individual Release, and any dispute arising out of or related to this Individual Release, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto, and the laws of the State of California notwithstanding its conflict of law provisions. This Individual Release will be binding upon my successors, transferees, and assigns.
8. Any disagreement concerning and/or action to enforce this Individual Release shall be commenced and maintained only in the United States District Court for the Northern District of California.
9. I represent and warrant that I have carefully read and understand this Individual Release and that I execute it freely, voluntarily, and without being pressured or influenced by, or relying on, any statement or representation made by any person or entity acting on behalf of any Released Party. I certify that I understand that I have the right to consult with an attorney of my choice before signing this Individual Release.
10. I represent and warrant that I have authority to execute this Individual Release and that I am the sole and exclusive owner of all claims that I am releasing pursuant to this Individual Release. I acknowledge that I have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the 2.0-liter TDI Matter.

SIGNATURE PAGE FOLLOWS



1 Elizabeth J. Cabraser (State Bar No. 083151)
ecabraser@lchb.com
2 LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
3 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
4 Telephone: (415) 956-1000
Facsimile: (415) 956-1008

5 *Lead Counsel for Plaintiffs*

Robert J. Giuffra, Jr.
Sharon L. Nelles
William B. Monahan
giuffrar@sullcrom.com
nelles@sullcrom.com
monahanw@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

*Co-Liaison Counsel for the Volkswagen
Group Defendants*

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

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

MDL 2672 CRB (JSC)

15 This Documents Relates to:

**CONSUMER CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE (AMENDED)**

16 ALL CONSUMER AND RESELLER
17 ACTIONS

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, or, in the case of Non-Volkswagen Dealers, held title to or held
7 by bill of sale dated on or before September 18, 2015, a Volkswagen or Audi 2.0-liter TDI
8 vehicle in the United States or its territories (an “Eligible Vehicle,” defined more fully in Section
9 2.33), or who, between September 18, 2015, and the end of the Claim Period, become a registered
10 owner of, or, in the case of Non-Volkswagen Dealers, hold title to or hold by bill of sale dated
11 after September 18, 2015, but before the end of the Claims Period, an Eligible Vehicle in the
12 United States or its territories. The following entities and individuals are excluded from the Class:

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

1 employees; and Volkswagen Dealers and Volkswagen Dealers' officers and
2 directors;

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

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

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

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

13 2.19. "Class Counsel" means Lead Counsel and the PSC.

14 2.20. "Class Member" means a member of the Class.

15 2.21. "Class Notice Program" means the program for distributing information about the
16 Class Settlement to Class Members.

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

23 2.23. "Complaint" means the Consolidated Consumer Class Action complaint filed in
24 the Action on February 22, 2016, ECF No. 1230.

25 2.24. "Court" means the United States District Court for the Northern District of
26 California, San Francisco Division.

27 2.25. "Defeat Device" has the same meaning as in 40 C.F.R. § 86.1803-01 or 42 U.S.C.
28 § 7522(a)(3)(B).

1 2.26. “DOJ” means the United States Department of Justice.

2 2.27. “DOJ Consent Decree” means the consent decree lodged with the Court on or
3 about June 28, 2016, as agreed by (1) the United States on behalf of the Environmental Protection
4 Agency; and (2) the People of the State of California, by and through CARB and the Attorney
5 General of California; and (3) Volkswagen, resolving certain aspects of the disputes between
6 those parties on the terms described therein.

7 2.28. “Effective Date” means the date the Court enters the Final Approval Order, the
8 FTC Consent Order, or the DOJ Consent Decree, whichever is latest.

9 2.29. “Eligible Lessee” means (1) the current lessee or lessees of an Eligible Vehicle
10 with a lease issued by VW Credit, Inc.; (2) the former lessee or lessees of an Eligible Vehicle
11 who had an active lease issued by VW Credit, Inc. as of September 18, 2015 and who surrendered
12 or surrenders the leased Eligible Vehicle to Volkswagen; or (3) the owner of an Eligible Vehicle
13 who had an active lease issued by VW Credit, Inc. as of September 18, 2015, and who acquired
14 ownership of the previously leased Eligible Vehicle at the conclusion of the lease after June 28,
15 2016. For avoidance of doubt, no person shall be considered an Eligible Lessee by virtue of
16 holding a lease issued by a lessor other than VW Credit, Inc.

17 2.30. “Eligible Owner” means the registered owner or owners of an Eligible Vehicle on
18 June 28, 2016, or the registered owner or owners who acquire an Eligible Vehicle after June 28,
19 2016, but before the end of the Claim Period, except that the owner of an Eligible Vehicle who
20 had an active lease issued by VW Credit, Inc. as of September 18, 2015, and purchased an
21 Eligible Vehicle previously leased by that owner after June 28, 2016, shall be an Eligible Lessee.
22 A Non-Volkswagen Dealer who, on or after June 28, 2016, holds title to or holds by bill of sale
23 an Eligible Vehicle in the United States or its territories shall qualify as an Eligible Owner
24 regardless of whether that Non-Volkswagen Dealer is registered as the owner of the Eligible
25 Vehicle, provided that the Non-Volkswagen Dealer otherwise meets the definition of Eligible
26 Owner. For avoidance of doubt, an Eligible Owner ceases to be an Eligible Owner if he transfers
27 ownership of the Eligible Vehicle to a third party on or after June 28, 2016; and a third party who
28 acquires ownership of an Eligible Vehicle on or after June 28, 2016, thereby becomes an Eligible

1 Owner if that third party otherwise meets the definition of an Eligible Owner. An owner of an
2 Eligible Vehicle will not qualify as an Eligible Owner while the Eligible Vehicle is under lease to
3 any third party, although any such owner, including any leasing company other than VW Credit,
4 Inc., who otherwise meets the definition of an Eligible Owner would become an Eligible Owner if
5 such lease has been canceled or terminated and the owner has taken possession of the vehicle. In
6 exceptional cases, specific arrangements may be made with the leasing company, in consultation
7 with the Claims Supervisor, such that, (1) without canceling or terminating the lease, the leasing
8 company may be treated as an Eligible Owner and obtain an Approved Emissions Modification
9 and Owner Restitution and (2) a lessor that takes possession of a leased Eligible Vehicle after the
10 September 1, 2018, Claim submission deadline (or the December 30, 2018, end date of the Claim
11 Program) may nonetheless be entitled to submit a Claim.

12 2.31. "Eligible Seller" means a person who purchased or otherwise acquired an Eligible
13 Vehicle on or before September 18, 2015, and sold or otherwise transferred ownership of such
14 vehicle after September 18, 2015, but before June 28, 2016. For avoidance of doubt, Eligible
15 Seller includes any owner (1) who acquired his, her, or its Eligible Vehicle on or before
16 September 18, 2015, (2) whose Eligible Vehicle was totaled, and (3) who consequently
17 transferred title of his, her, or its vehicle to an insurance company after September 18, 2015, but
18 before June 28, 2016.

19 2.32. "Eligible Seller Identification Period" means the time period in which an Eligible
20 Seller must identify himself, herself, or itself, by (1) electronic registration on the Settlement
21 Website or (2) submission of an Eligible Seller identification form by mail or fax. The Eligible
22 Seller Identification Period will last at least 45 days from entry of the Preliminary Approval
23 Order. If the Court enters the Preliminary Approval Order on July 26, 2016 (the date of the
24 preliminary approval hearing), the Eligible Seller Identification Period will run until September
25 16, 2016, the same date as the Opt-Out Deadline. Eligible Sellers who do not identify themselves
26 during that time period will not be eligible for a Restitution Payment under this Class Action
27 Agreement.

28 2.33. "Eligible Vehicle" means Model Year 2009 through 2015 Volkswagen and Audi

1 light-duty vehicles equipped with 2.0-liter TDI engines that (1) are covered, or purported to be
 2 covered, by the EPA Test Groups in the table immediately below this paragraph; (2) are, at any
 3 point during the period September 18, 2015 to June 28, 2016, registered with a state Department
 4 of Motor Vehicles or equivalent agency or owned by a Non-Volkswagen Dealer in the United
 5 States or its territories that (a) holds title to the vehicle or (b) holds the vehicle by bill of sale; (3)
 6 for an Eligible Owner, are currently Operable or cease to be Operable only after the Opt-Out
 7 Deadline; and (4) have not been modified pursuant to an Approved Emissions Modification.
 8 Eligible Vehicle also excludes any Volkswagen or Audi vehicle that was never sold in the United
 9 States or its territories.

Model Year	EPA Test Group	Make and Model(s)
2009	9VWXV02.035N	VW Jetta, VW Jetta SportWagen
2009	9VWXV02.0U5N	VW Jetta, VW Jetta SportWagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2012	CVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2012	CVWXV02.0U4S	VW Passat
2013	DVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen, Audi A3
2013	DVWXV02.0U4S	VW Passat
2014	EVWXV02.0U5N	VW Beetle, VW Beetle Convertible, VW Golf, VW Jetta, VW Jetta SportWagen
2014	EVWXV02.0U4S	VW Passat
2015	FVGAV02.0VAL	VW Beetle, VW Beetle Convertible, VW Golf, VW Golf SportWagen, VW Jetta, VW Passat, Audi A3

20 2.34. “EPA” means the United States Environmental Protection Agency.

21 2.35. “Escrow Account” means the escrow account managed by the Escrow Agent,
 22 which shall be the sole escrow account for compensation of Class Members under the Class
 23 Action Agreement, FTC Consent Order, and DOJ Consent Decree.

24 2.36. “Escrow Agent” means the agreed-upon entity to address and hold for distribution
 25 the funds identified in this Class Action Agreement pursuant to the terms of the Escrow
 26 Agreement. The Parties agree that Citibank Private Bank shall serve as Escrow Agent, subject to
 27 approval by the Court.

