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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

14 IN RE: VOLKSWAGEN 'CLEAN DIESEL'
15 MARKETING, SALES PRACTICES, AND
16 PRODUCTS LIABILITY LITIGATION

16 This document relates to:

17 *Napleton Orlando Imports, LLC et al. v.*
18 *Volkswagen Group of America, Inc. et al.,*
19 Case No. 3:16-cv-02086-CRB

MDL No. 02672-CRB (JSC)

SECOND AMENDED VOLKSWAGEN-
BRANDED FRANCHISE DEALER
AMENDED AND CONSOLIDATED
CLASS ACTION COMPLAINT

20 NAPLETON ORLANDO IMPORTS, LLC
21 d/b/a NAPLETON'S VOLKSWAGEN OF
22 ORLANDO, an Illinois limited liability company,
23 NAPLETON SANFORD IMPORTS, LLC d/b/a
24 NAPLETON'S VOLKSWAGEN OF SANFORD,
25 an Illinois limited liability company, and
26 NAPLETON AUTOMOTIVE OF URBANA,
27 LLC d/b/a NAPLETON VOLKSWAGEN OF
28 URBANA, a Florida limited liability company,
individually, and J. BERTOLET, INC. dba J.
BERTOLET VOLKSWAGEN, on behalf of itself
and all similarly situated persons and entities,

Plaintiffs,

JURY TRIAL DEMANDED

1 v.

2 VOLKSWAGEN GROUP OF AMERICA, INC., a
3 New Jersey Corporation, VW CREDIT, INC., a
4 Delaware corporation, VOLKSWAGEN AG, a
5 German corporation, ROBERT BOSCH, LLC, a
Michigan limited liability company, and ROBERT
BOSCH GmbH, a German corporation.

6 Defendants.

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10 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**
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1 Plaintiffs Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, an
2 Illinois limited liability company, Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of
3 Sanford, an Illinois limited liability company and Napleton Automotive of Urbana, LLC d/b/a
4 Napleton Volkswagen of Urbana, a Florida limited liability company (individually "Napleton VW
5 Orlando", "Napleton VW Sanford", "Napleton VW Urbana" and collectively referred to as
6 "Napleton Plaintiffs"), and J. Bertolet, Inc. dba J. Bertolet Volkswagen ("Bertolet"), a
7 Pennsylvania corporation, individually and on behalf of all others similarly situated (the "Franchise
8 Dealer Class"), allege the following:

9 I. INTRODUCTION

10 1. This case arises because Defendants defrauded Volkswagen-branded franchise
11 dealers ("Franchise Dealers" or "Dealers"), federal and state regulators, and consumers with
12 respect to the emissions levels of so-called "Clean Diesel" vehicles; and because Volkswagen and
13 Volkswagen Credit, Inc. have engaged in systematic unfair and illegal pricing practices with
14 respect to vehicle pricing and allocation schemes. Volkswagen does not sell its cars directly to
15 consumers; rather, its direct customers are Franchise Dealers. As a result, Defendants have
16 defrauded Franchise Dealers with respect to the cars they sold and held for sale, as well as the
17 value, viability, expected return from their dealerships, and suitability of their dealerships for
18 continued investment. Moreover, Defendants fraud directed at consumers has caused Franchise
19 Dealers to suffer loss of sales, loss of revenue on existing customer relationships, and loss of future
20 contractual relationships, including sales and service revenue.

21 2. As a direct and foreseeable result of Volkswagen and Bosch's unlawful emissions
22 fraud and RICO conspiracy, and Volkswagen's illegal pricing and allocation schemes, and
23 coercion to use Volkswagen Credit, Franchise Dealers have been harmed in their business in the
24 form of reduced sales, lost profits, lost trade-ins, lost service revenue, cars sitting on their lots
25 which cannot be sold, and investments in dealerships that are worth substantially less than their
26 purchase, investment, and carrying costs.

A. The Volkswagen/Bosch “Clean Diesel” Fraud and RICO Conspiracy

3. Defendants’ monumental fraud in the certification of Volkswagen’s so-called “Clean Diesel” automobiles in the U.S. and worldwide through the use of illegal “defeat devices” was certainly one of the most significant fraudulent events in the automotive industry in the last decade, and one of the most significant environmental crimes in history. As stated by Cynthia Giles, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the EPA: “Using a defeat device in cars to evade clean air standards is illegal and a threat to public health.” Yet that is exactly what Volkswagen and Bosch conspired to do in Volkswagen’s 2009-2015 Volkswagen, Audi, and Porsche Clean Diesel vehicles.¹ Volkswagen had knowing and willing partners in Defendants Robert Bosch GmbH (“Bosch GmbH”) and Robert Bosch LLC (“Bosch LLC”) which developed and provided the hardware and software that enables the defeat device at issue. Everything about Volkswagen and Bosch’s fraudulent scheme was coolly calculated, as defendant Michael Horn, the newly departed CEO of VW America, confessed in the fall of 2015 at Congressional hearings: “[the defeat device] was installed for this purpose, yes.”²

4. The United States Government, through the Environmental Protection Agency, as well as individual state regulators, have passed and enforced laws designed to protect citizens from pollution and in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these laws and must adhere to state and EPA rules and regulations. Following revelations of Volkswagen’s widespread use of defeat devices (made possible by Bosch hardware and software) to defraud the EPA and state regulators, hundreds of class action lawsuits were filed on behalf of consumers who purchased the affected vehicles, and independent dealers who owned the affected vehicles, but were unable to sell them because of Volkswagen’s fraud. Stop sale orders were placed on all vehicles with defect devices that Franchise Dealers had paid for and were carrying for sale and lease. The class allegations in this case arise because the Volkswagen/Bosch emissions fraud caused great harm to Franchise Dealers

¹ See Sept. 18, 2015 EPA News Release; Nov. 2, 2015 EPA News Release.

² See Bill Chappell, *‘It Was Installed For This Purpose,’ VW’s U.S. CEO Tells Congress About Defeat Device*, NPR (Oct. 8, 2015), available at <http://www.npr.org/sections/thetwo-way/2015/10/08/446861855/volkswagen-us-ceo-faces-questions-on-capitol-hill>.

like Plaintiffs, who are the direct customers of Volkswagen, and who in turn rely on the defrauded consumers to be their customers and the lifeblood of their business. Franchise Dealers' profits have been erased and dealerships have plummeted in value due to the inability to sell tens of thousands of affected vehicles and service over 500,000 such vehicles. Moreover, Franchise Dealers are suffering an extraordinary decline in brand value (and thus, sales, profits and service revenue) for all Volkswagen vehicles as a result of Volkswagen/Bosch's purposeful fraud and deceit.

5. Volkswagen promised low-emission environmentally friendly vehicles, with high fuel economy and exceptional performance. And Bosch LLC extensively lobbied regulators and promoted its diesel technology as clean and powerful. In response to Volkswagen's aggressive advertising of "Clean" diesel, consumers bought them in record numbers. Volkswagen has sold more diesel cars in the United States than every other brand combined. From 2009 to 2015, Volkswagen sold or leased through its Franchise Dealers in the United States nearly 580,000 dirty diesels that Volkswagen and Bosch's defeat device disguised as clean (the "Affected Vehicles"). The success of the Volkswagen brand allowed Volkswagen to require substantial facility investments from Dealers and caused Dealers to pay substantial premiums for franchise rights and inventory. Bosch LLC and its parent Bosch GmbH profited alongside Volkswagen from the fraud. Every cheating car contained a Bosch EDC 17 controller and software, which directly translated into profits for the Bosch companies.

6. Affected Vehicles include the following:

2.0 Liter Diesel Models and Years	
Volkswagen Jetta	2009-2015
Volkswagen Jetta SportWagen	2009-2014
Volkswagen Beetle	2012-2015
Volkswagen Beetle Convertible	2012-2015
Audi A3	2010-2015
Volkswagen Golf	2010-2015
Volkswagen Golf SportWagen	2015
Volkswagen Passat	2012-2015

3.0 Liter Diesel Models and Years	
Volkswagen Touareg	2009-2016
Porsche Cayenne	2013-2016
Audi A6 Quattro	2014-2016
Audi A7 Quattro	2014-2016
Audi A8	2014-2016
Audi A8L	2014-2016
Audi Q5	2014-2016
Audi Q7	2009-2016

7. Volkswagen's apparent success in creating the niche Clean Diesel market and exploiting it led to a brand resurgence that significantly enhanced the value of the brand and, therefore, the value of – and cost to purchase and maintain – franchise dealerships. Now, however, "there are half a million cars running an emissions setup that never should've left the factory."³ Each of these Affected Vehicles is illegal and never should have been sold because Volkswagen's fraudulently obtained EPA certificates of conformity were invalid. Since the confirmation of Volkswagen and Bosch's scheme, the U.S. DOJ and at least 45 state attorneys general have announced they are investigating Volkswagen's misconduct; one Volkswagen engineer has already pleaded guilty to a conspiracy to defraud, while several others have been indicted; Volkswagen itself has pleaded guilty to engaging in a conspiracy to defraud U.S. regulators; DOJ and many states are simultaneously investigating Bosch LLC and Bosch GmbH. The FTC has separately sued Volkswagen for fraudulent advertising; and other criminal and civil investigations are underway across the globe.

8. As detailed in the EPA's Notice of Violation ("NOV"), sophisticated software in the Affected Vehicles developed jointly by Volkswagen and Bosch GmbH detects when the vehicle is undergoing emissions testing and engages full emissions controls during the test. But otherwise, at all other times that the vehicle is running, the emissions controls are suppressed. Thus, the Affected Vehicles meet emissions standards in the laboratory or testing station, but during normal operation emit oxides of nitrogen (NOx) at up to 40 times the standard allowed under federal and

³ <http://www.popularmechanics.com/cars/a17430/ezra-dyer-volkswagen-diesel-controversy/> (last visited on Sept. 28, 2015).

1 state laws and regulations. The software constituting the defeat device was produced by
 2 Defendants Bosch GmbH and Bosch LLC and contained in an Electronic Diesel Control Module
 3 (“EDC”) that Bosch GmbH developed and sold to Volkswagen. It is a defeat device as defined by
 4 the Clean Air Act.

5 9. By manufacturing and selling cars with defeat devices that allowed for higher levels
 6 of emissions than what was certified to the EPA, and higher levels than state and federal
 7 regulations allow, Volkswagen violated the Clean Air Act and state environmental regulations,
 8 breached franchisee protection laws, breached its VW-branded franchise dealer agreements,
 9 defrauded its VW-branded franchise dealers, engaged in a criminal racketeering enterprise and
 10 engaged in unfair competition under state and federal law. Volkswagen’s knowing and willing
 11 partners in its fraud, Bosch LLC and Bosch GmbH, provided the critical hardware and developed
 12 the software that enabled the cars to appear to be emissions compliant, when they were really gross
 13 polluters. Bosch LLC joined Volkswagen in touting “clean diesel” technology and defrauding
 14 regulators.

15 10. Substantial diminution in the value of Affected Vehicles has already been reported.
 16 On average, the resale value of Volkswagen diesel cars fell 13% in the first two weeks following
 17 the disclosure of the VW fraud.⁴ And in the months since then, with a broad no-sale order and no
 18 viable fix on the horizon, values have plummeted even more. In addition, former Volkswagen
 19 Group of America CEO Michael Horn admitted in Congressional testimony on October 8, 2015,
 20 that at least 415,000 of the Affected Vehicles will require software *and hardware* changes and any
 21 fix for these vehicles could take years to implement and vehicle performance may be implicated.⁵
 22 The precipitous drop in the value of Affected Vehicles, the inability of VW-branded franchise
 23 dealers to sell or service Affected Vehicles, and the tremendous diminution in the Volkswagen
 24 brand value as a result of lost sales and service revenue and lost contractual relationships with
 25

26 ⁴ See [http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-](http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-percent#.kvRJEo96L)
 27 [percent#.kvRJEo96L](http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-percent#.kvRJEo96L).

