

VT SUPERIOR COURT  
WASHINGTON UNIT

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT.

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CIVIL DIVISION  
Docket No. 536-9-16 Wncv

STATE OF VERMONT

FILED

Plaintiff,

v.

VOLKSWAGEN AKTIENGESELLSCHAFT a/k/a )  
VOLKSWAGEN AG; VOLKSWAGEN GROUP )  
OF AMERICA, INC.; VOLKSWAGEN GROUP )  
OF AMERICA CHATTANOOGA OPERATIONS )  
LLC; AUDI AKTIENGESELLSCHAFT a/k/a )  
AUDI AG; AUDI OF AMERICA, L.L.C.; DR. ING. )  
H.C.F. PORSCHE AKTIENGESELLSCHAFT )  
a/k/a PORSCHE AG; and PORSCHE CARS )  
NORTH AMERICA, INC.; )

Defendants.

**PARTIAL CONSENT JUDGMENT**

**WHEREAS**, Plaintiff, the State of Vermont (“State”), acting by and through the Attorney General and on behalf of Vermont consumers and the Vermont Agency of Natural Resources (“Agency”), filed a Complaint in this action alleging that Volkswagen Aktiengesellschaft a/k/a Volkswagen AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga Operations LLC, Audi Aktiengesellschaft a/k/a Audi AG, and Audi of America, L.L.C. (collectively, “Volkswagen”), Dr. Ing. h.c. F. Porsche Aktiengesellschaft AG, a/k/a Porsche AG, and Porsche Cars North America, Inc. (collectively, “Porsche”) (Volkswagen and Porsche together, “Defendants”), designed, produced, marketed, advertised, distributed, sold, and leased certain 2.0- and 3.0-liter diesel passenger vehicles (the

“Subject Vehicles”)<sup>1</sup> containing undisclosed software allegedly intended to circumvent federal or state emissions standards in violation of (a) the Vermont Air Pollution Control statutes, 10 Vt. Stat. Ann. §§ 551 et seq., and the Vermont Air Pollution Control Regulations (“VAPCR”) §§ 5-1101 – 1109 (Counts 1-8), and (b) the Vermont Consumer Protection Act, 9 V.S.A. § 2453 *et seq.* (Counts 9-10) and;

**WHEREAS**, on or about March 30, 2017, the State (together with a coalition of nine other States) and Defendants entered into a Second Partial Settlement Agreement (“Partial Settlement Agreement”), a true and correct copy of which is attached hereto as Exhibit A, which resolves the State’s Environmental Claims<sup>2</sup> against Defendants concerning the Subject Vehicles, including the claims alleged in Counts 1-8 of the State’s Complaint, while reserving to the State all rights with respect to claims by the State arising under its state consumer and unfair trade and deceptive acts and practices laws, rules and/or regulations, including the claims against Defendants concerning the Subject Vehicles alleged in Counts 9 and 10 of the State’s Complaint;

**WHEREAS**, the State and Defendants (collectively, the “Parties”) consent to entry of this Partial Consent Judgment (“Judgment” or “Consent Judgment”) in order to effectuate the Partial Settlement Agreement’s resolution of the State’s Environmental Claims, avoid prolonged and costly litigation of such claims, and further the public interest, while reserving to the State all rights with respect to claims by the State arising under its state consumer and unfair trade and deceptive acts and practices laws, rules and/or regulations.

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<sup>1</sup> The term “**Subject Vehicles**” is defined at paragraph 3, below.

<sup>2</sup> The term “**Environmental Claims**” is defined at paragraph 3, below.

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

**I. JURISDICTION AND VENUE**

1. Defendants consent to this Court's continuing subject matter and personal jurisdiction solely for the purposes of entry, enforcement, and modification of this Judgment and without waiving their right to contest this Court's jurisdiction in other matters. This Court retains jurisdiction of this action for the purposes of enforcing or modifying the terms of this Judgment, or granting such further relief as the Court deems just and proper.