28 2.37. “Escrow Agreement” means the agreement by and among Class Counsel and

1 Volkswagen's Lead Counsel with respect to the escrow of the funds to be deposited into the
2 Escrow Account pursuant to this Class Action Agreement.

3 2.38. "Fairness Hearing" means the hearing held by the Court for the purpose of
4 determining whether to approve this Class Action Agreement as fair, reasonable, and adequate.

5 2.39. "Final Approval Order" or "Final Order and Judgment" means the Court's order
6 approving the Class Action Settlement.

7 2.40. "FTC" means the Federal Trade Commission.

8 2.41. "FTC Consent Order" means the order entered by this Court by the consent of the
9 FTC and Volkswagen, resolving certain aspects of the disputes between those parties on the terms
10 described therein.

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

1 2.43. “Lead Plaintiffs’ Counsel” means Elizabeth Cabraser of Lieff, Cabraser, Heimann
2 & Bernstein, LLP, who was appointed by the Court on January 21, 2016.

3 2.44. “Lease Termination” means the process by which an Eligible Lessee may have the
4 lease for his, her, or its Eligible Vehicle terminated, without paying an early termination penalty,
5 as described in more detail in Section 4 and Exhibit 1.

6 2.45. “Lease Termination Option” means the option of an Eligible Lessee to have the
7 lease for his, her, or its Eligible Vehicle terminated through the Lease Termination, without
8 paying an early termination penalty, as described in more detail in Section 4 and Exhibit 1.

9 2.46. “Lessee Restitution” means monetary compensation that Volkswagen will pay to
10 Eligible Lessees who do not opt out of the Class, in addition to the Lease Termination or
11 Approved Emissions Modification, as determined by the formula set forth in Section 4 and
12 Exhibit 1.

13 2.47. “Loan Obligation” means any debt incurred by an Eligible Owner and secured by
14 an Eligible Vehicle, whether through VW Credit, Inc. or any other lender.

15 2.48. “Long Form Notice” means the Long Form Notice substantially in the form
16 attached hereto as Exhibit 3.

17 2.49. “Notice Administrator” means the third-party agent or administrator agreed to by
18 the Parties and appointed by the Court to implement and consult on Class Notice. The Parties
19 agree that Kinsella Media, LLC shall serve as Notice Administrator, subject to approval by the
20 Court.

21 2.50. “Operable” means a vehicle that can be driven under its own 2.0-liter TDI engine
22 power. A vehicle is not Operable if it had a Branded Title of Assembled, Dismantled, Flood,
23 Junk, Rebuilt, Reconstructed, or Salvaged on September 18, 2015, and was acquired by any
24 person or entity from a junkyard or salvage yard after September 18, 2015.

25 2.51. “Opt-Out Deadline” means the last day a Class Member may opt out of the Class
26 Action Settlement, which is September 16, 2016, for all Class Members who are Class Members
27 as of that date. Individuals and entities that purchase an Eligible Vehicle on or after September
28 16, 2016, shall have all the rights, privileges, and responsibilities of Class Members, and shall

1 have 30 days from the date of their purchase to opt out of the Class. Additionally, because the
2 remedies available to Class Members include a contingent option, if there is no Approved
3 Emissions Modification available for a Class Member's Eligible Vehicle by May 1, 2018, that
4 Eligible Owner or Lessee shall have a second opportunity, from May 1, 2018, until June 1, 2018,
5 to withdraw from the Class Action Settlement.

6 2.52. "Owner Restitution" means monetary compensation that Volkswagen will pay to
7 Eligible Owners who do not opt out of the Class, in addition to the Vehicle Value Payment or
8 Approved Emissions Modification, as determined by the formula set forth in Exhibit 1.

9 2.53. "Parties" means the Class Representatives and Volkswagen, collectively, as each
10 of those terms is defined in this Class Action Agreement.

11 2.54. "Plaintiffs' Steering Committee" or "PSC" means those counsel appointed to the
12 Plaintiffs' Steering Committee by the Court in this Action on January 21, 2016. Lead Counsel is
13 Chair of the PSC.

14 2.55. "Post-Appeal Date" means the latest date on which the Final Approval Order
15 approving this Class Action Agreement becomes final. For purposes of this Class Action
16 Agreement:

17 2.55.1. if no appeal has been taken from the Final Approval Order, "Post-Appeal
18 Date" means the date on which the time to appeal therefrom has expired;

19 or

20 2.55.2. if any appeal has been taken from the Final Approval Order, "Post-
21 Appeal Date" means the date on which all appeals therefrom, including
22 petitions for rehearing or reargument, petitions for rehearing *en banc* and
23 petitions for a writ of *certiorari* or any other form of review, have been
24 fully disposed of in a manner that affirms the Final Approval Order; or

25 2.55.3. if Class Counsel and Volkswagen agree in writing, the "Post-Appeal
26 Date" can occur on any other earlier agreed date.

27 2.56. "Preliminary Approval Order" means the order that may, at the discretion of the
28 Court, be entered by the Court preliminarily approving the Class Action Settlement as outlined in

1 Section 3 of this Class Action Agreement.

2 2.57. “Release” means the release and waiver described in Section 9 of this Class Action
3 Agreement and in the Final Approval Order. In addition, Class Members who participate in the
4 Buyback, Lease Termination, and Restitution Program, or the Approved Emissions Modification
5 and Restitution Program, or otherwise receive a Restitution Payment pursuant to this Class Action
6 Agreement, will execute an Individual Release as described in Section 9.7 of the Class Action
7 Agreement, and that Individual Release will remain valid even if the Final Approval Order is later
8 reversed and/or vacated on appeal.

9 2.58. “Released Party” or “Released Parties” has the definition set forth in Section 9.2 of
10 this Class Action Agreement.

11 2.59. “Restitution Payment” or “Restitution Payments” means the Owner Restitution,
12 Lessee Restitution, and Seller Restitution payments, separately or collectively.

13 2.60. “Seller Restitution” means monetary compensation that Volkswagen will pay to
14 Eligible Sellers who do not opt out of the Class, as determined by the formula set forth in
15 Exhibit 1.

16 2.61. “Settlement Master” means Robert Mueller III, who was appointed by the Court to
17 serve as Settlement Master to administer, coordinate, and preside over settlement-related
18 proceedings.

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

1 entry of the Final Approval Order.

2 2.63. "Short Form Notice" means the Short Form Notice substantially in the form as
3 attached hereto as Exhibit 2.

4 2.64. "Vehicle Value" means an Eligible Vehicle's Base Value adjusted for options and
5 mileage, as set forth in Exhibit 1.

6 2.65. "Volkswagen," "VW," or "Volkswagen Entities" means Volkswagen AG, Audi
7 AG, and Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of
8 America, Inc.).

9 2.66. "Volkswagen Dealer" means any authorized Volkswagen or Audi dealer located in
10 the United States and Puerto Rico as evidenced by a current and valid Dealer Sales and Service
11 Agreement. "Non-Volkswagen Dealer" means any automobile dealer in business as of June 28,
12 2016 that is located in the United States and Puerto Rico other than a Volkswagen Dealer.

13 2.67. "Volkswagen's Internal Lease Program" means the program through which
14 employees and retirees may lease vehicles from Volkswagen for themselves and certain members
15 of their families. For purposes of this agreement, "participants" in Volkswagen's Internal Lease
16 Program shall include anyone for whom a vehicle is leased under the program.

17 2.68. "Volkswagen's Lead Counsel" means Robert J. Giuffra, Jr. and Sharon L. Nelles
18 of Sullivan & Cromwell LLP.

19 2.69. "VW Class Update" means the notice that will be provided by Volkswagen when
20 (1) an Approved Emissions Modification becomes available for any make, model, and model year
21 of an Eligible Vehicle or (2) it is determined that an Approved Emissions Modification will not
22 become available for any particular make, model, or model year of an Eligible Vehicle.

23 Volkswagen will provide the VW Class Updates to Class Counsel for comment prior to releasing
24 them. Once final, the VW Class Update(s) will be distributed by First-Class U.S. Mail, postage
25 paid.

26 2.70. "VW Credit, Inc." means VW Credit, Inc., including VW Credit, Inc. d/b/a
27 Volkswagen Credit and Audi Financial Services.

28 2.71. Other capitalized terms used in this Class Action Agreement but not defined in this

1 Section shall have the meanings ascribed to them elsewhere in this Class Action Agreement.

2 2.72. The term “he or she” and “his or her” include “it” or “its” where applicable.

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

4 3.1. Promptly after this Agreement is signed, but by no later than June 28, 2016, the
5 Parties shall file the Agreement with the Court, together with a Motion for Preliminary Approval
6 of the Class Action Agreement and Approval of Class Notice. Simultaneously, the Class
7 Representatives shall move for certification of the Class for settlement purposes only, pursuant to
8 Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 23(a), 23(b)(3), and 23(e). It is expressly
9 agreed that any certification of the Class shall be for settlement purposes only, and Volkswagen
10 does not waive any arguments that it may have that class certification for any other purpose
11 would be improper.

12 3.2. The Parties agree to take all actions and steps reasonably necessary to obtain a
13 Preliminary Approval Order from the Court.

14 **4. CONSUMER COMPENSATION AND REMEDIES**

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

28 **4.2. Class Action Buyback, Lease Termination, and Restitution Program**

1 4.2.1. **Buyback.** Eligible Owners who do not opt out of the Class can sell their
2 car back to Volkswagen for the Vehicle Value, which is determined by
3 (i) taking the September 2015 NADA Clean Trade value, or, where no
4 value was published by NADA as of September 2015, a calculation based
5 on each individual vehicle's MSRP and (ii) making adjustments for
6 options and mileage. If this Class Action Agreement is approved,
7 Volkswagen will not buy back any vehicle under the Class Action
8 Agreement, DOJ Consent Decree, or FTC Order without receiving a
9 Release, as described in Section 9.