28 ⁵ See [http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-](http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells)
[need-software-and-hardware-fixes-horn-tells](http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells).

1 present and future customers has caused direct and quantifiable harm to Plaintiffs and the Franchise
2 Dealer Class they seek to represent.

3 11. What makes Volkswagen and Bosch's fraud on Franchise Dealers particularly
4 egregious is that Volkswagen knew from at least early 2014 that its fraud was unraveling, yet it
5 kept dealers in the dark until the very day of the Notice of Violation. For example, Plaintiff
6 Napleton Automotive of Urbana was purchased just three days before the September 18, 2015
7 NOV, yet Volkswagen withheld the truth and pushed the sale through, even though it knew
8 Plaintiff Napleton was purchasing a dealership that would imminently plummet in value, would
9 never achieve forecast sales and service revenue, and would never provide the expected return on
10 the investment. Volkswagen approved multiple dealership purchase and sale agreements that it
11 knew were based upon valuation models that were supported only by its ongoing fraud.

12 **B. Volkswagen's Unfair Pricing and Allocation Schemes**

13 12. Volkswagen has also engaged in policies with respect to its franchise dealers that
14 are in direct conflict with federal law designed to protect car dealers from unfair practices by
15 vehicle manufacturers, as well as various franchisee protection laws of Florida and Illinois, causing
16 direct and measurable harm to the Napleton Plaintiffs. Napleton Plaintiffs seek damages and
17 injunctive relief under applicable state and federal law.

18 **II. JURISDICTION AND VENUE**

19 13. The *Napleton* action was originally filed in the Northern District of Illinois and
20 transferred to this Court by the MDL. Plaintiff Bertolet, Inc., filed its claims directly in this Court.

21 14. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331,
22 because Plaintiffs' claims arise under the RICO Act, 18 U.S.C. § 1962. The Court also has
23 diversity jurisdiction because Plaintiffs and Defendants reside in different states. The Court has
24 supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367. This Court also
25 has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a)(1), as modified by the
26 Class Action Fairness Act of 2005, because Plaintiffs and Volkswagen and Bosch are citizens of
27 different states; there are more than 100 members of the Franchise Dealer Class (as defined
28 herein); the aggregate amount in controversy exceeds \$5 million, exclusive of attorneys' fees,

1 interest, and costs; and Franchise Dealer Class members reside across the United States. The
 2 citizenship of each party is described further below in the “Parties” Section.

3 15. This Court has personal jurisdiction over each Defendant pursuant to 18 U.S.C.
 4 §§ 1965(b) and (d), and/or Cal. Code Civ. P. § 410.10. This Court has personal jurisdiction over
 5 Defendants because they have minimum contacts with the United States, this judicial district and
 6 this State, and intentionally availed themselves of the laws of the United States and this state by
 7 conducting a substantial amount of business throughout the state, including the design,
 8 manufacture, distribution, testing, sale, lease, and/or warranty of Volkswagen vehicles in this State
 9 and District. At least in part because of Defendants’ misconduct as alleged in this lawsuit,
 10 Affected Vehicles ended up on this state’s roads and dozens of franchise dealerships.

11 16. Venue is proper in this Court under 28 U.S.C. § 1391, because: (i) Defendants
 12 conduct substantial business in this District and have intentionally availed themselves of the laws
 13 and markets of the United States and this District; and/or (ii) many of the acts and transactions
 14 giving rise to this action occurred in this District, including, *inter alia*, Defendants’ promotion,
 15 marketing, distribution and sale of the Affected Vehicles to Plaintiffs and other Franchise Dealer
 16 Class members in this District. Defendants sell a substantial number of automobiles in this
 17 District, have dealerships located throughout this District, and the misconduct occurred in part in
 18 this District. Venue is also proper under 18 U.S.C. § 1965(a), because Defendants are subject to
 19 personal jurisdiction in this District as alleged in the preceding paragraph, and Defendants have
 20 agents located in this District.

21 III. PARTIES

22 A. J. Bertolet, Inc.

23 17. Plaintiff J. BERTOLET, INC. is a corporation existing under the laws of the State of
 24 Pennsylvania and is authorized to do business in the State of Pennsylvania.

25 18. Plaintiff’s primary place of business is J. Bertolet Volkswagen, located in
 26 Orwigsburg, Pennsylvania at 555 Route 61, Orwigsburg, PA 17961. Plaintiff Bertolet VW is a
 27 “motor vehicle dealer” as defined in 37 PA Code 301, *et seq.*
 28

1 19. Bertolet VW began operating a Volkswagen franchise in Orwigsburg, Pennsylvania
2 in 1964. The dealership is located at 555 Route 61, Orwigsburg, Pennsylvania. The dealership
3 was operated by Jack Bertolet, Sr. for 34 years. Jack Bertolet, Jr. grew up in the dealership starting
4 as a lot boy at the age of 15. Jack Bertolet, Jr. is now and has been the dealer operator of the
5 J. Bertolet Volkswagen store since 1998, although his father, Jack Bertolet, Sr., at the age of 87,
6 continues to come into the dealership most every day to assist customers. In addition to Jack Jr.
7 and Jack Sr., Jack Jr.'s brother, Blayne, and son, John, both work at the dealership as a
8 Shareholder/Vice President and General Manager, respectively. The Volkswagen dealership is the
9 only new vehicle franchise ever operated by the Bertolet family.

10 20. Bertolet VW serves the Reading, Allentown and Harrisburg areas of Pennsylvania.
11 Bertolet VW, like most new franchised motor vehicle dealers, is the community's primary source
12 for charitable giving and sponsorships for everything from the local hospital to the little league
13 baseball team. The Volkswagen brand in this part of Pennsylvania is synonymous with the
14 Bertolet family name. The Bertolet family has invested three generations into the Volkswagen
15 franchise.

16 21. Bertolet buys its inventory of new cars, parts, and service equipment directly from
17 Volkswagen. It also buys used Volkswagen cars from its customers, often when such customers
18 are buying new Volkswagens, then sells the used Volkswagen cars. The stop sale order that
19 Volkswagen issued immediately following the September 18, 2015 and November 2, 2015 NOV's
20 prevented Bertolet from selling cars it was holding for sale on its lots. The diesel emissions
21 scandal also caused a substantial reduction in sales of non-diesel vehicles as consumers' views of
22 the Volkswagen brand became sharply negative. In addition, Bertolet lost a substantial portion of
23 its service revenue when its customers stopped having their diesel cars serviced, expecting an
24 eventual buyback, or repairs to be provided directly by Volkswagen.

25 **B. Napleton Dealership Group**

26 22. Plaintiffs NAPLETON VW ORLANDO and NAPLETON VW SANFORD are
27 limited liability companies existing under the laws of the State of Illinois and are authorized to do
28

1 business in the State of Florida. NAPLETON VW URBANA is an Illinois limited liability
2 company authorized to do and doing business in the State of Illinois.

3 23. Plaintiffs NAPLETON VW ORLANDO and NAPLETON VW SANFORD are
4 “motor vehicle dealers” as defined in section 320.60(11)(a), Florida Statutes. Plaintiffs’ primary
5 places of business are 12700 E. Colonial Drive, Orlando, FL 32826 and 4175 S. Orlando Drive,
6 Sanford, FL 32773.

7 24. Plaintiff NAPLETON VW URBANA is a “motor vehicle dealer” as defined in 815
8 ILCS 710/4, *et seq.* whose primary place of business is 1111 O’Brien Drive, Urbana, IL 61802.

9 25. The Napleton Family has been involved in the automobile dealership business in the
10 Chicago area for three generations. Edward W. Napleton opened his first dealership in 1931 on
11 Chicago’s South Side. Along with his son, Francis Napleton, they grew from a single Buick
12 service station to several franchises in and around Chicago. Five of Francis Napleton’s eight
13 children have worked their entire lives in the automobile industry. Edward F. (Ed) Napleton began
14 his career sweeping floors at a dealership owned by his father, Francis, and grandfather, Edward.
15 He worked up the ranks, serving as a technician, in sales, and in finance, eventually becoming a
16 general manager. At 23, Ed Napleton became the youngest car dealer in the United States when he
17 was awarded a Pontiac dealership in Blue Island, Illinois.

18 26. Today, the Napleton family operates more than 50 dealerships in five states. Ed’s
19 business has grown to include 56 franchises in 30 different locations in five states. His business
20 employs over 1,800 people in Illinois, Georgia, Florida, Pennsylvania, and Missouri.

21 27. Ed Napleton believes that with his sizable presence in the marketplace comes a
22 responsibility to stand up for dealerships large and small. Individual dealers and small dealer
23 groups are often at the mercy of the immense vehicle manufacturers with respect to critical pricing
24 terms and vehicle allocations. These smaller firms are often unwilling for fear of reprisal, or
25 unable financially, to hold vehicle manufacturers to the legally required standards of fair play and
26 non-discrimination. Moreover, when foul play is detected, these smaller firms can be placed under
27 extreme duress to play along, or risk retaliation from the automaker that could end their very
28 existence in the market place.

28. On September 15, 2015, Ed purchased his third VW dealership in Urbana, Illinois. He did so based on VW's history, its status as one of the world's largest car manufacturers, and its promise of continuing success of its flagship clean diesel cars. Just three days later, the EPA publicized VW's admission that it had employed a "defeat device" on over 11 million vehicles worldwide. This revelation stunned the world and has had severe repercussions for Plaintiffs and all VW franchise dealers in the United States.

29. All three Napleton Dealerships buy their inventory of new cars, parts, and service equipment directly from Volkswagen. They also buys used Volkswagen cars from their customers, often when such customers are buying new Volkswagens, then sells the used Volkswagen cars. The stop sale order that Volkswagen issued immediately following the September 18, 2015 and November 2, 2015 NOVs prevented the Napleton Dealerships from selling cars they were holding for sale on their lots. The diesel emissions scandal also caused a substantial reduction in sales of non-diesel vehicles as consumers' views of the Volkswagen brand became sharply negative. In addition, the Napleton Dealerships lost a substantial portion of their service revenue when their customers stopped having their diesel cars serviced, expecting an eventual buyback, or repairs to be provided directly by Volkswagen.

C. Defendants

1. Volkswagen Group of America

30. Volkswagen Group of America, Inc. ("VGoA") is a corporation doing business in all 50 states (including the District of Columbia) and is organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Dr., Herndon, Virginia 20171. VGoA is a wholly-owned subsidiary of Volkswagen AG, and it engages in business, including the advertising, marketing and sale of Volkswagen automobiles to the Franchise Dealer Class members, in all 50 states. In 2014 alone, VGoA sold 552,729 vehicles from its network of approximately 650 independently-owned Franchise Dealer locations in all 50 states, including 95,240 TDI[®] "clean" diesel vehicles.

1 **2. Volkswagen AG**

2 31. Volkswagen AG (“VWAG”) is a German corporation with its principal place of
3 business in Wolfsburg, Germany. VWAG is one of the largest automobile manufacturers in the
4 world, and is in the business of designing, developing, manufacturing, and selling automobiles.
5 VWAG is the parent corporation of VGoA, Audi AG, and Porsche AG. According to VWAG, it
6 sold 10.14 million cars worldwide in 2014 – including 6.12 million VW-branded cars, 1.74 million
7 Audi-Branded cars, and 189,849 Porsche-branded cars. Combined with other brands, VWAG
8 boasts a 12.9% share of the worldwide passenger car market. VWAG’s sales revenue in 2014
9 totaled €202 billion (approximately \$221 billion) and sales revenue in 2013 totaled €197 billion
10 (approximately \$215 billion). At €12.7 billion (approximately \$13.9 billion), VWAG generated its
11 highest ever operating profit in fiscal year 2014, beating the previous record set in 2013 by €1.0
12 billion (approximately \$1.1 billion).