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

**II. DEFINITIONS**

3. Capitalized terms used herein shall have the following meanings (in alphabetical order):

- a. "Agency" means the Vermont Agency of Natural Resources.
- b. "Attorney General" means the Vermont Attorney General's Office.
- c. "BEV" means Battery Electric Vehicle.
- d. "California Second Partial Consent Decree" means the Second Partial Consent Decree executed by Defendants and California, by and through by the California Air Resources Board ("CARB") and the California Attorney General ("CA AG"), and entered by the MDL Court on May 17, 2017, a true and correct copy of which is attached hereto as Exhibit B.
- e. "Covered Conduct" means any and all acts or omissions, including all communications, occurring up to and including the effective date of this

Consent Judgment, relating to: (a) the design, installation, presence, or failure to disclose any Defeat Device in any Subject Vehicle; (b) the marketing or advertisement of any Subject Vehicle as green, clean, or environmentally friendly (or similar such terms), and/or compliant with state or federal emissions standards, including the marketing or advertisement of any Subject Vehicles without disclosing the design, installation or presence of a Defeat Device; (c) the offering for sale, sale, delivery for sale, or lease of the Subject Vehicles in the Section 177 States; (d) statements or omissions concerning the Subject Vehicles' emissions and/or the Subject Vehicles' compliance with applicable emission standards, including, but not limited to, certifications of compliance or other similar documents or submissions; and (e) conduct alleged, or any related conduct that could have been alleged, in any Complaint, Notice of Violation, or Notice of Penalty filed or issued by a Section 177 State, and/or a State Environmental Agency<sup>3</sup>, including, but not limited to, that the Subject Vehicles contain prohibited Defeat Devices that cause the Subject Vehicles to emit nitrogen oxides ("NO<sub>x</sub>") in excess of applicable legal standards and that Volkswagen and Porsche falsely reported vehicle emissions, that Volkswagen and/or Porsche tampered

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<sup>3</sup> These pleadings include, but are not limited to, *State of Maine v. Volkswagen AG, et al.*, No. 3:17-cv-00784 (CRB); *Commonwealth of Massachusetts v. Volkswagen Aktiengesellschaft et al.*, No. 3:16-cv-05088 (CRB); *State of New York et al. v. Volkswagen Aktiengesellschaft et al.*, No. 3:16-cv-05089 (CRB); *Commonwealth of Pennsylvania, Department of Environmental Protection et al. v. Volkswagen Aktiengesellschaft et al.*, No. 3:16-cv-05159 (CRB); *State of Vermont et al. v. Volkswagen Aktiengesellschaft et al.*, No. 3:16-cv-06299; and *Volkswagen, et al. v. Ecology*, PCHB No.16-104c.

with any emissions control device or element of design installed in the Subject Vehicles, that Volkswagen and/or Porsche affixed labels to the Subject Vehicles that were false, invalid or misleading and/or that Volkswagen and/or Porsche breached its warranties relating to the Subject Vehicles.

- f. “Defeat Device” means “an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless: (1) Such conditions are substantially included in the Federal emission test procedure; (2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only for emergency vehicles[.]” 40 C.F.R. § 86.1803-01, or “any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [the Emission Standards for Moving Sources section of the Clean Air Act], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3)(B).
- g. “Defendants” means Volkswagen and Porsche, collectively.

- h. “Environmental Claims” mean claims or potential claims that could be brought by the State, including in its sovereign enforcement capacity or as *parens patriae* on behalf of its citizens, or by the Agency under all potentially applicable federal, state, and/or local environmental laws, rules, and/or regulations, including, but not limited to, laws, rules, and/or regulations regarding mobile source emissions, certification, reporting of information, inspection and maintenance of vehicles and/or anti-tampering provisions, together with related common law and equitable claims.
- i. “Environmental Laws” means any potentially applicable laws, rules, regulations, and/or common law or equitable principles or doctrines under which the Environmental Claims may arise including, without limitation, 10 Vt. Stat. Ann. §§ 551 *et seq.*, and VAPCR §§ 5-1101 - 1109.
- j. “Escrow Account” means the bank account established for purposes of making the escrow payment set forth in paragraph 8(A) of the Partial Settlement Agreement.
- k. “Escrow Agent” means Citibank, N.A., as the mutually agreed escrow agent under paragraph 8(A) of the Partial Settlement Agreement.
- l. “Escrow Agreement” means the agreement between the Volkswagen Group of America, Inc. and the Escrow Agent concerning the creation of the Escrow Account.
- m. “FTC’s Second Partial Stipulated Order” means the Amended Second Partial Stipulated Order for Permanent Injunction and Monetary Judgment

entered by the MDL Court on May 17, 2017, a true and correct copy of which is attached hereto as Exhibit C.