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

1 see Exhibit 1. For information regarding the timeframe to submit a Claim,
2 please refer to the Claim Period definition in Section 2.11.

3 4.2.3. **Lease Termination.** Eligible Lessees who do not opt out of the Class
4 and retain an active lease of an Eligible Vehicle can terminate their leases
5 with no penalty for early termination.

6 4.2.4. **Lessee Restitution.** Eligible Lessees who terminate their leases pursuant
7 to this Class Action Agreement will be entitled to a Lessee Restitution
8 payment calculated based on a percentage of the Vehicle Value, plus a
9 fixed component (the percentages and fixed components used to calculate
10 Lessee Restitution will be different than those used to calculate Owner
11 Restitution). If they do not opt out of the Class, Eligible Lessees whose
12 leases terminated after September 18, 2015 and who do not own an
13 Eligible Vehicle will be entitled to Lessee Restitution. Eligible Lessees
14 who previously leased an Eligible Vehicle and obtained ownership after
15 June 28, 2016 may obtain an Approved Emissions Modification, if
16 available, plus Lessee Restitution. For more information about the Lease
17 Termination and Lessee Restitution available under this Class Action
18 Agreement, see Exhibit 1.

19 **4.3. Class Action Approved Emissions Modification and Restitution Program**

20 4.3.1. **Approved Emissions Modification.** As set forth more fully in
21 Appendix B to the DOJ Consent Decree, Volkswagen may apply for, and
22 if approved by the EPA and CARB, shall offer to Eligible Owners and
23 Eligible Lessees who own or lease an Eligible Vehicle at or after the time
24 of approval, an Approved Emissions Modification. As set forth in the
25 DOJ Consent Decree, the EPA and CARB will either approve or
26 disapprove an Emissions Modification for each generation of engines
27 depending on certain factors, such as the effect of the proposed Emissions
28 Modification on the vehicles' emissions levels, On Board Diagnostic

1 (“OBD”) system requirements, and durability, as more fully described in
2 Appendix B to the DOJ Consent Decree. The expected timeline for
3 Volkswagen to submit proposed Emissions Modifications and for the
4 EPA and CARB to approve or conclusively reject those Emissions
5 Modifications is set forth in the DOJ Consent Decree. It is possible that
6 EPA and CARB may approve Emissions Modifications for some Eligible
7 Vehicles, but not for others. If the EPA and CARB reject a proposed
8 Emissions Modification for a particular type of Eligible Vehicle, the
9 Approved Emissions Modification Option will not be available to Eligible
10 Owners and Eligible Lessees of that type of Eligible Vehicle. If no
11 Approved Emissions Modification becomes available, Eligible Owners
12 and Eligible Lessees who own or lease an Eligible Vehicle at that time
13 will be informed that they remain eligible to participate in a Buyback or
14 Lease Termination, or to opt out of the Class Action Settlement during
15 the period from May 1, 2018, to June 1, 2018.

16 4.3.2. **Approved Emissions Modification Disclosure.** As set forth more fully
17 in Appendix B to the DOJ Consent Decree, upon approval of each
18 proposed Emission Modification, Volkswagen shall provide Eligible
19 Owners, Eligible Lessees, and, as applicable, prospective purchasers, with
20 a clear and accurate written disclosure as approved in the sole discretion
21 of EPA and CARB (the “Approved Emissions Modification Disclosure”)
22 regarding the impacts of any Approved Emissions Modification on an
23 Eligible Vehicle. The Approved Emissions Modification Disclosure shall
24 also be made available online by Volkswagen using the Settlement
25 Website, which will, among other things, display the Approved
26 Emissions Modification Disclosure applicable to a specific vehicle when
27 a user inputs the Vehicle Identification Number (“VIN”). This online
28 access shall continue for a minimum of ten (10) years after the DOJ

1 Consent Decree is entered. As described more fully in Appendix B to the
2 DOJ Consent Decree, the Approved Emissions Modification Disclosure
3 will describe in plain language: (1) the Approved Emissions Modification
4 generally; (2) all software changes; (3) all hardware changes; (4) for
5 Generation 3, a clear explanation of each subsequent service action
6 required by the Approved Emissions Modification; (5) any and all
7 reasonably predictable changes resulting from the Approved Emissions
8 Modification, including but not limited to changes to reliability,
9 durability, fuel economy, noise vibration, vehicle performance, drivability
10 and any other vehicle attributes that may reasonably be important to
11 vehicle owners; (6) a basic summary of how Eligible Owners and Eligible
12 Lessees can obtain the Approved Emissions Modification; (7) system
13 limitations that make identification and repair of any components difficult
14 or even impossible, compromise warranty coverage, or may reduce the
15 effectiveness of inspection and maintenance program vehicle inspections;
16 and (8) any other disclosures required under the terms of the DOJ
17 Consent Decree. This Approved Emissions Modification Disclosure, and
18 a description of the Approved Emissions Extended Warranty, will be part
19 of the VW Class Update that is defined in Section 2.69. Class Counsel
20 will have an opportunity to comment on the disclosures made by
21 Volkswagen on the Settlement Website on a reasonable schedule.

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

3 **4.3.4. Two-Step Approved Emissions Modifications for Generation 3**

4 **Vehicles.** As described more fully in Appendix B to the DOJ Consent
5 Decree, any Emissions Modification for Eligible Vehicles with
6 Generation 3 engines shall be proposed and, if approved by the EPA and
7 CARB, made available in two stages. Under this Class Action
8 Agreement, Eligible Owners and Eligible Lessees of Generation 3
9 Eligible Vehicles who elect an Approved Emissions Modification will be
10 offered two-thirds (2/3) of their Restitution Payment upon submitting
11 their vehicles for the first stage of the Approved Emissions Modification
12 and the remaining one-third (1/3) of their Restitution Payment, as well as
13 a free oil change with respective engine oil filter, to the Eligible Owner or
14 Eligible Lessee, upon submitting their vehicles for the second stage of the
15 Approved Emissions Modification.

16 **4.3.5. Approved Emissions Modification Extended Warranty.** In addition to

17 the Restitution Payment received in connection with the Approved
18 Emissions Modification, each Eligible Owner or Eligible Lessee who
19 receives the Approved Emissions Modification shall also receive an
20 Approved Emissions Modification Extended Warranty, as set forth more
21 fully in Appendix B to the DOJ Consent Decree. The Approved
22 Emissions Modification Extended Warranty shall cover all components
23 which are replaced as part of the Approved Emissions Modification, any
24 component which, as determined by EPA and CARB, can reasonably be
25 impacted by effects of the Approved Emissions Modification, as well as
26 the engine sub-assembly that consists of the assembled block, crankshaft,
27 cylinder head, camshaft, and valve train. The Approved Emissions
28 Modification Extended Warranty shall cover all parts and labor related to

1 the covered components, as well as the cost or provision of a loaner
2 vehicle for warranty service lasting longer than 3 hours. Volkswagen will
3 not impose on Class Members any fees or charges, and must pay any fees
4 or charges imposed by its dealers related to the Approved Emissions
5 Modification Extended Warranty. Volkswagen shall provide a free
6 loaner vehicle for the owner of any Eligible Vehicle undergoing an
7 Approved Emissions Modification that is scheduled to, or does, last
8 longer than three hours to complete.

9 4.3.6. **Warranty Remedies.** As set forth more fully in Appendix A to the DOJ
10 Consent Decree, in addition to any protections provided by law,
11 Volkswagen must reoffer and provide a Buyback or Lease Termination to
12 any Eligible Owner or Eligible Lessee of a vehicle modified in
13 accordance with an Approved Emissions Modification (a “Modified
14 Vehicle”), in the event that, during the 18 months or 18,000 miles
15 following the completion of the Approved Emissions Modification (the
16 “Reoffer Period”), Volkswagen fails to repair or remedy a confirmed
17 mechanical failure or malfunction covered by the Approved Emissions
18 Modification Extended Warranty and associated with the Approved
19 Emissions Modification (a “Warrantable Failure”) after the Eligible
20 Owner or Eligible Lessee physically presents the Modified Vehicle to a
21 dealer for repair of the Warrantable Failure; and (1) the Warrantable
22 Failure is unable to be remedied after making four separate service visits
23 for the same Warrantable Failure during the Reoffer Period; or (2) the
24 Modified Vehicle with the Warrantable Failure is out of service due to the
25 Warrantable Failure for a cumulative total of 30 Days during the Reoffer
26 Period. For avoidance of doubt, a Modified Vehicle shall not be deemed
27 “out of service” when (after diagnosing the Warrantable Failure) the
28 dealer returns or tenders the Modified Vehicle to the customer while the

1 dealer awaits necessary parts for the Warrantable Failure, and the
2 Modified Vehicle remains operable. In such a case, the Eligible Owner
3 or Eligible Lessee shall receive the payments that he or she would have
4 received under a Buyback or Lease Termination at the time the Eligible
5 Owner or Eligible Lessee first requested the Approved Emissions
6 Modification less any payment amounts already received. No Eligible
7 Owner or Eligible Lessee shall receive double-recovery of any portion of
8 any payment.

9 4.3.7. **Preservation of Remedies.** The Approved Emissions Modification
10 Extended Warranty shall be subject to any remedies provided by state or
11 federal laws, such as the Magnuson-Moss Warranty Act, that provide
12 consumers with protections, including, without limitation, “Lemon Law”
13 protections, with respect to warranties.

14 4.3.8. **No Defense.** Neither this Class Action Agreement nor the Final
15 Approval Order is a defense to liability arising out of any Approved
16 Emissions Modification. Nothing herein prohibits Volkswagen from
17 relying on this Class Action Agreement in any action alleging
18 noncompliance with the Class Action Agreement.