13 32. VWAG, with the assistance of Bosch GmbH, engineered, designed, developed,
14 manufactured, and installed the defeat device software on the Affected Vehicles equipped with the
15 2.0-liter and 3.0 liter TDI[®] and exported these vehicles with the knowledge and understanding that
16 they would be sold throughout the United States at Franchise Dealers, including Plaintiffs. VWAG
17 also developed, reviewed, and approved the marketing and advertising campaigns designed to drive
18 sales of the Affected Vehicles.

19 33. VGoA and VWAG were and are at all times relevant to the allegations in this
20 Complaint working in concert under the common objective to engage in the emissions fraud
21 scheme described in this Complaint. Each of VGoA and VWAG were and are the agents of each
22 other and have acted and act for their common goals and profit. Therefore, all acts and knowledge
23 ascribed to one of VGoA or VWAG are properly imputed to the other. VGoA and VWAG are
24 referred to collectively herein as Volkswagen or “VW.”

25 34. At all times relevant to this action, Volkswagen manufactured, distributed, sold,
26 leased, and warranted the Affected Vehicles under the Volkswagen, Audi, and Porsche brand
27 names throughout the United States. Volkswagen and/or its parents, affiliates and agents designed,
28 manufactured, and installed the Clean Diesel engine systems in the Affected Vehicles, which

1 included the “defeat device,” manufactured by Bosch GmbH and programmed by Bosch GmbH
2 and Volkswagen. Volkswagen and/or its parents, affiliates, and agents developed and disseminated
3 the owner’s manuals and warranty booklets, advertisements, and other promotional materials
4 relating to the Affected Vehicles.

5 **3. Volkswagen Credit, Inc.**

6 35. Defendant Volkswagen Credit, Inc. (“VCI”) is a corporate entity organized and
7 existing under the laws of the State of Delaware. VCI is a “Sales finance company” as defined in
8 Florida Statutes, section 520.31 and a motor vehicle financing affiliate as defined in 815 ILCS
9 710/3.1, and is an affiliate of VGoA and engaged in the business of purchasing retail installment
10 contracts from one or more retail sellers throughout the United States.

11 **4. Bosch Defendants**

12 36. From at least 2005 to 2015, Bosch GmbH, Bosch LLC and CEO Volkmar Denner
13 (together, “Bosch”) were knowing and active participants in the creation, development, marketing,
14 and sale of illegal defeat devices specifically designed to evade U.S. emissions requirements in
15 vehicles sold solely in the United States. Bosch GmbH participated in the development of the
16 defeat device, and Bosch GmbH and Bosch LLC participated in the scheme to prevent U.S.
17 regulators from uncovering the device’s true functionality. Moreover, Bosch’s participation was
18 not limited to Bosch GmbH’s primary role in engineering the defeat device (in a collaboration with
19 VW described as unusually close). Bosch LLC marketed “Clean Diesel” in the United States and
20 lobbied U.S. regulators to approve Affected Vehicles, a highly unusual activity refuting Bosch
21 LLC and Bosch GmbH’s claims to have been a mere supplier in the scandal. These lobbying
22 efforts, taken together with evidence of Bosch LLC’s and Bosch GmbH’s actual knowledge that
23 the “akustikfunction” operated as a defeat device, and participation in concealing the true
24 functionality of the device from U.S. regulators, can be interpreted only one way under U.S. law:
25 Bosch LLC and Bosch GmbH were both knowing and active participants in a massive, decade-long
26 conspiracy with VW to defraud U.S. consumers, regulators and Franchise Dealers.

1 **5. Robert Bosch GmbH**

2 37. Robert Bosch GmbH (“Bosch GmbH”) is a German multinational engineering and
3 electronics company headquartered in Gerlingen, Germany. Robert Bosch GmbH is the parent
4 company of Robert Bosch LLC. Robert Bosch GmbH, directly and/or through its North-American
5 subsidiary Robert Bosch LLC, at all material times, designed, manufactured, and supplied elements
6 of the defeat device to Volkswagen for use in the Affected Vehicles. Bosch GmbH is subject to the
7 personal jurisdiction of this Court because it has availed itself of the laws of the United States
8 through its management and control over Bosch, LLC, and over the design, development,
9 manufacture, distribution, testing, and sale of hundreds of thousands of the defeat devices installed
10 in the Affected Vehicles sold or leased in the U.S.

11 **6. Robert Bosch LLC**

12 38. Robert Bosch LLC (“Bosch LLC”) is a Delaware limited liability company with its
13 principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331.
14 Robert Bosch LLC is a wholly-owned subsidiary of Robert Bosch GmbH. Robert Bosch LLC,
15 directly and/or in conjunction with its parent Robert Bosch GmbH, at all material times, designed,
16 manufactured, and supplied elements of the defeat device to Volkswagen for use in the Affected
17 Vehicles.

18 39. Both Bosch GmbH and Bosch LLC (together with Volkmar Denner, “Bosch”) operate under the umbrella of the Bosch Group, which encompasses some 340 subsidiaries and
19 companies. The Bosch Group is divided into four business sectors: Mobility Solutions (formerly
20 Automotive Technology), Industrial Technology, Consumer Goods, and Energy and Building
21 Technology. The Mobility Solutions sector, which supplies parts to the automotive industry, and
22 its Diesel Systems division, which develops, manufactures and applies diesel systems, are
23 particularly at issue here and include the relevant individuals at both Bosch GmbH and Bosch LLC.
24 Bosch’s sectors and divisions are grouped not by location, but by subject matter. Mobility
25 Solutions includes the individuals involved in the RICO enterprise and conspiracy at both Bosch
26 GmbH and Bosch LLC. Some individuals worked at both Bosch LLC and Bosch GmbH during
27 the course of the RICO conspiracy. The acts of individuals described in this Complaint have been

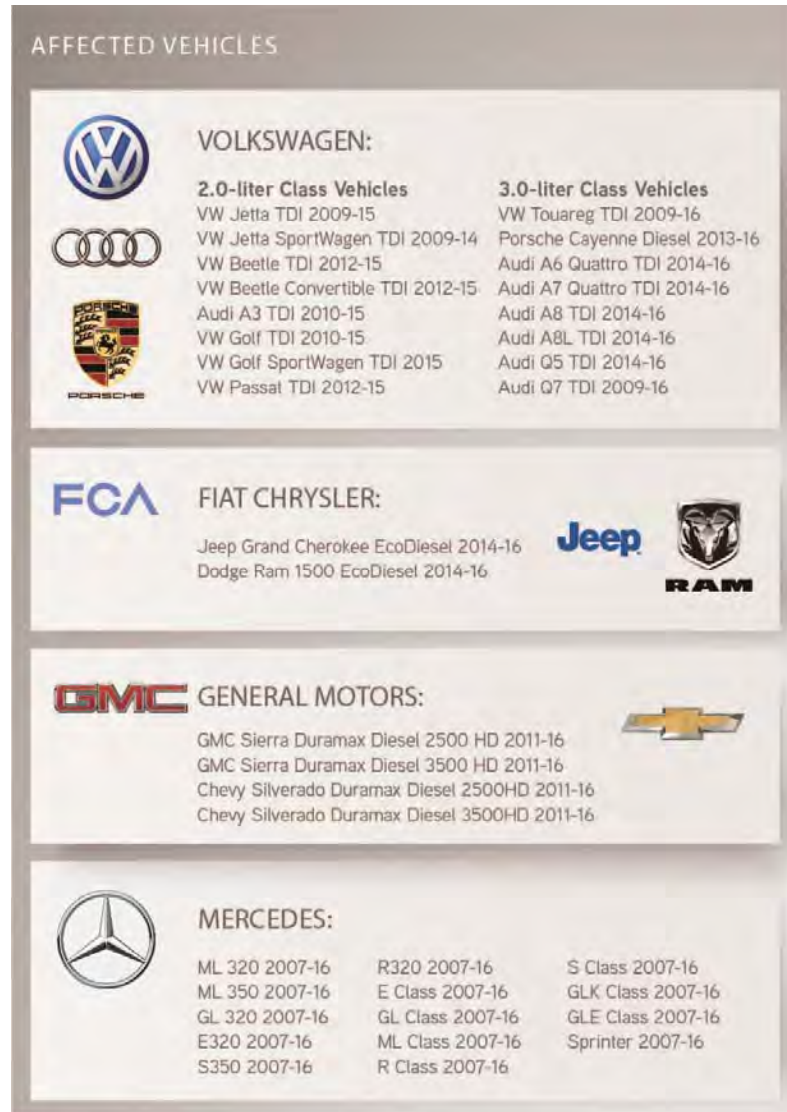
1 associated with Bosch GmbH and Bosch LLC whenever possible. Regardless of whether an
2 individual works for Bosch LLC in the U.S. or Bosch GmbH in Germany, the individuals often
3 hold themselves out as working for “Bosch”. This collective identity is captured by Bosch’s
4 mission statement: “We are Bosch,” a unifying principle that links each entity and person within
5 the Bosch Group.⁶ Bosch documents and press releases often refer to the author as “Bosch”
6 without identifying any particular Bosch entity. Thus, the identity of which Bosch defendant was
7 the author of such documents and press releases cannot be ascertained with certainty until Bosch
8 GmbH and Bosch LLC respond to discovery requests in this matter.⁷

9 40. From at least 2005 to 2015, Robert Bosch GmbH, Robert Bosch LLC, and currently
10 unnamed Bosch employees were knowing and active participants in the creation, development,
11 marketing, and sale of illegal defeat devices specifically designed to evade U.S. emissions
12 requirements in vehicles sold solely in the United States and in vehicles in Europe, but not just the
13 vehicles in this case. These vehicles include the Dodge Ram 1500 EcoDiesel, Jeep Grand Cherokee
14 EcoDiesel, the GM Silverado and Sierra, and Mercedes BlueTEC vehicles, as well as models made
15 by Volkswagen, Audi, and Porsche.

16 41. The following is a list of all diesel models in the United States with hardware and
17 software supplied by Bosch GmbH whose emissions exceed standards and are beyond what a
18 reasonable consumer would expect from cars marketed as “clean” or “low emission”:
19
20
21
22
23
24

25 ⁶ Bosch 2014 Annual Report: “Experiencing quality of life,” available at
26 http://www.bosch.com/en/com/bosch_group/bosch_figures/publications/archive/archive-cg12.php.

27 ⁷ Though Requests for Production, Interrogatories and Requests for Admission were served by
28 the PSC on Bosch Defendants in or around March of 2016, and Bosch responded to such requests
with objections and promises to produce in May 2016, to date, Bosch has made no material
production of documents in response to these requests.



42. German authorities are now investigating Bosch GmbH and authorities are focusing on certain Bosch employees:

Three Bosch Managers Targeted as German Diesel Probe Expands

A German probe into whether Robert Bosch GmbH helped Volkswagen AG cheat on emissions tests intensified as Stuttgart prosecutors said they were focusing on three managers at the car-parts maker.

While Stuttgart prosecutors didn't identify the employees, the step indicates that investigators may have found specific evidence in the probe. Previously, prosecutors have said they were looking into the role "unidentified" Bosch employees may have played in providing software that was used to cheat on emission tests.