- n. “MDL” means the multidistrict litigation styled as *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (MDL 2672).
- o. “MDL Court” means the U.S. District Court for the Northern District of California, the court in which the MDL is pending.
- p. “Section 177 States” means, collectively, the States of Connecticut, Delaware, Maine, New York, Oregon, Rhode Island, Vermont, and Washington, and the Commonwealths of Massachusetts and Pennsylvania.
- q. “State” or “Vermont” means the State of Vermont.
- r. “Subject Vehicles” means each and every light duty diesel vehicle equipped with a 2.0-liter or 3.0-liter TDI engine that Volkswagen and Porsche or their respective affiliates sold or offered for sale in, leased or offered for lease in, or introduced or delivered for introduction into commerce in the United States or its states or territories, or imported into the United States or its states or territories, and that is or was purported to have been covered by the following EPA Test Groups:

**2.0-Liter Diesel Models**

<b>Model Year (MY)</b>	<b>EPA Test Group</b>	<b>Vehicle Make and Model(s)</b>
2009	9VWXV02.035N 9VWXV02.0U5N	VW Jetta, VW Jetta Sportwagen
2010	AVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3
2011	BVWXV02.0U5N	VW Golf, VW Jetta, VW Jetta Sportwagen, Audi A3

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

### 3.0-Liter Diesel Models

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

- s. "U.S. First Partial Consent Decree" means the consent decree executed by Defendants, the United States, on behalf of the United States Environmental Protection Agency ("DOJ/EPA"), and California, by and



through CARB and CA AG, concerning the 2.0-liter Subject Vehicles and entered by the MDL Court on October 25, 2016, a true and correct copy of which is attached hereto as Exhibit D.

- t. “U.S. Second Partial Consent Decree” means the consent decree executed by Defendants, the United States on behalf of DOJ/EPA, and California, by and through CARB and CA AG, concerning the 3.0-liter Subject Vehicles and entered by the MDL Court on May 17, 2017, a true and correct copy of which is attached hereto as Exhibit E.
- u. “U.S. Third Partial Consent Decree” means the consent decree executed by Defendants and the United States on behalf of DOJ/EPA, and entered by the MDL Court on April 13, 2017, a true and correct copy of which is attached hereto as Exhibit F<sup>4</sup>.
- v. “3.0 Liter Class Action Settlement” means the Plaintiffs Steering Committee’s 3.0-Liter Class Action Settlement Agreement, entered by the MDL Court on May 17, 2017, a true and correct copy of which is attached hereto as Exhibit G.
- w. “ZEV” means Zero Emission Vehicle.

### III. EFFECT OF JUDGMENT

- 4. Entry of this Consent Judgment fully and finally resolves and disposes the Environmental Claims arising from or related to the Covered Conduct that were alleged in the

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<sup>4</sup> The U.S. Third Partial Consent Decree covers both 2.0-liter and 3.0-liter Subject Vehicles.

State's Complaint in this matter or that could be brought by the State in its sovereign enforcement capacity or as *parens patriae* on behalf of Vermont citizens.

5. This Consent Judgment will, upon its Entry Date, constitute a fully binding and enforceable agreement between the Parties, and the Parties consent to its entry as a partial final judgment by the Court.

#### IV. ADMISSIONS

6. Volkswagen admits that:

- a. software in the Volkswagen- and Audi-branded 2.0 and 3.0 Liter Subject Vehicles enables the vehicles' engine control modules to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the engine control module detects the vehicles are not undergoing Federal Test Procedures, resulting in NO<sub>x</sub> emissions that exceed EPA-compliant and CARB-compliant levels (which CARB standards are applicable in the Commonwealth) when the vehicles are driven on the road; and
- b. this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 2.0 and 3.0 Liter Subject Vehicles, and, as a result, the design specifications of the 2.0 and 3.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications.