19 4.3.9. **Disclosure to Subsequent Purchasers.** For each Eligible Vehicle that
20 receives an Approved Emissions Modification, Volkswagen shall label
21 the vehicle as set forth in the DOJ Consent Decree and provide a
22 mechanism for potential purchasers to determine if the vehicle has
23 received an Approved Emissions Modification.

24 4.4. **Other Provisions**

25 4.4.1. **Allocation of Funding Pool.** The Parties have negotiated among
26 themselves, under the supervision of the Settlement Master, a plan of
27 allocation of the Funding Pool among eligible Class Members so that
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those parameters can be described as part of notice to the Class. The plan of allocation is set forth in Exhibit 1.

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

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

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

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

4.4.6. **Joint and Several Responsibility.** The Volkswagen Entities' obligations to comply with the requirements of the Class Action Agreement are joint and several. In the event of the insolvency of any Volkswagen Entity or the failure by any Volkswagen Entity to implement any requirement of the Class Action Agreement, the remaining Volkswagen Entities shall complete all such requirements. Any legal successor or assign of any Volkswagen Entity shall remain jointly and severally liable for the payment and other performance obligations hereunder. The Volkswagen Entities shall include an agreement to so remain liable in the terms of any sale, acquisition, merger or other transaction changing the ownership or control of any of the Volkswagen Entities, and no change in the ownership or control of any Volkswagen Entity shall affect the obligations hereunder of any Volkswagen Entity.

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

4.4.8. **Deceased, Dissolved, or Bankrupt Claim Members.** Nothing in the Class Action Agreement shall prevent Class benefits from being provided, upon appropriate proof, to, or for the benefit of, an otherwise

1 eligible Class Member, or that Class Member’s estate or legal
2 representative, notwithstanding that Class Member’s death, dissolution,
3 or bankruptcy (whether discharged or ongoing), in accordance with
4 applicable law.

5 **5. CLASS CLAIMS PROCESS AND ADMINISTRATION**

6 5.1. **Claims Program.** The Claims Program involves five steps. At **Step 1**, based on
7 information they provide to Volkswagen online or by telephone, Class Members will obtain
8 information about the options available to them. At **Step 2**, once a Class Member is ready to
9 proceed with the Claims Process, the Class Member will submit a Claim Form online, by mail, or
10 by fax, that contains certain information about his or her Eligible Vehicle along with required
11 documentation. At **Step 3**, the Class Member’s eligibility or ineligibility to participate in the
12 Class Action Settlement will be determined, and a formal offer will be made if the Class Member
13 is deemed an eligible “Claimant.” At **Step 4**, Claimants will confirm their selection of an offered
14 remedy, accept their formal offer, and schedule an appointment at their preferred Volkswagen (or
15 Audi) Dealer (if necessary). At **Step 5**, Claimants will obtain their chosen remedy. The process
16 for submitting a Claim is designed to be as simple and convenient to Claimants as possible,
17 consistent with the integrity of the Claims Program.

18 5.2. **Claims Supervisor.** Based on information and documents collected from Class
19 Members by Volkswagen, the Claims Supervisor will oversee the implementation and
20 administration of the Claims Process, including validation of Claim eligibility and approval of
21 compensation offers and payments to Class Members. The Claims Supervisor’s duties include,
22 but are not limited to (1) receiving and maintaining on behalf of the Court any Class Member
23 correspondence regarding requests for exclusion and/or objections to the Settlement; and (2)
24 forwarding written inquiries to Class Counsel or its designee for a response, if warranted.

25 5.3. **Claims Review Committee.** The Court shall appoint a Claims Review
26 Committee (“CRC”) to review contested claims deemed ineligible and appealed by the Claimant.
27 The CRC will include one representative from Volkswagen and one representative from Class
28 Counsel, as well as a Court-appointed “Neutral,” who would be called upon only to resolve any

1 disagreements between the CRC's other members, should they arise. It is anticipated that the
2 Parties will be able to resolve most issues, but the availability of a neutral third party appointed
3 by the Court ensures that disputes can be resolved without Court intervention. The Class Counsel
4 representative on the CRC will have responsibility for handling CRC communication with
5 Claimants and Claimants' counsel. Determinations by the CRC as to ineligible Claims will
6 constitute final determinations.

7 **5.4. Reporting.** The Claims Supervisor will prepare periodic reports on the progress
8 and status of the Claims Program. The Claims Supervisor shall provide its first report to the
9 Court within one month from the Effective Date and every three months thereafter. The Claims
10 Supervisor shall provide reports to the Parties on a monthly basis. These reports will include
11 information sufficient to allow the Court and the Parties to assess the Claims Program's progress.

12 **5.5. The Court's Ongoing and Exclusive Jurisdiction.** The Court retains the
13 ongoing and exclusive jurisdiction and independent case management authority, as MDL
14 Transferee Judge and under Federal Rule of Civil Procedure 23, regarding the general operation
15 of the Claims Program and those appointed to implement and oversee it.

16 **6. REQUESTS FOR EXCLUSION**

17 **6.1. Manner of Opting Out.** The Class Notice will provide instructions regarding the
18 procedures that must be followed to opt out of the Class pursuant to Fed. R. Civ. P.
19 23(c)(2)(B)(v). The Parties agree that, to opt out validly from the Class, a Class Member must
20 personally sign and submit a written request to opt out stating "I wish to exclude myself from the
21 Class in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability*
22 *Litigation*, No. 15-md-2672," (or substantially similar clear and unambiguous language) to the
23 Claims Supervisor on or before the Opt-Out Deadline at the following address: Opt Out VW
24 Settlement, P.O. Box 57424, Washington, DC 20037. That written request also will contain the
25 Class Member's printed name, address, telephone number, and VIN of the Eligible Vehicle
26 forming the basis of the Class Member's inclusion in the Class, a statement as to whether the
27 Class Member is an Eligible Owner, Eligible Lessee, or Eligible Seller, and the dates of the Class
28 Member's ownership or lease of an Eligible Vehicle. For any Class Member who no longer owns

1 or leases an Eligible Vehicle, evidence that the vehicle was sold or that the lease expired or was
2 terminated also must be provided. The Claims Supervisor will provide copies of all opt-out
3 requests to Lead Class Counsel and Counsel for Volkswagen within seven (7) days of the receipt
4 of each such request.

5 **6.2. Consequences of Failure To Opt Out in a Timely and Proper Manner.** All
6 Class Members who do not timely and properly opt out of the Class will in all respects be bound
7 by all terms of this Class Action Agreement and the Final Approval Order upon the Effective
8 Date.

9 **6.3. Opting Out and Objecting Are Mutually Exclusive Options.** Any Class
10 Member who elects to opt out pursuant to this Section may not also object to the Settlement,
11 pursuant to Section 7 herein. Any Class Member who elects to object pursuant to Section 7
12 herein may also not opt out pursuant to this Section.

13 **7. OBJECTIONS TO THE SETTLEMENT**

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

1 that the Class Member has reviewed the Class definition and has not opted out of the Class, and
2 any other supporting papers, materials, or briefs the Class Member wishes the Court to consider
3 when reviewing the objection.

4 **7.2. Objecting Through Counsel.** A Class Member may object on his or her own
5 behalf or through a lawyer hired at that Class Member's own expense, provided the Class
6 Member has not submitted a written request to opt out, as set forth in Section 7. The objection
7 must state whether it applies only to the objector, to a specific subset of the Class, or to the entire
8 Class, and also state with specificity the grounds for the objection. Lawyers asserting objections
9 on behalf of Class Members must: (a) file a notice of appearance with the Court by the date set
10 forth in the Preliminary Approval and Class Certification Order, or as the Court otherwise may
11 direct; (b) file a sworn declaration attesting to his or her representation of each Class Member on
12 whose behalf the objection is being filed or file (in camera) a copy of the contract between that
13 lawyer and each such Class Member; and (c) comply with the procedures described in this
14 Section.

15 **7.3. Intent To Appear at the Fairness Hearing.** A Class Member (or counsel
16 individually representing him or her, if any) seeking to make an appearance at the Fairness
17 Hearing must file with the Court, by the date set forth in the Preliminary Approval Order, a
18 written notice of his or her intent to appear at the Fairness Hearing, in accordance with the
19 requirements set forth in the Preliminary Approval Order, or by such time and in such manner as
20 the Court may otherwise direct.

21 **7.4. Consequences of Failure To Object in a Timely and Proper Manner.** Unless
22 the Court directs otherwise, any Class Member who fails to comply with the provisions of this
23 Section, will waive and forfeit any and all rights he, she, or it may have to object to the Class
24 Action Settlement and/or to appear and be heard on said objection at the Fairness Hearing.
25 Failure to object waives a Class Member's right to appeal.

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

27 **8.1.** The Notice Administrator shall be responsible for, without limitation: (a) printing,
28 mailing by First-Class U.S. Mail, postage paid, or arranging for the mailing of the Long Form

1 Notice (attached as Exhibit 3) and personalized cover letters; (b) updating Class Member address
2 information prior to mailing using the National Change of Address (NCOA) system; (c) handling
3 returned notice-related mail not delivered to Class Members; (d) attempting to obtain updated
4 address information for any Long Form Notice packages returned without a forwarding address;
5 (e) responding to requests for Long Form Notice packages; (f) establishing a post-office box for
6 the receipt of any correspondence; (g) responding to requests from Class Counsel and/or
7 Volkswagen's Negotiating Counsel; (h) assisting in the creation of Notice-related content for the
8 Settlement Websites to which Class Members may refer for information about the Action and the
9 Settlement; and (i) otherwise implementing and/or assisting with the dissemination of the notice
10 of the Settlement.