1 “We have opened a probe against all three on suspicions they aided
2 fraud in connection to possible manipulation in emissions treatments
3 in VW cars,” Jan Holzner, a spokesman for the agency, said in an
4 emailed statement. “All of them are managers with the highest in
5 middle management.”

6 Bosch, which is also being investigated by the U.S. Department of
7 Justice, has been caught up in the VW diesel scandal that emerged in
8 2015 over allegations its employees may have helped rig software
9 that helped the carmaker to cheat emission tests. Earlier this year,
10 Stuttgart prosecutors opened a similar probe into Bosch’s role in
11 connection with emission tests of Daimler cars.

12 A spokesman for Bosch said that while he can’t comment on
13 individual employees, the company “takes the overall allegations in
14 diesel cases seriously and has been cooperating fully from the
15 beginning of the probes.”

16 The Stuttgart probe is running parallel to the central criminal
17 investigation in Braunschweig, closer to VW’s headquarters. That
18 investigation is targeting nearly 40 people on fraud allegations
19 related to diesel-emission software, including former VW Chief
20 Executive Officer Martin Winterkorn.

21 Prosecutors’ interest extends to multiple units in the VW family --
22 including luxury brands Audi and Porsche. In addition, Stuttgart
23 prosecutors are also reviewing a third case related to Bosch’s
24 cooperation with Fiat Chrysler Automobiles NV on software for
25 diesel engines.^[8]

26 **D. Non-Defendant Employees of Defendants and Entities Who Participated in the 27 Alleged Criminal Enterprise and Conspiracy**

28 **1. Martin Winterkorn**

43. Martin Winterkorn is a resident of Germany. Winterkorn was CEO of VWAG until
he resigned on September 23, 2015, in the wake of the diesel emissions scandal. Notably,
Winterkorn was widely regarded as a detail-oriented, micromanaging CEO, who retained control
over engineering details that many other CEOs would relinquish fully to deputies. Winterkorn is
being investigated by the German government for allegations of fraud. Winterkorn reportedly
hand-picked the engineers who designed the defeat devices. Winterkorn received compensation

⁸ <https://www.bloomberg.com/news/articles/2017-06-29/three-bosch-managers-targeted-as-german-diesel-probe-expands>.

1 from the illegal scheme and course of conduct based on the revenues and profits from the Affected
2 Vehicles and Volkswagen's increased market share. Winterkorn approved, authorized, directed,
3 ratified, and/or participated in the acts complained of herein. Winterkorn has availed himself of the
4 laws of the United States through his management and control over VW America as well as the
5 manufacture, distribution, testing, and sale of hundreds of thousands of Affected Vehicles imported
6 and sold across the United States. Furthermore, Winterkorn has consistently travelled to the U.S.
7 to attend and make presentations at various car shows across the country in order to promote the
8 sale of the Affected Vehicles. German press has reported that Winterkorn is the subject of criminal
9 investigations in Germany.

10 **2. Matthias Müller**

11 44. Matthias Müller is a resident of Germany. Müller is a 40-year veteran of
12 Volkswagen, where he began as an apprentice toolmaker at Audi AG in 1977. Müller was
13 appointed coordinator of the Audi model lines in 2002, after Winterkorn took over the management
14 of Audi AG. In 2007, when Winterkorn became CEO of VWAG, Winterkorn appointed Müller as
15 Head of Product Management across all Volkswagen brands. In 2010, Müller was appointed CEO
16 of Porsche AG. In 2014, Müller became the Chief Information Officer of Porsche Automobil
17 Holding SE. Müller became the CEO of VWAG on September 25, 2015, upon Winterkorn's
18 resignation amidst the emissions scandal. Müller profited millions of dollars from the illegal
19 scheme and course of conduct based on the revenues and profits from the Affected Vehicles and
20 Volkswagen's increased market share. Müller approved, authorized, directed, ratified, and/or
21 participated in the acts complained of herein. Müller has availed himself of the laws of the United
22 States through his management and control of the American Volkswagen Defendants, as well as
23 the design, manufacture, distribution, testing, and/or sale of hundreds of thousands of Affected
24 Vehicles imported and sold across the United States. Furthermore, Müller has consistently
25 travelled to the U.S. to attend and make presentations at various car shows across the country in
26 order to promote the sale of the Affected Vehicles.

1 **3. Michael Horn**

2 45. Michael Horn is a resident of Virginia. Until mid-2016, Horn was President and
3 CEO of VGoA. Horn received compensation from the illegal scheme and course of conduct based
4 on the revenues and profits from the Affected Vehicles and Volkswagen's increased market share.
5 Horn approved, authorized, directed, ratified, and/or participated in the acts complained of herein.
6 Horn has admitted that he was aware of the vehicles' emissions non-compliance since at least
7 2014.

8 **4. Rupert Stadler**

9 46. Rupert Stadler is a resident of Germany. Stadler became the CEO of Audi AG on
10 January 1, 2010. Stadler joined Audi AG in 1990 and has held various roles at Audi and VW,
11 including the Head of the Board of Management's Office for Volkswagen and the Head of Group
12 Product Planning. In 2003, Stadler became an Audi AG Board Member and was later responsible
13 for the Finance and Organization Division. Stadler joined the Board of Management of
14 Volkswagen when he was appointed to his current role as CEO of Audi AG. Stadler received
15 millions of dollars from the illegal scheme and course of conduct based on the revenues and profits
16 from the Affected Vehicles and Volkswagen's increased market share. Stadler approved,
17 authorized, directed, ratified, and/or participated in the acts complained of herein. Stadler has
18 availed himself of the laws of the United States through his management and control over Audi
19 America as well as the design, manufacture, distribution, testing, and/or sale of hundreds of
20 thousands of Affected Vehicles imported and sold across the United States. Furthermore, Stadler
21 has consistently travelled to the U.S. to attend and make presentations at various car shows across
22 the country in order to promote the sale of the Affected Vehicles.

23 **5. Richard Dorenkamp**

24 47. From in or about 2003 until in or about December 2012, Dorenkamp worked for
25 VWAG as the head of VW's Engine Development After-Treatment Department in Wolfsburg,
26 Germany. From in or about 2006 until in or about December 2012, Dorenkamp led a team of
27 engineers that developed the diesel engine (the "EA 189" engine) that was used in the Affected
28 Vehicles.

1 **6. Heinz-Jakob Neusser**

2 48. From in or about July 2013 until in or about September 2015, Neusser worked for
3 VWAG as the head of Development for VW Brand, sat on the management board for VW Brand,
4 and also served as head of Engine Development for all of VWAG. From in or about October 2011,
5 when he joined VW from Porsche, until in or about July 2013, Neusser served as the head of the
6 VW Brand Engine Development department. In his capacity as head of Development for VW
7 Brand, Neusser supervised a group of approximately 10,000 VWAG employees.

8 **7. Jens Hadler**

9 49. From in or about May 2007 until in or about March 2011, Hadler worked for
10 VWAG as the head of the VW Brand Engine Development department. Before serving as head of
11 Engine Development, Hadler held various positions within VWAG, including as head of Diesel
12 Engine Development for VW from in or about 2003 until in or about October 2006.

13 **8. Bernd Gottweis**

14 50. From in or about 2007 until in or about October 2014, Gottweis was a supervisor
15 with responsibility for VWAG's Quality Management and Product Safety department who reported
16 to the head of Quality Management. Before serving in that position, Gottweis held various
17 positions within VWAG.

18 **9. Oliver Schmidt**

19 51. From in or about 2012 through in or about February 2015, Schmidt was the General
20 Manager in charge of the Engineering and Environmental Office ("EEO"), located in Auburn Hills,
21 Michigan. From in or about March 2015 through in or about September 2015, Schmidt returned to
22 VWAG headquarters in Wolfsburg, Germany, to work as a principal deputy to Neusser in
23 Neusser's capacity as head of Engine Development for all of VWAG. Schmidt has been indicted
24 in the Eastern District of Michigan for his role in the emissions conspiracy and is currently being
25 held without bail pending trial.

1 **10. Jurgen Peter**

2 52. From in or about 1990 until present, Peter worked for VWAG in the certification
3 group. Between about March 2015 and about July 2015, Peter was one of the VWAG liaisons
4 between the regulatory agencies and VWAG.

5 **11. Volkmar Denner**

6 53. Volkmar Denner is a resident of Germany. Denner has been the Chairman CEO of
7 Robert Bosch GmbH since July 1, 2012. Denner contemporaneously holds the position of Chief
8 Technology Officer. Denner joined Bosch in 1986, and has held numerous positions within the
9 company, including Director of ECU Development, Vice-President of Sales and Development,
10 Semiconductors and Electronic Control Units division, and President of Automotive Electronics
11 division. In 2006, Denner became a member of Robert Bosch GmbH's Board of Management and
12 was later responsible for research and advance engineering, product planning, and technology
13 coordination across the company's three business sectors from July 2010 until his appointment as
14 CEO. Denner received millions of dollars from the illegal scheme and course of conduct based on
15 the revenues and profits from the sale of defeat devices to Volkswagen. Denner approved,
16 authorized, directed, ratified, and/or participated in the acts complained of herein. He has availed
17 himself of the laws of the United States through his management and control over Bosch LLC, as
18 well as the design, development manufacture, distribution, testing, and sale of hundreds of
19 thousands of the defeat devices installed in the Affected Vehicles sold or leased in the U.S.

20 **12. IAV GmbH**

21 54. IAV GmbH ("IAV") is a limited liability company headquartered in Berlin,
22 Germany. IAV is an engineering company in the automotive industry and designs products for
23 powertrain, electronics and vehicle development. Volkswagen is an IAV client.

24 55. IAV Automotive Engineering Inc. is a subsidiary of IAV based in the U.S.

25 56. IAV employees were part of working group that included Bosch GmbH, Bosch
26 LLC, VGoA and VWAG employees that had a common purpose of designing and implementing a
27 defeat device in U.S.-based diesel Volkswagens.

IV. FACTUAL ALLEGATIONS CONCERNING THE DIESELGATE SCANDAL

A. Volkswagen's Plot to Dominate the Automotive Market

57. Volkswagen's illegal diesel emissions scheme was borne out of greed and ambition to dominate the global automotive market at any cost. By Volkswagen's own admissions, the seeds for the scandal were planted in 2005, as Volkswagen was repositioning its fleet of vehicle offerings in light of tightening U.S. emission regulations, "with a strategic decision to launch a large-scale promotion of diesel vehicles in the United States in 2005."⁹ While other automakers focused on hybrid, electric or hydrogen fueled vehicles, Volkswagen pivoted toward "clean diesel" technology as its primary strategy to reach the growing target market of environmentally conscious consumers.

58. In 2004, the second generation Toyota Prius became an explosive success, tripling global sales from years prior and changing environmentally-friendly vehicles from a niche market to a standard consumer option. Although it was the first mainstream hybrid vehicle, the Prius was widely viewed as "boring," because the improvements in fuel efficiency and emissions were offset by relatively bland styling and lackluster driving performance.

59. Volkswagen took note of the success of the Prius and sought to achieve the same (or better) efficiency benchmarks, but in a "fun-to-drive," high-performance vehicle. This was to be achieved with a purported remarkable breakthrough in diesel technology: the EA189 TDI engine. TDI, short for "turbocharged diesel injection," was the culmination of millions of dollars in research and development, and was heralded by VW as the critical factor that would be responsible for its growth and success in the U.S.

60. In 2007, Martin Winterkorn left his position at Audi to become VWAG's CEO. Winterkorn set goals for Volkswagen to become a world leader in automobile manufacturing. This

⁹ *Volkswagen making good progress with its investigation, technical solutions, and Group realignment*, VOLKSWAGEN AG (Dec. 10, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/12/VW_PK.html.