7. Porsche admits that:

- a. software in the Porsche-branded 3.0 Liter Subject Vehicles enables the vehicles' engine control modules to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the engine control module detects the vehicles are not undergoing Federal Test Procedures, resulting in NO<sub>x</sub> emissions that exceed EPA-compliant and CARB-compliant levels (which CARB standards are applicable in the Commonwealth) when the vehicles are driven on the road; and
- b. this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 3.0 Liter Subject Vehicles, and, as a result, the design specifications of the 3.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications.

8. Volkswagen AG admits, agrees, and stipulates that the factual allegations set forth in the Statement of Facts attached as Exhibit 2 to its January 11, 2017 Rule 11 Plea Agreement in *U.S. v. Volkswagen AG*, No. 16-CR-20394 are true and correct. Volkswagen AG agrees it will neither contest the admissibility of, nor contradict, the Statement of Facts contained in Exhibit 2 to the Rule 11 Plea Agreement in any proceeding. A true and correct copy of the Statement of Facts described in this paragraph is attached hereto as Exhibit H.

9. Except as provided in paragraphs 6 through 8 herein, Volkswagen and/or Porsche neither admits nor denies any factual allegations regarding the Covered Conduct.

## V. RELIEF

### A. PAYMENT

10. Within five business days of receipt from the State of (1) a signed, written certification, in a mutually agreeable form,<sup>5</sup> that the Partial Settlement Agreement has been duly approved by all necessary legal action by execution or filing of this Judgment and is now final under the law of the State, (2) a true and accurate copy of this Judgment, as entered, and any other documents implementing this Judgment, and (3) instructions, in mutually agreeable form, for wiring funds to the State, Volkswagen will pay to the State \$4,242,401.80 (“Judgment Amount”) by authorizing the Escrow Agent to disburse that amount to the State according to the wiring instructions provided by the State.

### B. ZERO EMISSION VEHICLE (ZEV) COMMITMENT

11. Defendants shall increase the availability of ZEVs in the State by introducing in the State the three additional BEV models to be introduced in California under Paragraphs 11.a. and 11.b. of the California Second Partial Consent Decree. Defendants shall introduce and continue to market these BEV models in the State within the same time periods that are set forth for California in Paragraphs 11.a. and 11.b. of the California Second Partial Consent Decree.

12. In the State until at least 2019, Volkswagen shall offer its existing BEV model (the VW e-Golf BEV) or its successor or replacement models.

13. In the State until at least 2025, in the event that Volkswagen agrees to offer a new BEV model in the United States between 2020 and 2025 (in addition to the three BEV models identified in paragraph 11 above), it will offer that BEV model (or its successor).

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<sup>5</sup> The certification shall include the name and title of the signatory and shall certify that such signatory is a duly authorized representative of the State and is duly authorized to make such certification.

14. Defendants shall make each BEV model launched in the Section 177 States available to their dealers of new vehicles in the State and encourage such dealers to make the BEV models available for potential consumers for demonstration and test drive. Defendants shall deliver at least one vehicle of each BEV model within eight weeks of the port release date to all of their dealers in the State that (i) agree to sell BEV models; and (ii) sell the brand of that particular BEV model (*e.g.*, Volkswagen BEV models need only be delivered to Volkswagen dealers and need not be delivered to Audi or Porsche dealers).

15. Defendants shall undertake commercially reasonable efforts to make each such BEV model available to their dealers through the course of each model's production for purposes of consumer demonstration, test drive, sale and lease.

16. In the State, Defendants' launch and marketing of each BEV model shall include advertising, promotional support, and support to dealers to incentivize dealer participation in the offering for sale or lease of the BEV models. This dealer support shall include support for dealers in (i) making the BEV models available for consumer demonstration and test driving; and (ii) the servicing of the BEV models.

17. Defendants' obligations under paragraphs 11-16, including to introduce, offer for sale, deliver, advertise, market or promote the BEV models, shall be limited to (i) the State, provided Defendants have dealers of new vehicles in the State; and (ii) dealers that agree to sell the BEV models. Defendants shall have no obligations under paragraphs 11-16 (i) if they have no dealer of new vehicles in the State; and (ii) with respect to any dealer that does not agree to sell the BEV models.