11 8.2. The Notice Administrator shall be responsible for arranging for the publication of
12 the Short Form Notice (attached as Exhibit 2), establishing Internet banner notifications, and for
13 consulting on other aspects of the Class Notice Program including, but not limited to, media
14 outreach, including advertisements, in national newspapers, trade publications, and the Internet.
15 The print advertisements will be substantially similar to the Short Form Notice. The Claims
16 Supervisor and/or the Notice Administrator shall coordinate to minimize costs in effectuating the
17 terms of this Class Action Agreement. The Notice Administrator shall submit a projected budget
18 to Class Counsel and Volkswagen on an annual basis and shall not make expenditures that exceed
19 that projected budget by more than eight (8) percent without the prior approval of Class Counsel
20 and Volkswagen.

21 8.3. All reasonable and necessary costs of the Class Notice Program, including the VW
22 Class Update, and the fees and costs of the Notice Administrator, shall be borne exclusively by
23 Volkswagen.

24 8.4. Within two (2) days of the issuance of the Preliminary Approval Order and the
25 approval of the Class Notice Program by the Court, Volkswagen shall transfer or pay to the
26 Notice Administrator an amount sufficient to cover the initial costs of the Class Notice Program.

27 8.5. The Notice Administrator may retain one or more persons to assist in the
28 completion of his or her responsibilities.

1 8.6. The Notice Administrator shall send to each appropriate state and federal official
2 the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms. The identities of
3 such officials and the content of the materials shall be mutually agreed to by the Parties.

4 8.7. Not later than ten (10) days before the date of the Fairness Hearing, the Notice
5 Administrator shall file with the Court a list of those persons who have opted out or excluded
6 themselves from the Settlement. The Notice Administrator shall file with the Court the details
7 outlining the scope, method and results of the Class Notice Program.

8 8.8. The Notice Administrator and the Parties shall promptly after receipt provide
9 copies of any requests for exclusion, objections and/or related correspondence to each other.

10 **9. RELEASE AND WAIVER**

11 9.1. The Parties agree to the following release and waiver (the “Release”), which shall
12 take effect upon entry of the Final Approval Order. The terms of the Release are a material term
13 of the Class Action Agreement and will be reflected in the Final Approval Order.

14 9.2. **Released Parties.** Released Parties means any person who, or entity that, is or
15 could be responsible or liable in any way whatsoever, whether directly or indirectly, for the 2.0-
16 liter TDI Matter. The Released Parties include, without limitation, (1) Volkswagen AG,
17 Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America,
18 Inc.), Volkswagen Group of America Chattanooga Operations, LLC, Audi AG, Audi of America,
19 LLC, VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC, and any former,
20 present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates,
21 parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the “VW
22 Released Entities”); (2) any and all contractors, subcontractors, and suppliers of the VW Released
23 Entities; (3) any and all persons and entities indemnified by any VW Released Entity with respect
24 to the 2.0-liter TDI Matter; (4) any and all other persons and entities involved in the design,
25 research, development, manufacture, assembly, testing, sale, leasing, repair, warranting,
26 marketing, advertising, public relations, promotion, or distribution of any Eligible Vehicle, even
27 if such persons are not specifically named in this paragraph, including without limitation all
28 Volkswagen Dealers, as well as non-authorized dealers and sellers; (5) Claims Supervisor;

1 (6) Notice Administrator; (7) lenders, creditors, financial institutions, or any other parties that
2 financed any purchase or lease of an Eligible Vehicle; and (8) for each of the foregoing, their
3 respective former, present, and future affiliates, parent companies, subsidiaries, predecessors,
4 successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited
5 partners, attorneys, assigns, principals, officers, directors, employees, members, agents,
6 representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors,
7 administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.
8 Notwithstanding the foregoing, this Release does not release any claims against Robert Bosch
9 GmbH and Robert Bosch, LLC or any of its former, present, and future owners, shareholders,
10 directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors,
11 or successors.

12 **9.3. Class Release.** In consideration for the Settlement, Class Members, on behalf of
13 themselves and their agents, heirs, executors and administrators, successors, assigns, insurers,
14 attorneys, representatives, shareholders, owners associations, and any other legal or natural
15 persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally,
16 irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all
17 claims, demands, actions, or causes of action, whether known or unknown, that they may have,
18 purport to have, or may have hereafter against any Released Party, as defined above, arising out
19 of or in any way related to the 2.0-liter TDI Matter. This Release applies to any and all claims,
20 demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in
21 equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past,
22 present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-
23 contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any
24 way related to the 2.0-liter TDI Matter, including without limitation (1) any claims that were or
25 could have been asserted in the Action; and (2) any claims for fines, penalties, criminal
26 assessments, economic damages, punitive damages, exemplary damages, liens, injunctive relief,
27 attorneys’, expert, consultant, or other litigation fees or costs other than fees and costs awarded by
28 the Court in connection with this Settlement, or any other liabilities, that were or could have been

1 asserted in any civil, criminal, administrative, or other proceeding, including arbitration (the
2 “Released Claims”). This Release applies without limitation to any and all such claims, demands,
3 actions, or causes of action regardless of the legal or equitable theory or nature under which they
4 are based or advanced including without limitation legal and/or equitable theories under any
5 federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance,
6 code, regulation, contract, common law, equity, or any other source, and whether based in strict
7 liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty,
8 misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether
9 existing now or arising in the future, that arise from or in any way relate to the 2.0-liter TDI
10 Matter. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful
11 death or personal injury. For the avoidance of doubt, claims relating to 3.0-liter TDI vehicles are
12 not subject to any release in this Class Action Agreement.

13 **9.4. Possible Future Claims.** For the avoidance of doubt, Class Members expressly
14 understand and acknowledge that they may hereafter discover claims presently unknown or
15 unsuspected, or facts in addition to or different from those that they now know or believe to be
16 true, related to the 2.0-liter TDI Matter, the Action and/or the Release herein. Nevertheless, it is
17 the intention of Class Counsel and the Class Representatives in executing this Class Action
18 Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle,
19 and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or
20 might have existed (whether or not previously or currently asserted in any action or proceeding)
21 with respect to the 2.0-liter TDI Matter.

22 **9.5. Release of “Holder Rule” Claims.** In exchange for the Class Action Settlement
23 compensation and remedies described in Section 4 and Exhibit 1, Class Members shall execute a
24 release releasing their potential claims under the Trade Regulation Rule Concerning the
25 Preservation of Consumers’ Claims and Defenses 16 C.F.R. §433.2 (the “Holder Rule”), relating
26 to the 2.0-liter TDI Matter.

27 **9.6. Waiver of California Civil Code Section 1542 and Analogous Provisions.**
28 Class Representatives expressly understand and acknowledge, and Class Members will be

1 deemed to understand and acknowledge Section 1542 of the California Civil Code, which
2 provides: “A general release does not extend to claims which the creditor does not know or
3 suspect to exist in his or her favor at the time of executing the release, which if known by
4 him or her must have materially affected his or her settlement with the debtor.” Each Class
5 Representative expressly acknowledges that he, she, or it has been advised by Class Counsel of
6 the contents and effect of Section 1542 and that he, she, or it has considered the possibility that
7 the number or magnitude of all claims may not currently be known. To ensure that this Release is
8 interpreted fully in accordance with its terms, Class Members expressly waive and relinquish any
9 and all rights and benefits that they may have under Section 1542 to the extent that such section
10 may be applicable to the Release. Class Members likewise expressly waive and relinquish any
11 rights or benefits of any law of any state or territory of the United States, federal law or principle
12 of common law, or of international or foreign law, which is similar, comparable, analogous, or
13 equivalent to Section 1542 of the California Code to the extent that such laws or principles may
14 be applicable to the Release.

15 9.7. **Individual Release.** Class Members who receive a Buyback, Lease Termination
16 and/or Restitution Payment shall be required to execute an Individual Release, in the form
17 attached as Exhibit 5, as a precondition to receiving such relief. Consistent with the Release
18 provided in this Agreement, the Individual Release will provide that the Class Member releases
19 all of the Released Parties from any and all present and future claims (as described in Sections 9.3
20 and 9.4) arising out of or related to the 2.0-liter TDI Matter. The Individual Release shall remain
21 effective even if the Final Approval Order is reversed and/or vacated on appeal, or if this Class
22 Action Agreement is abrogated or otherwise voided in whole or in part.

23 9.8. **Actions or Proceedings Involving Released Claims.** Class Members who do not
24 opt out expressly agree that this Release, and the Final Approval Order, is, will be, and may be
25 raised as a complete defense to, and will preclude, any action or proceeding specified in, or
26 involving claims encompassed by, this Release. Class Members who do not opt out shall not now
27 or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution,
28 commencement, filing or prosecution of any suit, action, and/or other proceeding, against the

1 Released Parties with respect to the claims, causes of action and/or any other matters subject to
2 this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or
3 proceeding not already encompassed by the Action, Class Members who do not opt out shall
4 cause such suit, action, or proceeding to be dismissed with prejudice. If a Class Member who
5 does not opt out commences, files, initiates, or institutes any new legal action or other proceeding
6 for any Released Claim against any Released Party in any federal or state court, arbitral tribunal,
7 or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with
8 prejudice and at that Class Member's cost; and (2) the respective Released Party shall be entitled
9 to recover any and all reasonable related costs and expenses from that Class Member arising as a
10 result of that Class Member's breach of his, her, or its obligations under this Release.

11 **9.9. Ownership of Released Claims.** Class Representatives shall represent and
12 warrant that they are the sole and exclusive owners of any and all claims that they personally are
13 releasing under this Class Action Agreement. Class Representatives further acknowledge that
14 they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or
15 encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to
16 the 2.0-liter TDI Matter, including without limitation, any claim for benefits, proceeds or value
17 under the Action, and that Class Representatives are not aware of anyone other than themselves
18 claiming any interest, in whole or in part, in any benefits, proceeds or values to which Class
19 Representatives may be entitled as a result of the 2.0-liter TDI Matter. Class Members submitting
20 a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all
21 claims that they personally are releasing under the Class Action Agreement and that they have not
22 assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any
23 right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions,
24 including without limitation, any claim for benefits, proceeds or value under the Actions, and that
25 such Class Members are not aware of anyone other than themselves claiming any interest, in
26 whole or in part, in any benefits, proceeds or values to which those Class Members may be
27 entitled as a result of the 2.0-liter TDI Matter.