1 included a target of tripling U.S. sales to at least 800,000 vehicles by 2018.¹⁰ At the time, diesel-
 2 engine vehicles made up just 5% of the U.S. car market, and Winterkorn recognized this as the
 3 perfect opportunity to expand Volkswagen's market share.

4 61. To expand its diesel market penetration in the U.S., Volkswagen needed to
 5 overcome the stigmas associated with diesel vehicles. Foremost among these was the consumer
 6 perception that diesel engines emitted thick, toxic smoke full of dangerous and destructive
 7 pollutants, and should be relegated to the smog-filled cities of the past. In developing and
 8 marketing a new kind of diesel vehicle, Volkswagen claimed to have solved the environmental
 9 problems with its new EA189 engine, which it aggressively marketed as the clean, green, sporty
 10 alternative to hybrid engines, such as those in the Prius.

11 62. Bosch LLC, acting in concert with and under the direction of Bosch GmbH, joined
 12 in the efforts to change the perception of diesel in the United States. As early as 2005, Bosch
 13 Diesel Systems (a division of Bosch Group that contained employees of both Bosch LLC and
 14 Bosch GmbH), and specifically Bosch Diesel Systems employees [REDACTED] and [REDACTED]
 15 worked with public relations firm Mightycomm to "target NGOs and regulators in California on
 16 behalf of Bosch...."¹¹

17 63. Behind the scenes, however, Volkswagen realized internally that it was not possible
 18 to roll out these so-called "clean" diesel vehicles within its self-imposed budgets and engineering
 19 constraints. To get the job done, Winterkorn appointed two engineers with whom he had worked
 20 closely at Audi (Ulrich Hackenberg and Wolfgang Hatz) to lead up R&D and engine development
 21
 22

23
 24 ¹⁰ William Boston, *Volkswagen Emissions Investigation Zeroes In on Two Engineers*, WALL
 STREET JOURNAL (Oct. 5, 2015), <http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602>.

25 ¹¹ VW-MDL [REDACTED]-1529 [REDACTED] Like many documents in this case, this letter from Mightycomm
 26 is addressed to [REDACTED] and [REDACTED] but does not specify whether they hold positions at Bosch
 27 GmbH or Bosch LLC at the time of the letter, instead designating only Bosch Diesel Systems, and
 28 speaking of the actions of "Bosch". Bosch GmbH and Bosch LLC, however, certainly know on
 which company's behalf, if not both companies, these employees were working at the time they
 were involved in these efforts to promote diesel sales in the United States and California.

1 for this project. These two engineers were the chief developers of the TDI engine.¹² Their primary
 2 mandate from management was to develop a diesel engine that maintained the performance of
 3 traditional gasoline engines with reduced CO₂ emissions and lower gas mileage, all while meeting
 4 the strict NO_x emission standards in the U.S.

5 64. Diesel fuel is traditionally denser than gasoline, and the syrupy fuel contains longer
 6 hydrocarbon chains, which tend to produce a more efficient vehicle. In fact, diesel engines can
 7 convert over 45% of fuel energy into useful mechanical energy, whereas gasoline engines convert
 8 only 30% of fuel into energy.¹³ To make use of this dense diesel fuel, diesel engines combine high
 9 temperatures and high compression to produce a pressure-cooker of mechanical energy, as opposed
 10 to a spark ignition in the typical gasoline engine. Though more efficient, diesel engines come with
 11 their own set of challenges, as highly-compressed diesel emissions produce high levels of NO_x.
 12 These NO_x emissions can be reduced by adjusting the compression and temperature, but that, in
 13 turn, produces soot, a similarly-undesirable hydrocarbon emission. Diesel engines exist in a state
 14 of balance between these conditions, known as “rich” and “lean” states. A diesel engine in a rich
 15 state contains more fuel than air, which in turn tends to burn off less fuel and thereby produces
 16 higher amounts of soot, reduced fuel efficiency, and sluggish driving performance. On the other
 17 hand, the lean state contains more air than fuel and produces higher amounts of NO_x. Neither of
 18 these discharges is desirable, and for the EPA to designate a diesel car as a “clean” vehicle, it must
 19 produce *both* low soot and low NO_x.

20 65. In recent years, the EPA and the California Air Resources Board (“CARB”) have
 21 promulgated stricter NO_x emission standards, requiring all diesel models starting in 2007 to
 22 produce 90% less NO_x than years prior.¹⁴ These strict emission standards posed a challenge to

23 ¹² Jack Ewing, *Volkswagen Engine-Rigging Scheme Said to Have Begun in 2008*, N.Y. TIMES
 24 (Oct. 5, 2015), <http://www.nytimes.com/2015/10/05/business/engine-shortfall-pushed-volkswagen-to-evade-emissions-testing.html>.

25 ¹³ *Just the Basics, Diesel Engine*, U.S. DEPT. OF ENERGY, OFFICE OF ENERGY EFFICIENCY &
 26 RENEWABLE ENERGY (last visited Feb. 8, 2016), available at http://www1.eere.energy.gov/vehiclesandfuels/pdfs/basics/jtb_diesel_engine.pdf.

27 ¹⁴ *Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control*
 28 *Requirements*, ENVIRONMENTAL PROTECTION AGENCY (Dec. 2000), <http://www3.epa.gov/otaq/highway-diesel/regs/f00057.pdf>.

1 Volkswagen's engineers in developing the EA189 engines. In fact, during a 2007 demonstration in
 2 San Francisco, VW engine R&D chief Hatz lamented presciently that "[Volkswagen] can do quite
 3 a bit and we will do a bit, but 'impossible' we cannot do... From my point of view, the CARB is
 4 not realistic ... I see it as nearly impossible for [Volkswagen]."¹⁵

5 66. Yet, the "impossible" is just what Volkswagen set out to do. In order to
 6 successfully grow the U.S. diesel market and meet its ambitious goals, Volkswagen needed to
 7 develop the technology to reduce NO_x emissions, while maintaining the efficient, powerful
 8 performance of a lean-state diesel engine. This seemingly impossible dilemma mired Volkswagen
 9 in an internal struggle about how to best proceed, with two divergent technological solutions
 10 available: selective catalytic reduction ("SCR"), or use of a lean NO_x trap ("LNT").

11 67. Advocating the former of these solutions, in 2006, Wolfgang Bernhard, then a top
 12 executive at VWAG (and former Daimler executive), championed a technology-sharing agreement
 13 with Mercedes-Benz and BMW to jointly develop a SCR system using urea. This system, which
 14 assists in neutralizing emissions of NO_x, was generically known as a "Diesel Exhaust Fluid"
 15 system and marketed as "Bluetec" by Mercedes and "AdBlue" by Volkswagen and other German
 16 vehicle manufacturers. This solution, touted by Bernhard, worked by injecting urea into a diesel
 17 vehicle's exhaust stream to react with the NO_x, converting it into harmless nitrogen and oxygen.

18 68. While Hatz initially supported this solution, stating publicly at the Detroit Auto
 19 Show in early 2007 that "Bluetec technology allows us to demonstrate Audi's commitment to
 20 always being at the very forefront of diesel technology,"¹⁶ his support dissipated as Volkswagen's
 21 leadership factionalized – split between those who balked at the \$350 per-vehicle cost of the SCR
 22 system advocated by Bernhard, and those who thought that the SCR system was the only
 23 technologically feasible method to meet emission regulations.

24
 25
 26 ¹⁵ Danny Hakim, *et al.*, *VW Executive Had a Pivotal Role as Car Maker Struggled With*
 27 *Emissions*, N.Y. TIMES (Dec. 21, 2015), [http://www.nytimes.com/2015/12/22/business/
 international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mt
 28 rref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pay](http://www.nytimes.com/2015/12/22/business/international/vw-executive-had-a-pivotal-role-as-car-maker-struggled-with-emissions.html?mtref=undefined&gwh=7E46E42F7CCC3D687AEC40DFB2CFA8BA&gwt=pay).

¹⁶ *Id.*

69. Bernhard, the advocate for SCR, ultimately lost the internal battle at Volkswagen and resigned. Consequently, Hatz remained and was tasked with implementing the alternative strategy: the lower-cost LNT. This relatively inexpensive technology involved the storage of NO_x emissions in a separate compartment during vehicle operation. Once that compartment filled up, the system burned off the stored NO_x by pumping an extra burst of fuel into the cylinders, most of which passed through to the converter, where it then burned the NO_x into nitrogen and oxygen. While this method was cheaper and easier to implement than the SCR system advocated by Bernhard, it was less effective and resulted in lower fuel efficiency.

70. According to many sources (including journalists, industry insiders, and Volkswagen whistleblowers), Volkswagen's top brass issued a directive to its engineers to find a way to meet emission standards despite tight budgetary and technical constraints, or suffer the consequences. Volkswagen AG's former CEO, Ferdinand Piëch, created "a culture where performance was driven by fear and intimidation" and whose leadership was characterized as "a reign of terror."¹⁷ Employees were told, "[y]ou will sell diesels in the U.S., and you will not fail. Do it, or I'll find somebody who will."¹⁸ Piëch was infamous for firing subordinates who failed to meet his exacting standards: "Stories are legion in the industry about Volkswagen engineers and executives shaking in their boots prior to presentations before Piëch, knowing that if he was displeased, they might be fired instantly."¹⁹ And so it seems, out of self-preservation, the defeat device scandal was borne.

B. Defendants' Illegal "Defeat Device" Scheme

71. Ultimately, time ran out, and Volkswagen executives and engineers were either unable or unwilling to devise a solution within the constraints of the law and their self-imposed cost-cutting measures. So instead of being honest (and risk being summarily fired), they and others

¹⁷ Bob Lutz, *One Man Established the Culture That Led to VW's Emissions Scandal*, ROAD & TRACK (Nov. 4, 2015), <http://www.roadandtrack.com/car-culture/a27197/bob-lutz-vw-diesel-fiasco/>.

¹⁸ *Id.*

¹⁹ Doron Levin, *The man who created VW's toxic culture still looms large*, FORTUNE (Oct. 16, 2015), <http://fortune.com/2015/10/16/vw-ferdinand-piech-culture/>.

1 conspired to cheat and defraud regulators, consumers and their own customers – Franchise Dealers
2 – by installing a “defeat device” in the new diesel vehicles. The defeat device enabled the affected
3 vehicles to “pass” the EPA and CARB emission testing so that Volkswagen could obtain COCs
4 and EOs to sell illegally polluting cars throughout the U.S and in California.

5 72. Volkswagen had a ready-made solution at hand. As reported by the New York
6 Attorney General, starting as far back as 1999, Audi engineers had come up with a similar solution
7 to a problem they were facing related to the development of the 3.0-liter diesel engine for Audi
8 models sold in Europe. The engineers had eliminated a noise problem associated with diesel
9 engines by changing the software in the electronic controls (necessarily with the assistance of
10 Bosch GmbH, which strictly controlled programming software) to inject additional fuel into the
11 engine on ignition. But as a result, the engine could not meet European emissions standards during
12 testing. To solve this problem, the engineers developed defeat device software that could
13 recognize when the car was being tested and deactivate the extra fuel injection function during
14 testing, then reactivate it during normal driving conditions. From 2004-2008, Audi incorporated
15 the defeat device software in its 3.0-liter diesel engines sold in Europe. Since the defeat device
16 software was related to the goal of reducing engine noise, it became known as the “Acoustic
17 Function” or, in German, the “Akustikfunktion.”