18. Regardless of the foregoing, Volkswagen will ensure that at least one vehicle of each of the Audi- or Volkswagen-branded BEV models introduced in the Section 177 States is

available for consumer demonstration and driving in the State until at least 2025 to the extent that there is at least one Audi or Volkswagen dealer in the State and for so long as such BEV model is being offered nationally for new vehicle sale.

**VI. ZEV INVESTMENT COMMITMENT, MITIGATION TRUST, AND FURTHER INJUNCTIVE RELIEF**

19. To the extent that such requirements apply to the State or Subject Vehicles therein, Volkswagen shall, consistent with the terms and definitions set forth in the U.S. First Partial Consent Decree, comply with:

- a. The Buyback, Lease Termination, and Vehicle Modification Recall Program requirements of Section IV.A and Appendix A;
- b. The Vehicle Recall and Emissions Modification Program requirements of Section IV.B and Appendices A & B;
- c. The ZEV Investment Commitment requirements of Section IV.C and Appendix C; and
- d. The Mitigation of Excess Emissions and Mitigation Trust requirements of Section IV.D and Appendix D, as may be modified by the Trustee to the Mitigation Trust and approved by the MDL Court.<sup>6</sup>

20. Volkswagen and Porsche, as applicable, shall, consistent with the terms and definitions set forth in U.S. Second and Third Partial Consent Decrees, and as approved by the MDL Court:

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<sup>6</sup> As set forth in the U.S. First Partial Consent Decree, Section IV.D and Appendix D required Volkswagen to make \$2,700,000,000 in Mitigation Trust Payments.

- a. Implement the Buyback, Lease Termination, and Vehicle Modification, and Emissions Compliant Recall Program and Vehicle Recall and Emissions Modification Program for 3.0 Liter Vehicles set forth in Section IV and Appendices A and B of the U.S. Second Partial Consent Decree;
- b. Comply with the obligation to deposit \$225,000,000<sup>7</sup> in Mitigation Trust Payments into the Trust Account to be used to fund Eligible Mitigation Actions, as set forth in paragraph 17(a) of Section IV of the U.S. Second Partial Consent Decree; and

Comply with the injunctive relief provisions set forth in Section V (Volkswagen) and Section VI (Porsche) of the U.S. Third Partial Consent Decree.

## **VII. REPORTING AND NOTICES**

21. Volkswagen shall produce to the State:
  - a. any status reports provided to the EPA, CARB and the CA AG under Paragraph 7.4 of Appendix A to the U.S. First Partial Consent Decree;
  - b. any status reports to be provided by Volkswagen to the EPA, CARB and the CA AG under Paragraph 11.3 of Appendix A to the U.S. Second Partial Consent Decree;
  - c. any consumer name and address information to be provided by Volkswagen to the Notice Administrator under the 3.0 Liter Class Action Settlement. To the extent that it has not already done so, Volkswagen will provide this information to the State promptly upon entry of this Consent

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<sup>7</sup> Such payment under the U.S. Second Partial Consent Decree is in addition to the \$2,700,000,000 payment required under the U.S. First Partial Consent Decree.

Judgment. The State will take all reasonable efforts to protect data consumers provide for any purpose related to this Consent Judgment or the settlement agreements referenced herein.

22. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Consent Judgment shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

**For the State:**

Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

Megan O'Toole  
Associate General Counsel  
Department of Environmental Conservation  
Office of General Counsel  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901

**For Volkswagen:**

As to Volkswagen AG and Audi AG:

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

As to Volkswagen Group of America, Inc. and  
Volkswagen Group of America Chattanooga  
Operations LLC

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

**For Porsche:**

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

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

As to Porsche Cars North America, Inc.:

1 Porsche Dr.  
Atlanta, GA 30354  
Attention: Secretary  
With copy by email to [offsecy@porsche.us](mailto:offsecy@porsche.us)



As to one or more of the Volkswagen parties:

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

As to one or more of the Porsche parties:

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

### VIII. RELEASE

23. Subject to paragraph 24, below, in consideration of the admissions in Section IV, the monetary and non-monetary relief described in Section V, certain of the undertakings to which Volkswagen and/or Porsche have agreed in the U.S. First, Second, and Third Partial Consent Decrees, the 3.0 Liter Class Action Settlement, and the FTC's Second Partial Stipulated Order, to the extent approved by the MDL Court, as set forth in Section VI and upon Volkswagen's payment of the amount contemplated in paragraph 10, the State:

- a. releases Volkswagen, Porsche, their affiliates and any of Volkswagen's, Porsche's or their affiliates' former, present or future owners, shareholders, directors, officers, employees, attorneys, parent companies, subsidiaries, predecessors, successors, dealers, agents, assigns and representatives (collectively, the "Released Parties"<sup>8</sup>), from all Environmental Claims arising from or related to the Covered Conduct, including, without limitation, penalties, fines, or other monetary payments and/or injunctive relief; and

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<sup>8</sup> For avoidance of doubt, for purposes of this Judgment, Robert Bosch GmbH and Robert Bosch LLC are not Released Parties and IAV GmbH and IAV Automotive Engineering, Inc. are Released Parties.

- b. The claims released under subsection (a) above include claims that the State and the Agency brought or could have brought under Environmental Laws: (i) in the State's sovereign enforcement capacity; and (ii) as *parens patriae* on behalf of its citizens.

24. The State reserves, and this Judgment is without prejudice to, all claims, rights, and remedies against Volkswagen, Porsche, and their affiliates, and Volkswagen, Porsche, and their affiliates reserve, and this Judgment is without prejudice to, all defenses (except to the extent waived in Paragraph 6 of the Partial Settlement Agreement) with respect to all matters not expressly released in paragraph 23 above, including, without limitation:

- a. any claims arising under state tax laws;
- b. any claims for the violation of securities laws;
- c. any claims unrelated to the Covered Conduct;
- d. any claims by the State arising under its state consumer protection and unfair and deceptive acts and practices laws, rules and/or regulations; and
- e. any action to enforce this Judgment and subsequent, related orders or judgments.

25. All claims raised in Counts 1-8 of the State's Complaint in this matter are released pursuant to paragraph 23, above.

#### **IX. MISCELLANEOUS**

26. The provisions of this Judgment shall be construed in accordance with the laws of the State.

27. This Judgment is made without trial or adjudication of any issue of fact or law.

28. The Parties agree that this Judgment does not enforce the laws of other countries, including the emissions laws or regulations of any jurisdiction outside the United States.

Nothing in this Judgment is intended to apply to, or affect, Defendants' obligations under the laws or regulations of any jurisdiction outside the United States. At the same time, the laws and regulations of other countries shall not affect Defendants' obligations under this Judgment.

29. Nothing in this Judgment shall limit or expand the Attorney General's right to obtain information, documents, or testimony from Volkswagen and Porsche pursuant to any state or federal law, regulation, or rule concerning the claims reserved in paragraph 24, or to evaluate Volkswagen and Porsche's compliance with the obligations set forth in this Judgment.

30. Nothing in this Judgment constitutes an agreement by the Attorney General concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws. The Judgment takes no position with regard to the tax consequences of the Judgment with regard to federal, state, local and foreign taxes.

31. Nothing in this Judgment releases any private rights of action asserted by entities or persons not releasing claims under this Judgment, nor does this Judgment limit any defense available to Volkswagen or Porsche in any such action.

32. Nothing in this Judgment shall be construed to waive any claims of sovereign immunity any party may have in any action or proceeding.

33. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment.

34. This Judgment, which constitutes a continuing obligation, is binding upon the State, the Agency, Defendants, and any of Defendants' respective successors, assigns, or other entities or persons otherwise bound by law.

35. Aside from any action stemming from compliance with this Judgment and except in the event of a Court's material modification of this Judgment, the Parties waive all rights of appeal or to re-argue or re-hear any judicial proceedings upon this Judgment, any right they may possess to a jury trial, and any and all challenges in law or equity to the entry of this Judgment. The Parties will not challenge or appeal (i) the entry of the Judgment, unless the Court materially modifies the terms of the Judgment, or (ii) the Court's jurisdiction to enter and enforce the Judgment.