28 **9.10. Total Satisfaction of Released Claims.** Any benefits pursuant to the Class

1 Action Agreement are in full, complete, and total satisfaction of all of the Released Claims
2 against the Released Parties, that the Benefits are sufficient and adequate consideration for each
3 and every term of this Release, and that this Release shall be irrevocably binding upon Class
4 Representatives and Class Members who do not opt out of the Class.

5 9.11. **Release Not Conditioned on Claim or Payment.** The Release shall be effective
6 with respect to all Releasing Parties, including all Class Members who do not opt out, regardless
7 of whether those Class Members ultimately file a Claim or receive compensation under this Class
8 Action Agreement.

9 9.12. **Basis for Entering Release.** Class Counsel acknowledge that they have
10 conducted sufficient independent investigation and discovery to enter into this Class Action
11 Agreement and that they execute this Class Action Agreement freely, voluntarily, and without
12 being pressured or influenced by, or relying on any statements, representations, promises, or
13 inducements made by the Released Parties or any person or entity representing the Released
14 Parties, other than as set forth in this Class Action Agreement. Class Representatives
15 acknowledge, agree, and specifically represent and warrant that they have discussed with Class
16 Counsel the terms of this Class Action Agreement and have received legal advice with respect to
17 the advisability of entering into this Class Action Agreement and the Release, and the legal effect
18 of this Class Action Agreement and the Release. The representations and warranties made
19 throughout the Class Action Agreement shall survive the execution of the Class Action
20 Agreement and shall be binding upon the respective heirs, representatives, successors and assigns
21 of the Parties.

22 9.13. **Material Term.** Class Representatives and Class Counsel hereby agree and
23 acknowledge that this Section 9 was separately bargained for and constitutes a key, material term
24 of the Class Action Agreement that shall be reflected in the Final Approval Order.

25 9.14. **Reservation of Claims.** This Class Action Agreement shall resolve the claims of
26 Class Members who do not opt out only as they relate to the 2.0-liter TDI Matter. The Parties
27 reserve all rights to litigate liability and equitable relief of any sort for any subset of vehicles,
28 purchasers, or lessees not expressly covered by this Class Action Agreement. For avoidance of

1 doubt, this carve-out includes, but is not limited to, claims related to 3.0-liter TDI vehicles.

2 **9.15. Released Parties' Releases of Class Representatives, the Class, and Class**
3 **Counsel.** Upon the Effective Date, Released Parties absolutely and unconditionally release and
4 forever discharge the Class Representatives, Class Members, and Class Counsel from any and all
5 claims relating to the institution or prosecution of the Action.

6 **9.16. Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over all
7 Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise
8 regarding this Class Action Agreement or in relation to this Action, including any dispute
9 regarding validity, performance, interpretation, administration, enforcement, enforceability, or
10 termination of the Class Action Agreement and no Party shall oppose the reopening and
11 reinstatement of the Action on the MDL Court's active docket for the purposes of effecting this
12 Section.

13 **10. ESCROW ACCOUNT**

14 **10.1.** Within ten (10) business days after the Court enters the Final Approval Order,
15 Volkswagen shall fund the Escrow Account with the "Funding Amount," which funds shall be
16 used, as necessary, to compensate Class Members who submit valid Claims pursuant to this Class
17 Action Agreement. The initial Funding Amount shall be \$1,500,000,000. If and when the
18 funding level of the Escrow Account reaches the "Minimum Balance," which shall initially be set
19 at \$1,250,000,000, the Escrow Agent shall alert Volkswagen, and Volkswagen shall, within seven
20 (7) business days, deposit such funds in the Escrow Account as are necessary to bring the balance
21 of the Escrow Account back to the Funding Amount.

22 **10.2.** Every six (6) months after the Escrow Account is first funded, the Funding
23 Amount shall be adjusted to the lower of (i) the initial amount of \$1,500,000,000 or (ii) twenty-
24 five (25) percent of the amount of the total Funding Pool that has not yet been spent, as verified
25 by the Claims Supervisor. In the event that the Funding Amount is adjusted, the Minimum
26 Balance shall be adjusted proportionately. For example, if the Funding Amount is adjusted to
27 \$900,000,000, the Minimum Balance shall be adjusted to \$750,000,000.

28 **10.3.** Within thirty (30) days of the conclusion of the Claim Period, any funds in the

1 Escrow Account, including all interest accrued, shall revert to Volkswagen.

2 10.4. In the event that the Class Action Settlement is terminated or invalidated for any
3 reason prior to the conclusion of the Claim Period, any funds in the Escrow Account, including
4 all interest accrued, shall revert to Volkswagen.

5 **11. ATTORNEYS' FEES AND EXPENSES**

6 11.1. Volkswagen agrees to pay reasonable attorneys' fees and costs for work performed
7 by Class Counsel in connection with the Action as well as the work performed by other attorneys
8 designated by Class Counsel to perform work in connection with the Action in an amount to be
9 negotiated by the Parties and that must be approved by the Court. Volkswagen and Class Counsel
10 represent that they have not discussed the amount of fees and costs to be paid prior to agreement
11 on the terms of this Class Action Agreement. Class Counsel and counsel for Volkswagen will
12 attempt to negotiate the amount of attorneys' fees and costs to be paid after the execution of this
13 Class Action Agreement and any settlement agreement related to claims involving TDI vehicles
14 with 3.0-liter engines. If a settlement agreement related to 3.0-liter TDI vehicles is not reached
15 by August 12, 2016, Class Counsel and counsel for Volkswagen will attempt to negotiate the
16 amount of attorneys' fees and costs to be paid in connection with claims involving Eligible
17 Vehicles (*i.e.*, TDI vehicles with 2.0-liter engines). If the Parties reach an agreement about the
18 amount of attorneys' fees and costs, Class Counsel will submit the negotiated amount to the Court
19 for approval. If the Parties do not reach an agreement as to the amount of attorneys' fees and
20 costs, the parties will litigate the fee issues, and each party will present its respective position to
21 the Court for determination. The litigation of the fee issues will be subject to the Parties'
22 agreement that: (1) the attorneys' fees and costs will be paid by Volkswagen in addition to the
23 compensation provided to Class Members under this Class Action Agreement; (2) each party will
24 be free to argue for what it believes is a reasonable fee; and (3) Volkswagen and Class Counsel
25 will request that the Court issue an Order setting forth the amount to be paid in attorneys' fees
26 and costs to be paid by Volkswagen in this action, and providing that Class Counsel will not be
27 permitted to seek additional fees and costs after the Court makes its award. The Parties shall have
28 the right to appeal the Court's determination as to the amount of attorneys' fees and costs.

1 Volkswagen reserves all rights to object to an award of attorney's fees and/or costs beyond what
2 it believes to be reasonable.

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

4 12.1. **Preliminary Approval Order.** As set forth in Section 3.1, on or before June 28,
5 2016, the Parties shall file with the Court a Motion for Preliminary Approval of the Class Action
6 Agreement and Approval of Class Notice.

7 12.2. **Final Settlement Approval Order and Judgment.** On or before August 26,
8 2016, or any subsequently mutually agreed upon date, Class Counsel shall file with the Court a
9 motion seeking a Final Judgment Approving and Providing for the Enforcement of the Class
10 Action Settlement.

11 12.3. **Proposed Schedule.** A comprehensive potential schedule for the approval of this
12 Settlement is set forth below, subject, of course, to the views of the Court. The Parties will use
13 their best efforts to advance the Settlement along the lines outlined in the proposed schedule set
14 forth below, recognizing it is subject to change, as required by Court order and/or agreed to by the
15 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

1 2	September 29, 2016	Deadline for State Attorneys General to file Comments/Objections to this Class Action Agreement
3	September 30, 2016	Reply Memorandum in Support of Final Approval filed
4 5 6 7 8 9	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.

10
11 **13. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

12 13.1. Counsel for all Parties warrant and represent that they are expressly authorized by
13 the Parties whom they represent to negotiate this Class Action Agreement. The persons signing
14 this Class Action Agreement on behalf of each Party warrants that he/she is authorized to sign
15 this Class Action Agreement on behalf of that Party.

16 13.2. The Parties and their respective counsel will cooperate with each other, act in good
17 faith, and use their best efforts to effect the implementation of the Class Action Agreement and
18 advance the Settlement Claims Program. In the event the Parties are unable to reach agreement
19 on the form or content of any document needed to implement the Class Action Agreement, or on
20 any supplemental provisions that may become necessary to effectuate the terms of this Class
21 Action Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

22 13.3. The Parties further agree to make all reasonable efforts to ensure the timely and
23 expeditious administration and implementation of the Class Action Agreement and to minimize
24 the costs and expenses incurred therein.

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

26 14.1. The terms and provisions of this Class Action Agreement may be amended,
27 modified, or expanded by written agreement of the Parties and approval of the Court; provided,
28 however, that after entry of the Final Approval Order, the Parties may by written agreement effect

1 such amendments, modifications, or expansions of this Class Action Agreement and its
2 implementing documents (including all exhibits hereto) without further notice to the Class or
3 approval by the Court if such changes are consistent with the Court's Final Approval Order and
4 do not limit the rights of Class Members under this Class Action Agreement.

5 14.2. Any unintended conflicts between the Class Action Agreement, the DOJ Consent
6 Decree, and/or the FTC Consent Order shall not be held against any of the Parties, but shall
7 instead be resolved by mutual agreement of the Parties, with the aid of the Settlement Master and,
8 if necessary, the Court.