18 73. When it became clear that the 2.0-liter TDI engine being developed for the U.S.
19 market could not meet U.S. emission regulations, and initial emission testing failed, the launch of
20 the Jetta TDI “clean” diesel, initially scheduled for 2007 as part of the “US ‘07 project,” had to be
21 delayed. The prospect of failure was unacceptable, so Volkswagen cheated instead. Starting in the
22 mid-2000s, Volkswagen engineers, working with Bosch Diesel Systems (at both Bosch GmbH and
23 Bosch LLC) – as detailed further below – and with the knowledge of management, adapted Audi’s
24 “akustikfunktion” concept to the 2.0-liter and 3.0-liter diesel engines for Volkswagen and Audi
25 models to be sold in the U.S.

26 74. On or about May 17, 2006, a VW engineer emailed employees in the VW Brand
27 Engine Development department and described aspects of the software. He cautioned against
28 using it in its current form because it was nothing more than a mechanism to detect, evade and

1 defeat U.S. emissions cycles and tests. As he explained (in German): “within the clearance
2 structure of the pre-fuel injection the acoustic function is nearly always activated within our current
3 US ‘07-data set. This function is pure [cycle-beating] and can like this absolutely not be used for
4 US ‘07.”

5 75. VW executives, including Richard Dorenkamp (Head of VW’s Engine
6 Development After-Treatment Department) and Jens Hadler (Head of VW Brand Engine
7 Development and Head of Diesel Engine Development), authorized the creation and installation of
8 this software. It has been reported that the decision to cheat the EPA, CARB, and countless other
9 regulators worldwide was an “open secret” in Volkswagen’s engine development department, as it
10 was necessary for the “EA 189 engine to pass U.S. diesel emissions limits within the budget and
11 time frame allotted.” With the knowledge and assistance of Bosch GmbH, the resulting defeat
12 device was incorporated into the software required to operate the 2.0-liter and 3.0-liter TDI engines
13 in the Affected Vehicles.

14 76. The defeat device that Defendants installed in the Affected Vehicles to evade
15 emission testing is software code residing the vehicles’ electronic control unit. All modern engines
16 are integrated with sophisticated computer components to manage the vehicle’s operation. In
17 diesel vehicles, this software is known as electronic diesel control (“EDC”). The EDC equipped in
18 the Affected Vehicles is formally referred to as the Electronic Diesel Control Unit 17 (also known
19 as “EDC Unit 17,” “EDC 17,” and “EDC17”). Bosch GmbH tested, manufactured, and sold
20 customized EDC17’s to Volkswagen for the Affected Vehicles.

21 77. The EDC17 was widely used throughout the automotive industry, including by
22 BMW, Mercedes, FCA and GM, to operate modern “Clean Diesel” engines. Bosch GmbH and
23 Bosch LLC, through their employees in the Bosch Diesel Systems group, worked with each vehicle
24 manufacturer that utilized the EDC17 to create a unique set of specifications and software code to
25 manage the vehicle’s engine operation. Bosch GmbH and Bosch LLC were highly protective of
26 the proprietary code and programming that operated the EDC17. Bosch GmbH had detailed
27 agreements with the automakers that governed the use, modification and programming of the
28

1 EDC17, and which prevented automakers from making modifications to the EDC17 that were not
2 known, approved, and tested by Bosch GmbH.

3 78. Bosch's EDC Unit 17 controls emissions by periodically reading sensor values,
4 evaluating a control function, and controlling actuators based on the control signal.²⁰ Sensor
5 readings include crankshaft position, air pressure, air temperature, air mass, fuel temperature, oil
6 temperature, coolant temperature, vehicle speed, exhaust oxygen content, as well as driver inputs
7 such as accelerator pedal position, brake pedal position, cruise control setting, and selected gear.
8 Based on sensor input, EDC17 controls and influences the fuel combustion process including, in
9 particular, fuel injection timing, which affects engine power, fuel consumption, and the
10 composition of the exhaust gas.²¹

11 79. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine
12 management software over which Bosch exerts near-total control. In fact, the software is typically
13 locked to prevent customers, like Volkswagen, from making significant changes on their own.
14 Accordingly, both the design and implementation are interactive processes, requiring Bosch's close
15 collaboration with the automaker from beginning to end.

16 80. With respect to the Affected Vehicles, the EDC 17 was used surreptitiously to evade
17 emissions regulations. Bosch GmbH, Bosch LLC and Volkswagen worked together to develop and
18 implement a specific set of software algorithms for implementation in the Affected Vehicles,
19 including algorithms to adjust fuel levels, exhaust gas recirculation, air pressure levels, and urea
20 injection rates in vehicles equipped with SCR systems.

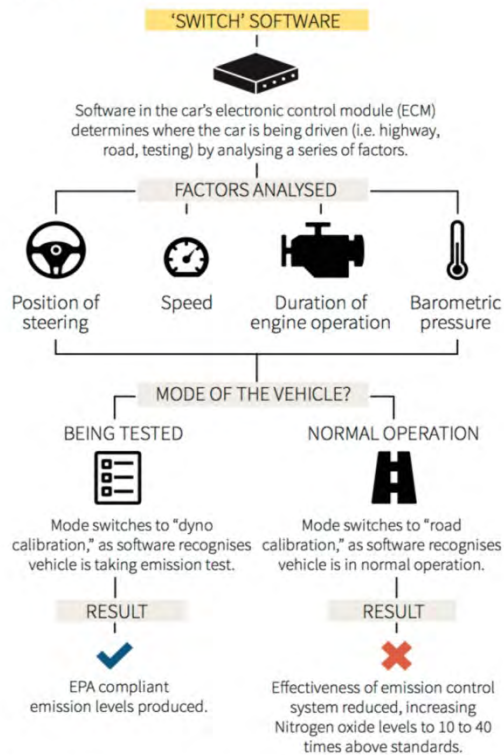
21 81. Bosch's EDC17 contained the defeat device programming that was necessary for
22 the Affected Vehicles to "pass" emission tests in the U.S. When carmakers test their vehicles
23 against EPA emission standards, they place the cars on dynamometers (large rollers) and then
24 perform a series of specific maneuvers prescribed by federal regulations. Bosch's customized
25 EDC17 controllers created for Affected Vehicles detected test scenarios by monitoring vehicle

26
27 ²⁰ Moritz Contag, *et al.*, *How They Did It: An Analysis of Emission Defeat Devices in Modern*
Automobiles, p.4 (2017).

28 ²¹ *Id.*

speed, acceleration, engine operation, air pressure and even the position of the steering wheel. When the EDC17's algorithm detected that the vehicle was on a dynamometer (and, therefore, undergoing an emission test), software code within the EDC17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration," temporarily reducing emissions to legal levels. Once the EDC17 detected that the emission test was complete, it would then enable a different "road calibration" that caused the engine to return to full power and efficiency while reducing the emissions control systems' performance, and consequently, caused the car to spew up to 40 times the legal limit of NO_x emissions. This process is illustrated in this diagram:

How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency
J. Wang, 22/09/2015

REUTERS

82. This workaround was highly illegal. And, according to the New York Attorney General, Volkswagen management knew the use of these devices to detect the test and change the

1 calibrations was illegal, as they studied the issue extensively during 2006-2007 when preparing to
2 launch their vehicles in the U.S. market.

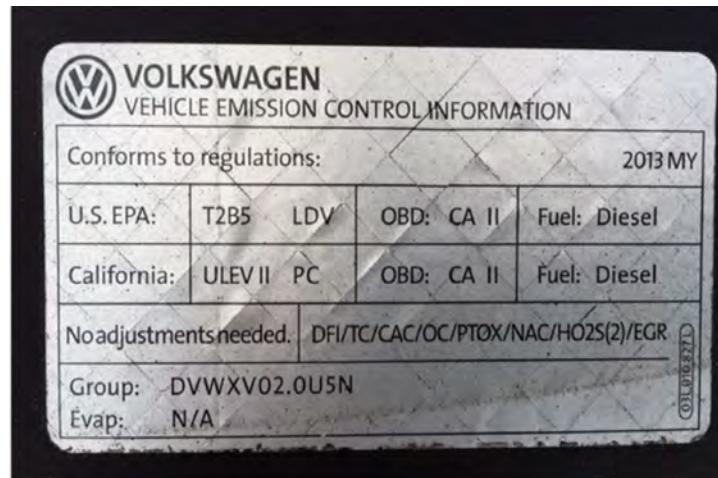
3 83. On or about October 5, 2007, Jens Hadler presided over a contentious meeting
4 regarding the trajectory of the US '07 project. Various technical problems had arisen with the
5 US'07 project that led to internal discussions and disagreements among members of the VWAG
6 team responsible for ensuring vehicles met U.S. emissions standards. At the conclusion of that
7 meeting, Hadler authorized Richard Dorkenkamp to proceed with the project knowing it was only
8 through the use of the defeat device software that the vehicles could hope to pass U.S. emissions
9 tests.

10 84. On or around October 17, 2007, slides containing explicit engineering terms for the
11 defeat device were sent to Mr. Hadler and other executives. Hadler responded (in German) "We
12 shall never present this anywhere and will also not distribute it." A month later, Hadler sent an e-
13 mail to Dorenkamp that included photos of himself posing with California's governor – then
14 Arnold Schwarzenegger – at an event where VW's cars were promoted as "green diesel."

15 85. The CAA expressly prohibits "defeat devices," defined as any auxiliary emission
16 control device "that reduces the effectiveness of the emission control system under conditions
17 which may reasonably be expected to be encountered in normal vehicle operation and use."
18 40 C.F.R. § 86.1803-01; *see also id.* § 86.1809-10 ("No new light-duty vehicle, light-duty truck,
19 medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat
20 device."). Moreover, the CAA prohibits the sale of components used as defeat devices, "where the
21 person knows or should know that such part or component is being offered for sale or installed for
22 such use or put to such use." 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a COC,
23 automakers must submit an application, which lists all auxiliary emission control devices installed
24 in the vehicle, a justification for each, and an explanation of why the control device is not a defeat
25 device.

26 86. Thus, in order to obtain the COCs necessary to sell their vehicles, Volkswagen did
27 not disclose, and affirmatively concealed, the presence of the test-detecting and performance
28 altering software code that it developed with engineers from EAV, Bosch GmbH and Bosch LLC

1 within the EDC17 from government regulators, thus making that software an illegal “defeat
 2 device.” In other words, Volkswagen lied to the government, its Franchise Dealer customers,
 3 consumers and the public at large. And at every step of the way, Bosch Diesel Systems, through its
 4 employees at Bosch GmbH and Bosch LLC, knew of and aided in the fraud. An example of one of
 5 Volkswagen’s vehicle stickers reflecting its fraudulently-obtained COCs is pictured below:



14 87. Because the COCs were fraudulently-obtained, and because the Affected Vehicles
 15 did not conform “in all material respects” to the specifications provided in the COC applications,
 16 the Affected Vehicles were never covered by a valid COC, and thus, were never legal for sale, nor
 17 were they EPA and/or CARB compliant, as represented. Volkswagen and Bosch Diesel Systems
 18 (in particular employees at Bosch LLC, which appeared to take the lead for Bosch Diesel Systems
 19 in interactions with regulators in the United States) hid these facts from the EPA, other regulators,
 20 Franchise Dealers and consumers, and it continued to sell and lease the Affected Vehicles through
 21 Franchise Dealers to the driving public, despite their illegality, and with the complicity of Bosch.

22 88. Volkswagen’s cheating continued. VGoA submitted COC applications on behalf of
 23 VWAG, Audi AG, and itself, for the 2.0-liter and VW-and Audi-branded 3.0-liter Affected
 24 Vehicles, describing compliant specifications and concealing the dual-calibration strategy of the
 25 defeat device. Similarly, VGoA submitted COC applications on behalf of itself and for the
 26 Porsche-branded 3.0-liter Affected Vehicles, describing compliant specifications and concealing
 27 the dual-calibration strategy of the defeat device.