36. The terms of this Consent Judgment may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Judgment, it will be effective only by written approval of the Parties and the approval of the Court.

37. Consent to this Judgment does not constitute an approval by the Attorney General of the Defendants' business acts and practices, and Defendants shall not represent this Judgment as such an approval.

38. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of the Judgment by expressing the view that the Judgment or its substance is without factual basis. Nothing in this paragraph affects Volkswagen or Porsche's right to take legal or factual positions in defense of litigation or other legal, administrative, or regulatory proceedings, including with respect to any legal or factual matter that is not admitted herein.

39. Nothing in this Judgment shall preclude any party from commencing an action to pursue any remedy or sanction that may be available to that party upon its determination that another party has failed to comply with any of the requirements of this Judgment.

40. Nothing in this Judgment shall create or give rise to a private right of action of any kind or create any right in a non-party to enforce any aspect of this Judgment or claim any legal or equitable injury for a violation of this Judgment. The exclusive right to enforce any violation or breach of this Judgment shall be with the parties to this Judgment and the Court.

41. Nothing in this Judgment shall relieve the Defendants of their obligation to comply with all federal, state or local law or regulation.

42. This Judgment effectuates and is consistent with the Partial Settlement Agreement. The Parties acknowledge that there are no documents, representations, inducements, agreements, understandings or promises that constitute any part of this Judgment other than those contained in the Partial Settlement Agreement or this Judgment. This Judgment is not intended to nullify or modify the Parties' obligations as set forth in the Partial Settlement Agreement.

43. If any portion of this Judgment is held invalid by operation of law, the remaining terms of this Judgment shall not be affected and shall remain in full force and effect.

44. This Judgment becomes effective upon entry by the Court. The court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under V.R.C.P. 54 and 58.

45. No court costs shall be taxed to any party.

46. Each of the persons who signs his/her name below affirms that he/she has the authority to execute this Judgment on behalf of the Party whose name appears next to his/her signature and that this Judgment is a binding obligation enforceable against said Party under the law of the State. The signatory from the State's Attorney General Office represents that he/she has the authority to execute this Judgment on behalf of the State and that this Judgment is a binding obligation enforceable against the State under the law of the State.

IT IS SO ORDERED. JUDGMENT is hereby entered in accordance with the foregoing.

By the Court:

*Mary Miles Teachout*

Hon. Mary Miles Teachout  
Vermont Superior Court Judge

*November 3, 2017*

Dated: September 14, 2017

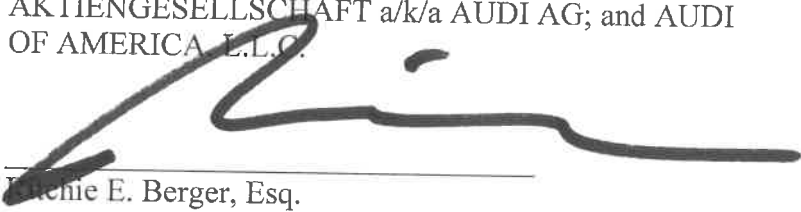
The Undersigned Parties enter into this Consent Judgment in the matter of *State of Vermont v. Volkswagen AG, et al.* (Washington Superior Court).

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ATTORNEY GENERAL

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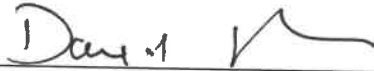
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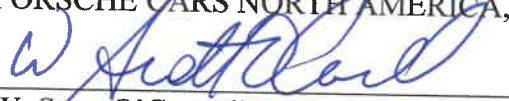


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## EXHIBIT LIST

<u>Exhibit</u>	<u>Title</u>
A	Partial Settlement Agreement
B	California Second Partial Consent Decree
C	FTC's Second Partial Stipulated Order
D	U.S. First Partial Consent Decree
E	U.S. Second Partial Consent Decree
F	U.S. Third Partial Consent Decree
G	3.0 Liter Class Action Settlement
H	Statement of Facts from Plea Agreement