9 14.3. This Class Action Agreement shall terminate at the discretion of either
10 Volkswagen or the Class Representatives, through Class Counsel, if: (1) the Court, or any
11 appellate court(s), rejects, modifies, or denies approval of any portion of this Class Action
12 Agreement or the proposed Settlement that the terminating Party in its (or their) sole judgment
13 and discretion reasonably determine(s) is material, including, without limitation, the terms of
14 relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of
15 the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not
16 enter or completely affirm, or alters, narrows or expands, any portion of the Final Approval
17 Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its
18 (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party
19 must exercise the option to withdraw from and terminate this Class Action Agreement, as
20 provided in this Section 14, by a signed writing served on the other Parties no later than twenty
21 days after receiving notice of the event prompting the termination. The Parties will be returned to
22 their positions status quo ante.

23 14.4. If an option to withdraw from and terminate this Class Action Agreement arises
24 under Section 14.3 above, neither Volkswagen nor Class Representatives are required for any
25 reason or under any circumstance to exercise that option and any exercise of that option shall be
26 in good faith.

27 14.5. If, but only if, this Class Action Agreement is terminated pursuant to Section 14.3,
28 above, then:

- 1 14.5.1. This Class Action Agreement shall be null and void and shall have no
2 force or effect, and no Party to this Class Action Agreement shall be
3 bound by any of its terms, except for the terms of Section 14.5 herein;
- 4 14.5.2. The Parties will petition the Court to have any stay orders entered
5 pursuant to this Class Action Agreement lifted;
- 6 14.5.3. All of the provisions of this Class Action Agreement, and all negotiations,
7 statements, and proceedings relating to it, shall be without prejudice to
8 the rights of Volkswagen, Class Representatives, or any Class Member,
9 all of whom shall be restored to their respective positions existing
10 immediately before the execution of this Class Action Agreement, except
11 that the Parties shall cooperate in requesting that the Court set a new
12 scheduling order such that no Party's substantive or procedural rights are
13 prejudiced by the settlement negotiations and proceedings;
- 14 14.5.4. Released Parties expressly and affirmatively reserve all defenses,
15 arguments, and motions as to all claims that have been or might later be
16 asserted in the Action, including, without limitation, the argument that the
17 Action may not be litigated as a class action;
- 18 14.5.5. Class Representatives and all other Class Members, on behalf of
19 themselves and their heirs, assigns, executors, administrators,
20 predecessors, and successors, expressly and affirmatively reserve and do
21 not waive all motions as to, and arguments in support of, all claims,
22 causes of action or remedies that have been or might later be asserted in
23 the Action including, without limitation, any argument concerning class
24 certification, and treble or other damages;
- 25 14.5.6. Volkswagen expressly and affirmatively reserves and does not waive all
26 motions and positions as to, and arguments in support of, all defenses to
27 the causes of action or remedies that have been sought or might be later
28 asserted in the Action, including without limitation, any argument or

1 position opposing class certification, liability, damages, or injunctive
2 relief;

3 14.5.7. Neither this Class Action Agreement, the fact of its having been entered
4 into, nor the negotiations leading to it shall be admissible or entered into
5 evidence for any purpose whatsoever;

6 14.5.8. Any settlement-related order(s) or judgment(s) entered in this Action after
7 the date of execution of this Class Action Agreement shall be deemed
8 vacated and shall be without any force or effect;

9 14.5.9. Volkswagen shall bear all reasonable and necessary costs incurred by the
10 Claims Supervisor and Notice Administrator in connection with the
11 implementation of this Class Action Settlement up until its termination.
12 Neither the Class Representatives nor Class Counsel shall be responsible
13 for any such settlement-related costs; and

14 14.5.10. Within five (5) business days, any funds in the Escrow Account,
15 including any interest accrued, shall revert to Volkswagen.

16 14.6. Notwithstanding the terms of Sections 14.5.1 through 14.5.10 above, if a Class
17 Member has (i) received compensation under the Class Action Agreement prior to its termination
18 or invalidation and (ii) executed an Individual Release, such a Class Member and Volkswagen
19 shall be bound by the terms of the Individual Release, which terms shall survive termination or
20 invalidation of the Class Action Agreement.

21 **15. REPRESENTATIONS AND WARRANTIES**

22 15.1. Class Counsel represents that: (1) they are authorized by the Class Representatives
23 to enter into this Class Action Agreement with respect to the claims asserted in the Action and
24 any other claims covered by the Release; and (2) they are seeking to protect the interests of the
25 Class.

26 15.2. Class Counsel further represents that the Class Representatives: (1) have agreed to
27 serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and
28 ready to perform all of the duties and obligations of representatives of the Class; (3) have read the

1 pleadings in the Action, including the Complaint, or have had the contents of such pleadings
2 described to them; (4) have consulted with Class Counsel about the obligations imposed on
3 representatives of the Class; (5) understand that they are entitled only to the rights and remedies
4 of Class Members under this Class Action Agreement and not to any additional compensation by
5 virtue of their status as Class Representatives; and (6) shall remain and serve as representatives of
6 the Class until the terms of this Class Action Agreement are effectuated, this Class Action
7 Agreement is terminated in accordance with its terms, or the Court at any time determines that
8 said Class Representatives cannot represent the Class.

9 15.3. Volkswagen represents and warrants that the individual(s) executing this Class
10 Action Agreement are authorized to enter into this Class Action Agreement on behalf of
11 Volkswagen.

12 15.4. The Parties acknowledge and agree that no opinion concerning the tax
13 consequences of the proposed Settlement to Class Members is given or will be given by the
14 Parties, nor are any representations or warranties in this regard made by virtue of this Class
15 Action Agreement. Each Class Member's tax obligations, and the determination thereof, are the
16 sole responsibility of the Class Member, and it is understood that the tax consequences may vary
17 depending on the particular circumstances of each individual Class Member.

18 **16. GENERAL MATTERS AND RESERVATIONS**

19 16.1. This Class Action Agreement will be binding upon, and inure to the benefit of, the
20 successors, transferees, and assigns of Volkswagen, the Class Representatives, and Class
21 Members.

22 16.2. Volkswagen's obligation to implement the Class Action Settlement Program
23 described in this Class Action Agreement is and shall be contingent upon each of the following:

24 16.2.1. Entry by the Court of the Final Approval Order approving the Class
25 Action Settlement;

26 16.2.2. The occurrence of the Effective Date; and

27 16.2.3. The satisfaction of any other conditions set forth in this Class Action
28 Agreement.

1 16.3. The Parties and their counsel agree to keep the existence and contents of this Class
2 Action Agreement confidential until the date on which the Motion for Preliminary Approval is
3 filed; provided, however, that this Section shall not prevent Volkswagen from disclosing such
4 information, prior to the date on which the Motion for Preliminary Approval is filed, to state and
5 federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, or
6 lawyers. The Parties and their counsel may also disclose the existence and contents of this Class
7 Action Agreement to persons or entities (such as experts, courts, co-counsel, and/or
8 administrators) to whom the Parties agree disclosure must be made in order to effectuate the
9 terms and conditions of this Class Action Agreement.

10 16.4. Class Representatives and Class Counsel agree that confidential information made
11 available to them solely through the settlement process was made available on the condition that
12 it not be disclosed to third parties (other than experts or consultants retained by Class
13 Representatives in connection with the Action). Nevertheless, nothing contained herein shall
14 prohibit Class Representatives from seeking certain confidential information pertinent to this
15 Class Action Agreement through informal confirmatory discovery, even if not previously
16 requested through formal discovery.

17 16.5. Information provided by Volkswagen, Volkswagen's Negotiating Counsel, and/or
18 the Settlement Master to Class Representatives, Class Counsel, any individual Class Member,
19 counsel for any individual Class Member, and/or administrators, pursuant to the negotiation and
20 implementation of this Class Action Agreement, includes trade secrets and highly confidential
21 and proprietary business information and shall be deemed "Highly Confidential" pursuant to the
22 protective orders that have been or will be entered in the Action, and shall be subject to all of the
23 provisions thereof. Any materials inadvertently produced shall, upon Volkswagen's request, be
24 promptly returned to Volkswagen's Negotiating Counsel, and there shall be no implied or express
25 waiver of any privileges, rights and defenses.

26 16.6. This Class Action Agreement, complete with its exhibits and all documents filed
27 with the Court, sets forth the entire agreement among the Parties with respect to its subject matter,
28 and it may not be altered, amended, or modified except by written instrument executed by Class

1 Counsel and Volkswagen's Negotiating Counsel on behalf of Volkswagen. The Parties expressly
2 acknowledge that no other agreements, arrangements, or understandings not expressed in this
3 Class Action Agreement or the documents filed with the Court exist among or between them, and
4 that in deciding to enter into this Class Action Agreement, they have relied solely upon their own
5 judgment and knowledge. This Class Action Agreement and the accompanying documents filed
6 with the Court supersede any prior agreements, understandings, or undertakings (written or oral)
7 by and between the Parties regarding the subject matter of this Class Action Agreement.

8 16.7. This Class Action Agreement and any amendments thereto, and any dispute
9 arising out of or related to this Class Action Agreement, shall be governed by and interpreted
10 according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto,
11 and the laws of the State of California notwithstanding its conflict of law provisions.

12 16.8. Any disagreement and/or action to enforce this Class Action Agreement shall be
13 commenced and maintained only in the United States District Court for the Northern District of
14 California.