89. VGoA coordinated the submission of these and other regulatory submissions with Audi to ensure that discrepancies among the companies' submissions did not alert regulators to emission problems with the Affected Vehicles.²² Executives from the companies even devised a policy of cross-brand communication and coordination to minimize the risk that U.S. regulators would learn of fraudulent representations in regulatory filings.²³ But the Affected Vehicles differed in "material respects" from the specifications described in the COC applications because they had undisclosed auxiliary emissions control devices that functioned as an illegal "defeat device."

90. James Robert Liang was a member of Volkswagen's development department from 1983 to 2008 and then Leader of Diesel Competence for VGoA from 2008 to 2015. Liang was indicted by a federal Grand Jury for his role in the Volkswagen-IAV-Bosch conspiracy. In pleading guilty to fraud and other charges, Liang admitted that he and several co-conspirators knowingly designed, authorized, and managed the production of an EA 189 engine that could only comply with U.S. emissions standards by using an illegal defeat device. He and others knowingly attended meetings with the EPA in Ann Arbor Michigan on or around October 3, 2006, and with CARB in El Monte, California on or around October 5, 2006, where they presented the engine as one which complied with U.S. emissions standards to obtain COCs.

91. Similarly, Mr. Liang and Mr. Dorenkamp met with EPA officials in Ann Arbor on or around March 19, 2007, and with CARB officials on or around March 21, 2007, to summarize the EA 189 engine design and proposed operation of emissions control systems, while concealing its defeat device.

92. Volkswagen's illegal workaround was enabled by its close partnership with Bosch Diesel Systems, which enjoyed a sizable portion of its annual revenue from manufacturing parts used in Volkswagen's diesel vehicles.²⁴ Bosch Diesel Systems employees at both Bosch LLC and

²² VW-MDL2672-00570461.

²³ VW-MDL2672-00412718.

²⁴ Approximately 50,000 of Bosch's 375,000 employees worked in the diesel-technology operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See Bosch probes whether its staff helped VW's emissions rigging*, Automotive News (Jan. 27,

1 Bosch GmbH were well aware that Volkswagen was using its emissions control components as a
 2 defeat device and, in fact, worked with Volkswagen to develop the software algorithm specifically
 3 tailored for the Affected Vehicles. Although Bosch GmbH reportedly “advised” Volkswagen as
 4 early as 2007 that the components should only be used for internal testing, not for manipulation of
 5 the engine in emission testing,²⁵ it knew (or certainly should have known) that its lip service would
 6 be ignored, and that the components would be used as defeat devices. Bosch Diesel Systems
 7 supplied Volkswagen with approximately 11 million such emission control components over seven
 8 years which, in itself, belies the official company line that it didn’t know.

9 93. Volkswagen, likewise, knew better – VW itself is a recidivist violator of the CAA.
 10 In July of 1973, the EPA sought legal action against VW America by the Department of Justice
 11 based on a claim that defeat devices were installed in 1973 Volkswagen vehicles. The matter was
 12 swiftly settled for \$120,000 the following year.²⁶ And, in June of 2005, VW America entered into
 13 a consent decree with the DOJ, wherein it paid a \$1.1 million penalty for failing to notify the EPA
 14 of emissions problems in certain vehicles manufactured by Volkswagen in Mexico.²⁷

15 94. Because the COCs were fraudulently obtained, the Affected Vehicles were never
 16 covered by valid COCs, and thus, were never offered legally for sale. Volkswagen hid these facts
 17 from the EPA, CARB and other state regulators, Franchise Dealers (including Plaintiff) and
 18 consumers, and it continued to sell and lease the Affected Vehicles through Franchise Dealers,
 19 despite their illegality, and with the complicity of Bosch Diesel Systems employees at both Bosch
 20 LLC and Bosch GmbH.

21
 22
 23
 24 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

25 ²⁵ *VW scandal: Company warned over test cheating years ago*, BBC (Sept. 27, 2015),
<http://www.bbc.com/news/business-34373637>.

26 ²⁶ Rich Gardellsa, *et al.*, *VW had previous run-in over ‘defeat devices’*, NBC News (Sept. 23,
 27 2015), <http://www.cnbc.com/2015/09/23/vw-had-previous-run-in-over-defeat-devices.html>.

28 ²⁷ Consent Decree, *United States v. Volkswagen of Am., Inc.*, Case No. 1:05-cv-01193-GK
 (D.D.C. June 15, 2005 and Nov. 4, 2005), ECF Nos. 1-2.

C. Bosch LLC and Bosch GmbH Each Played a Critical Role in the Defeat Device Scheme

95. Each Bosch entity, through the cross-entity Bosch Diesel Systems group, played a critical role in scheme to evade U.S. emission requirements in the Affected Vehicles.²⁸ In a letter to Volkswagen in 2007, Bosch GmbH acknowledged that use of the defeat device software was illegal. *In 2008, Bosch GmbH wrote Volkswagen and expressly demanded that Volkswagen indemnify Bosch (the specific entity was referred to by Bosch GmbH as “Bosch”) for anticipated liability arising from the use of the Bosch-created “defeat device” (Bosch GmbH’s words), which Bosch GmbH knew was “prohibited pursuant to ... US Law.”*²⁹ Volkswagen apparently refused to indemnify Bosch GmbH, but Bosch GmbH nevertheless continued to develop the so-called “akustikfunktion” (the code name used for the defeat device) for Volkswagen for another seven years. During that period, Bosch GmbH and Bosch LLC concealed the defeat device in communications with U.S. regulators once questions were raised about the emission control system in the Affected Vehicles, and Bosch Diesel Systems, through employees at Bosch LLC, went so far as to actively lobby lawmakers to promote Volkswagen’s “Clean Diesel” system in the United States. Bosch LLC’s efforts, taken together with evidence of Bosch LLC and Bosch GmbH’s actual knowledge that the “akustikfunktion” operated as an illegal defeat device, demonstrate that Bosch LLC and Bosch GmbH were both knowing and active participants in the decade-long illegal enterprise to defraud U.S. consumers, regulators, and franchise dealers.

1. Volkswagen and Bosch Diesel Systems, through both Bosch LLC and Bosch GmbH, Conspire to Develop the Illegal Defeat Device.

96. Bosch GmbH tightly controlled development of the control units in the Affected Vehicles, and actively participated in the development of the defeat device.

97. As discussed above, Bosch Diesel Systems, including employees at Bosch GmbH, introduced a new generation of diesel ECUs for Volkswagen. The development of the EDC17 was a massive undertaking, which began years before Volkswagen began its push into the U.S. market.

²⁸ Plaintiffs’ detailed and specific allegations against Bosch are based almost entirely on publicly-available documents, Plaintiffs’ own research, and information produced by Volkswagen.

²⁹ VW-MDL2672-02570091 (English translation) (emphasis added).

At least twenty Bosch GmbH engineers, as well as employees at Bosch LLC, were working full-time on developing and writing the code for the EDC17 in the 2001 time frame. By 2004, long before the November 20, 2006 meeting at which Volkswagen apparently decided to use the defeat device to “pass” emission certification standards in the U.S., Bosch GmbH and Volkswagen had already entered into preliminary agreements for further development of the EDC17.³⁰

98. A February 28, 2006, press release issued by “Bosch” (without specifying the legal entity) introduced the “New Bosch EDC17 engine management system” as the “brain of diesel injection” which “controls every parameter that is important for effective, low-emission combustion.” The EDC17 offered “[e]ffective control of combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press release, “Bosch” touted the EDC17 as follows:

EDC17: Ready for future demands

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world’s markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle’s entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits.^[31]

99. Bosch’s EDC17 was the technology behind Volkswagen’s ambition. The EDC17 and the development of its underlying software were integral to Volkswagen’s entire diesel strategy, which by late 2006 included creating software to sense when the vehicles were in test mode and then manipulate the emission control system at that time. This could not have been accomplished without years of collaborative work with Bosch Diesel Systems employees at both Bosch GmbH and Bosch LLC.

³⁰ See PowerPoint presentation at VW-MDL2672-02559528. This internal Volkswagen PowerPoint describes the “akustikfunktion” as activated in “recognition of emission related environment conditions” and proposed it as a solution to the “registration/certification [problem] in the US.”

³¹ See Feb. 28, 2006 Bosch press release, “The brain of diesel injection: New Bosch EDC17 engine management system,” <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

1 100. As early as February 2005, an internal feasibility study drafted by Ulrich
 2 Hackenberg (Audi Development Chief) mentioned Bosch's EDC17 as part of a strategy to reduce
 3 diesel vehicle emissions of nitrogen oxides ("NOx") by creating a change in engine electronics.³²
 4 The study discussed diesel strategies in the U.S. market in light of tightening U.S. emission
 5 standards. As discussed above, shortly after the cheating scandal became public, Volkswagen
 6 suspended Hackenberg, and he later resigned.³³

7 101. Bosch marketing materials (which did not specify the particular Bosch entity
 8 involved) made clear that the EDC17 was not one-size-fits-all. Instead, it was a "[c]oncept tailored
 9 for all vehicle classes and markets" that could "be adapted to match particular requirements [and]
 10 ... be used very flexibly in any vehicle segment on all the world's markets." The EDC17 was
 11 tailored and adapted by modifying the sophisticated software embedded within the electronic
 12 control unit ("ECU"). Bosch Diesel Systems, through employees at GmbH and Bosch LLC
 13 manufactured, developed, and provided the ECU and its base of software to Volkswagen for the
 14 Affected Vehicles.

15 102. Engineers at IAV, Volkswagen and Bosch Diesel Systems (including employees of
 16 Bosch LLC and Bosch GmbH) worked together to modify and adapt the software for the EDC17,
 17 and to create specifications for each vehicle model. Indeed, customizing a road-ready ECU is an
 18 intensive three- to five-year endeavor involving a full-time Bosch Diesel Systems presence at an
 19 automaker's facility. Bosch Diesel Systems and its customers work so closely together that it
 20 purposefully locates its component part manufacturing facilities close to its carmaker customers'
 21 manufacturing plants.

22 103. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine
 23 management software over which Bosch GmbH and Bosch LLC exert near-total control. In fact,
 24 the software is typically locked to prevent customers, like Volkswagen, from making significant
 25 changes on their own. The defeat device was just such a software change – one that would allow

26 ³² VW-MDL2672-00744825.

27 ³³ Jack Ewing, *Audi Executive Resigns After Suspension over VW Emissions Scandal*, NY.
 28 Times (Dec. 4, 2015), <http://www.nytimes.com/2015/12/05/business/international/ulrich-hackenberg-suspended-over-volkswagen-emissions-scandal-resigns.html>.

1 modifications to the vehicle's emission control to turn on only under certain circumstances – that
 2 Volkswagen could not have made without employees and management of Bosch LLC and Bosch
 3 GmbH knowing and participating.

4 104. The Bosch entities' security measures further confirm that customers (carmakers)
 5 cannot make significant changes to Bosch software without Bosch involvement. Bosch boasts that
 6 its security modules protect vehicle systems against unauthorized access in every operating phase,
 7 meaning that no alteration could have been made without either a breach of that security – and no
 8 such claims have been advanced – or Bosch GmbH's knowing participation.³⁴

9 105. Unsurprisingly, at least one car-company engineer has confirmed that Bosch GmbH
 10 maintains absolute control over its software as part of its regular business practices:

11 I've had many arguments with Bosch, and they certainly own the
 12 dataset software and let their customers tune the curves. Before each
 dataset is released it goes back to Bosch for its own validation.