15 16.9. Whenever this Class Action Agreement requires or contemplates that one of the
16 Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day
17 (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

18 If to Volkswagen, then to:

19 Sharon L. Nelles
20 SULLIVAN & CROMWELL LLP
21 125 Broad Street
22 New York, New York 10004
23 Email: nelless@sullcrom.com

24 If to the Class, then to:

25 Elizabeth J. Cabraser
26 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
27 275 Battery Street, 29th Floor
28 San Francisco, CA 94111

16.10. All time periods in this Class Action Agreement shall be computed in calendar
days unless otherwise expressly provided. In computing any period of time in this Class Action
Agreement or by order of the Court, the day of the act or event shall not be included. The last day

1 of the period shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when
2 the act to be done is the filing of a paper in court, a day on which the court is closed, in which
3 case the period shall run until the end of the next day that is not one of the aforementioned days.
4 As used in this Class Action Agreement, “Federal Holiday” includes holidays designated in Fed.
5 R. Civ. P. 6(a) or by the Clerk of the United States District Court for the Northern District of
6 California.

7 16.11. The Parties reserve the right, subject to the Court’s approval, to agree to any
8 reasonable extensions of time that might be necessary to carry out any of the provisions of this
9 Class Action Agreement.

10 16.12. The Class, Class Representatives, Class Counsel, Volkswagen, and/or
11 Volkswagen’s Lead Counsel shall not be deemed to be the drafter of this Class Action Agreement
12 or of any particular provision, nor shall they argue that any particular provision should be
13 construed against its drafter. All Parties agree that this Class Action Agreement was drafted by
14 counsel for the Parties during extensive arm’s-length negotiations. No parol or other evidence
15 may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or
16 their counsel, or the circumstances under which this Class Action Agreement was made or
17 executed.

18 16.13. The Parties expressly acknowledge and agree that this Class Action Agreement
19 and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations,
20 related notes, and correspondence, constitute an offer of compromise and a compromise within
21 the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or
22 territory.

23 16.14. The Class Representatives expressly affirm that the allegations contained in the
24 Complaint were made in good faith, but consider it desirable for the Action to be settled and
25 dismissed as to the Eligible Vehicles only because of the substantial benefits that the Settlement
26 will provide to Class Members.

27 16.15. The Parties agree that the Class Action Agreement was reached voluntarily after
28 consultation with competent legal counsel.

1 16.16. Neither this Class Action Agreement nor the Class Action Settlement Program, nor
2 any act performed or document executed pursuant to or in furtherance of this Class Action
3 Agreement or the Class Action Settlement Program is or may be deemed to be or may be used as
4 an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing
5 or liability of any Released Parties; or is or may be deemed to be or may be used as an admission
6 of, or evidence of, any fault or omission of any Released Parties in any civil, criminal, regulatory,
7 or administrative proceeding in any court, administrative agency or other tribunal. Nor shall this
8 Class Action Agreement or the Class Action Settlement Program be deemed an admission by any
9 Party as to the merits of any claim or defense.

10 16.17. Nothing in this Class Action Agreement limits or expands any existing rights of
11 the Class or any Class Member or third party to: (i) challenge any action or decision made by
12 EPA or CARB pursuant to, or during the implementation of, the DOJ Consent Decree; or
13 (ii) assert a claim based upon an allegation of excessive emissions or OBD deficiencies from a
14 vehicle that has undergone an Emission Modification approved by EPA and CARB under the
15 DOJ Consent Decree.

16 16.18. Any of the Released Parties may file this Class Action Agreement and/or the Final
17 Approval Order in any action that may be brought against it in order to support any defense or
18 counterclaim, including without limitation those based on principles of *res judicata*, collateral
19 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
20 preclusion or issue preclusion or similar defense or counterclaim.

21 16.19. The Parties, their successors and assigns, and their counsel undertake to implement
22 the terms of this Class Action Agreement in good faith, and to use good faith in resolving any
23 disputes that may arise in the implementation of the terms of this Class Action Agreement.

24 16.20. The waiver by one Party of any breach of this Class Action Agreement by another
25 Party shall not be deemed a waiver of any prior or subsequent breach of this Class Action
26 Agreement.

27 16.21. If one Party to this Class Action Agreement considers another Party to be in
28 breach of its obligations under this Class Action Agreement, that Party must provide the

1 breaching Party with written notice of the alleged breach and provide a reasonable opportunity to
2 cure the breach before taking any action to enforce any rights under this Class Action Agreement.

3 16.22. The Parties, their successors and assigns, and their counsel agree to cooperate fully
4 with one another in seeking Court approval of this Class Action Agreement and to use their best
5 efforts to implement this Class Action Agreement and the proposed Class Action Settlement
6 Program.

7 16.23. This Class Action Agreement may be signed with an electronic or facsimile
8 signature and in counterparts, each of which shall constitute a duplicate original.

9 16.24. In the event any one or more of the provisions contained in this Class Action
10 Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect,
11 such invalidity, illegality, or unenforceability shall not affect any other provision if Volkswagen,
12 on behalf of Defendants, and Class Counsel, on behalf of Class Representatives and Class
13 Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable
14 provision had never been included in this Class Action Agreement. Any such agreement shall be
15 reviewed and approved by the Court before it becomes effective.

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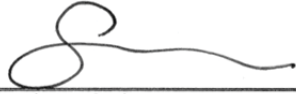
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List of Exhibits

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
3 Date: July 26, 2016



4 Elizabeth J. Cabraser
5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
6 275 Battery Street, 29th Floor
7 San Francisco, CA 94111

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

Dated: July ²⁶ __, 2016



Robert J. Giuffra, Jr.
Sharon L. Nelles
William B. Monahan
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
giuffrar@sullcrom.com
nelless@sullcrom.com
monahanw@sullcrom.com

Stephen D. Bell (S.D. #3488)
DORSEY & WHITNEY LLP
Millennium Building
125 Bank Street, Suite 600
Missoula, Montana 59802-4407
Tel: 406-721-6025
Fax: 406-543-0863
bell.steve@dorsey.com

Dan R. Larsen (*pro hac vice to be filed*)
DORSEY & WHITNEY LLP
111 South Main Street, 21st Floor
Salt Lake City, UT 84111
Telephone: (801) 933-7360
Facsimile: (801) 933-7373
larsen.dan@dorsey.com

Attorneys for Defendant Volkswagen Group of America, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION**

ALLEN AND JENNIFER PICKARD

Plaintiff,

vs.

VOLKSWAGEN GROUP OF AMERICA
INC.,

Defendant.

DECLARATION OF DAN R. LARSEN

Case No.:

Judge:

My name is DAN R. LARSEN. I am over the age of eighteen, competent, of sound mind and capable of making this declaration.

1. I represent Volkswagen Group of America, Inc. (VWGoA) in the above captioned matter.

2. On or about Monday, August 20, 2018, I spoke with counsel for plaintiffs, Shawn Nichols of the law firm Cadwell Sanford Deibert & Garry LLP.

3. I inquired of Mr. Nichols regarding paragraph 5 of the Complaint which appears to be incomplete.

4. The Complaint as served reads:

Pursuant to SDCL § 15-6-23, Plaintiffs bring this class action on behalf of themselves and all persons owning a Volkswagen—eligible to participate in the 2.0-Liter Settlement Claims Program—who live in an area where the climate has rendered the .

5. Mr. Nichols informed me that the sentence should end “car inoperable.”

6. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed August 28, 2018.

/s/ Dan R. Larsen

DATED this 29th day of August, 2018

Respectfully submitted,

/s/ Stephen D. Bell

Attorney for Volkswagen Group of America, Inc.

[See Trade-In Values](#)



♥ Used 2012 **Volkswagen Passat TDI SE Sedan 4D**

2012 ▾

 Print

Typical Mileage: 79,106  [Edit mileage and options](#)

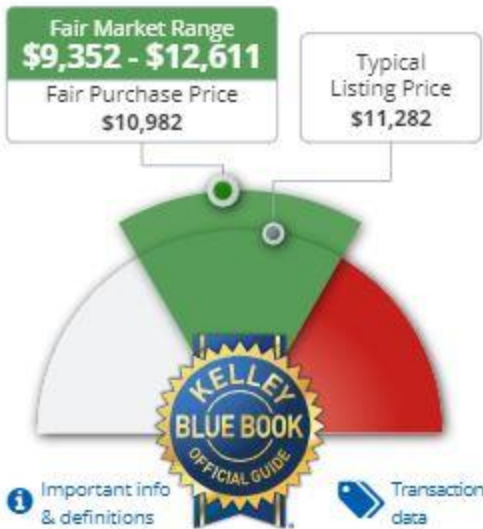
Pricing

Updated weekly, the Kelley Blue Book Fair Purchase Price shows you what others have been paying for this car recently.

Buy from a Dealer

Buy Certified from a Dealer

Buy from a Private Party



8 styles available

TDI SE Sedan 4D ▾

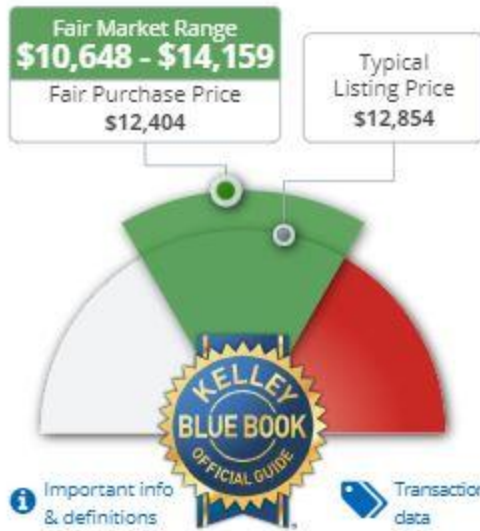
Based on Good Condition or Better
Valid for ZIP Code 57006 through 08/23/2018



Pricing

Updated weekly, the Kelley Blue Book Fair Purchase Price shows you what others have been paying for this car recently.

Buy from a Dealer	Buy Certified from a Dealer	Buy from a Private Party
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9 styles available

TDI SE Sedan 4D ▼

Based on Good Condition or Better
Valid for ZIP Code 57006 through 08/23/2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Volkswagen Emissions Fix Leaves Cars Inoperable](#)