13 Bosch is involved in all the development we ever do. They insist on
 14 being present at all our physical tests and they log all their own data,
 15 so someone somewhere at Bosch will have known what was going
 on.

16 All software routines have to go through the software verification of
 17 Bosch, and they have hundreds of milestones of verification, that's
 the structure

18 The car company is *never* entitled by Bosch to do something on their
 own.^[35]

19 Thus, Bosch GmbH and Bosch LLC cannot convincingly argue that the development of the
 20 "akustik" device was the work of a small group of rogue engineers.

21 106. In fact, Volkswagen's and Bosch GmbH's work on the EDC17 reflected a highly
 22 unusual degree of coordination. It was a massive project that required the work of numerous
 23 Bosch engineers and coders for a period of more than ten years, or perhaps more.³⁶ Although

24 ³⁴ *Reliable Protection for ECUs* (May 12, 2016), [https://www.escript.com/company/single-](https://www.escript.com/company/single-news/detail/reliable-protection-for-ecus/)
 25 [news/detail/reliable-protection-for-ecus/](https://www.escript.com/company/single-news/detail/reliable-protection-for-ecus/).

26 ³⁵ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
 27 (Nov. 23, 2015), [http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/)
[software/](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/).

28 ³⁶ Approximately 50,000 of Bosch's 375,000 employees worked in the diesel-technology
 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world.

1 Bosch GmbH publicly introduced the EDC17 in 2006, it had started to develop the engine
2 management system years before.³⁷

3 107. The size and complexity of the development of EDC17 is captured by a spreadsheet
4 that lists entries for work done by Volkswagen and Bosch employees on the EDC17 from late 2003
5 to 2009. Each entry is given one of six descriptors: enhancement, new feature, service, support,
6 integration, or bug/defect. In total, the spreadsheet contains 8,565 entries and lists hundreds of
7 Bosch employees, including employees at Bosch LLC and Bosch GmbH.³⁸

8 108. The joint enterprise is also memorialized in a series of agreements between Bosch
9 GmbH and Volkswagen dating back to as early as mid-2005, reflecting negotiations that date prior
10 to January, 2005. On April 7, 2005, for example, Bosch GmbH's [REDACTED] and [REDACTED]
11 executed the "Framework Development Agreement for Software Sharing in EDC/MED17 Control
12 Unit Projects from the Robert Bosch (RB) Diesel Systems (DS) And Gasoline Systems (GS) Motor
13 Vehicle Units." VWAG countersigned the agreement on September 26, 2005.

14 109. Importantly, the agreement defined software sharing as "the handing over of
15 BOSCH software in the form of object code by BOSCH to VW, so that VW can use this BOSCH
16 software as a basis for developing VW modules for specific EDC/ME(D)17 projects using software
17 development environments from BOSCH." The agreement states that "[p]roviding the VW
18 modules and integrating them to form a complete software product requires close cooperation
19 between the Parties."

20 110. The contract also outlined responsibilities for software sharing and co-
21 development. Throughout development, the contract dictated Bosch GmbH was to retain control
22 over the software. While Bosch GmbH provided (and owned) the object code, and Volkswagen
23 developed (and owned) the modules, the parties agreed that "BOSCH carries out any modifications
24

25 *See Bosch Probes Whether Its Staff Helped VW's Emissions Rigging*, Automotive News (Jan. 27,
26 2016), <http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

27 ³⁷ Feb. 28, 2006 Bosch press release, "The brain of diesel injection: New Bosch EDC17 engine
management system," <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

28 ³⁸ VW-MDL2672-02559780.

1 to the BOSCH software that are necessary in order to integrate the intended VW modules at the
2 expense of VW.” The agreement further specifies that “Bosch” would monitor the software, test
3 the implementation of Volkswagen modules, and grant written approval to Volkswagen modules.
4 Only if everything met Bosch’s standards would it then “deliver[] the final complete software
5 product for VW to use in combination with a BOSCH control unit.”³⁹ Thus, Bosch GmbH plainly
6 had knowledge of the defeat device code and needed to conduct extensive testing before delivering
7 the product to VW.

8 111. Yet another document demonstrates the tight grip that Bosch GmbH maintained
9 over EDC17 software and any modifications made to it. On February 20, 2006, VWAG and Bosch
10 (signed by Bosch GmbH’s [REDACTED], [REDACTED] of the Diesel Systems
11 division), entered into a supplemental agreement concerning the use of “expanded software”
12 documentation for the EDC17 and EDC16 (its predecessor).⁴⁰ Pursuant to this agreement, Bosch
13 GmbH identified 35 named individuals, affiliated with either VWAG or IAV
14 (Ingenieurgesellschaft Auto und Verkehr), who were granted access to expanded documentation
15 for the EDC17 for specific functions relating to emissions. Any changes to the list of persons to be
16 given access required the explicit consent of Bosch GmbH, and the access was temporary and non-
17 transferable. Critically, the agreement stated that “[t]his right of use shall not include the right to
18 the change, modify or use the DOCUMENTATION with third-party control units.”⁴¹ Bosch
19 GmbH thereby tightly controlled both who could access the expanded documentation and the scope
20 of their use of such materials.

21 112. A later agreement between Bosch GmbH and Volkswagen, this one from June 12,
22 2006, governed the implementation, integration, project management, and delivery of certain EDC
23 17 software functions for diesel vehicles that VWAG had requested from Bosch GmbH. This
24 agreement, too, made clear that any changes not explicitly detailed in the agreement would require
25 further approval from Bosch GmbH.

26 ³⁹ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752699.

27 ⁴⁰ Volkswagen produced an English translation of the agreement at VW-MDL2672-03752757.

28 ⁴¹ VW-MDL2672-03752757.

113. Along the same lines, several years later, in a February 5, 2011 agreement, Bosch GmbH granted VWAG a license to further develop Bosch Denoxtronic functions for the treatment of exhaust from diesel engines. Again, the contract is clear that Bosch maintains rights over the Denoxtronic functions.

114. To recap, as the EA 189 project moved to series production in 2009, Bosch GmbH's documented role was to provide to Volkswagen executable software for installation in the EDC17 controller at the VW production line.⁴² Bosch Diesel Systems insisted that it control the definition of the EDC17 software, test the software using bench top and vehicle testing, produce the final software release for series production, and deliver the software to Volkswagen for installation in the EA 189 engines used in the Affected Vehicles. Bosch GmbH's firm control over the development of and modifications to EDC17 is undeniable. It is inconceivable, then, that Bosch GmbH and Bosch LLC did not know that the software it was responsible for defining, developing, testing, maintaining and delivering, and that Bosch LLC promoted, lobbied, and coordinated for use in the United States, contained an illegal defeat device.

115. Bosch Diesel Systems employees at Bosch LLC and Bosch GmbH were in on the secret and knew that Volkswagen was using Bosch Diesel System's software algorithm as an "on/off" switch for emission controls when the Affected Vehicle was undergoing testing. As noted above, it has been said the decision to cheat was an "open secret" at Volkswagen.⁴³ It was an "open secret" at Bosch Diesel Systems as well.

116. The roots of the "akustikfunktion" – and likely the cheating – can be traced back to the late 1990's when Audi devised software called the "akustikfunktion" that could switch off certain functions when the vehicle was in a test mode.⁴⁴ The "akustik" term is derived from the

⁴² VW-MDL2672-03752699.

⁴³ Georgina Prodhon, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. See also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of rules'*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules> (it was necessary for the "EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted").

⁴⁴ <https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-stretch-back-to-audi?ref=MTI5ODU1>.

1 function's ability to modify the noise and vibration produced by the engine. News articles report
2 that, in 2006, VWAG further developed this "akustikfunktion" for the Affected Vehicles.⁴⁵

3 117. Written communications between and within Bosch Diesel Systems and
4 Volkswagen describe the "akustikfunktion" in surprising detail. In emails sent as early as July
5 2005 from VWAG's Andreas Specht to Bosch's [REDACTED], [REDACTED], [REDACTED] and
6 [REDACTED] Specht discussed emissions measurements from vehicles using the
7 "akustikfunktion" in connection with U.S. emission compliance.⁴⁶ A February 2014 PowerPoint
8 prepared by VWAG explained that the akustikfunktion measured speed, acceleration, and engine
9 operation to determine whether a vehicle is undergoing testing.⁴⁷ There is no question that the
10 code comprising the akustikfunktion was developed by Bosch: The technical agreement for it was
11 drafted by Bosch GmbH and contains a legend that "Robert Bosch GmbH reserves all rights in the
12 event of industrial property rights."

13 118. On November 13, 2006, VWAG's Dieter Mannigel (Software Design, U.S. Diesel
14 Engines, Drivetrain Electronics) circulated via email a PowerPoint presentation prepared for
15 VWAG's Rudolf Krebs (who joined Volkswagen from Audi in 2005) about how the
16 "akustikfunktion" is activated and deactivated in recognition of emissions-related environmental
17 conditions, such as temperature and pressure. The presentation explained that the existing vehicles
18 functioning with different drive cycles could not pass U.S. emission tests, and thus proposed the
19 release of the "akustikfunktion" to be driving dependent.⁴⁸

21 ⁴⁵ Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper",
22 *Reuters* (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. VW Group Chairman, Hans Dieter Poetsch, explained that a small group of
23 engineers and managers was involved in the creation of the manipulating software. *See* VW
24 Chairman Poetsch: Company "Tolerated Breaches of Rules", *Auto Week* (Dec. 10, 2015),
<http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>. *See also* "Scandal Explained", *BBC*, Dec. 10, 2015, <http://www.bbc.com/news/business-34324772>; Sept. 18, 2015, <http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works>.

26 ⁴⁶ VW-MDL2672-02559611.

27 ⁴⁷ VW-MDL2672-02572122.

28 ⁴⁸ VW-MDL2672-02559527. The email attached an internal Volkswagen PowerPoint that describes the "akustikfunktion" as activated in recognition of emission related environment

1 119. On November 20, 2006, Mannigel emailed his colleagues to summarize a meeting
 2 with Krebs, at which the PowerPoint described above was likely presented. Krebs had emphasized
 3 the importance of not getting caught by U.S. regulators using the “akustikfunktion,” and warned
 4 that the function must be explainable to regulators. Krebs was skeptical about using the
 5 akustikfunktion in the U.S. market due to potential regulatory and legal exposure, and Mannigel
 6 was nervous that regulators would be able to detect the “akustikfunktion.” Nevertheless, Mannigel
 7 reported, Volkswagen was going ahead with the expanded “akustikfunktion” with Bosch GmbH.⁴⁹
 8 It is likely this was the meeting at which VW decided to use the “akustikfunktion” as a defeat
 9 device to evade compliance with U.S. emission requirements.

10 120. Well after the defeat device was developed and integrated into hundreds of
 11 thousands of Affected Vehicles, Volkswagen and Bosch GmbH and Bosch LLC continued to work
 12 together to refine and maintain it. For example, both Bosch GmbH and Volkswagen were involved
 13 in the calibration of the defeat devices for the Affected Vehicles. A November 2014 email from
 14 VWAG’s Juergen Hintz, entitled “Akustikfunktion,” relayed a telephone call with Bosch GmbH’s
 15 [REDACTED] about the “akustikfunktion” and Volkswagen’s role. VWAG’s C. Arenz responded
 16 that while he had been responsible for the operation of the “akustikfunktion,” Bosch GmbH was
 17 responsible for its calibration. In fact, Arenz disclosed that he planned to meet with Bosch GmbH
 18 employees (along with Michael Brand) about calibrating the “akustikfunktion” the following
 19 week.⁵⁰ In another email, Hintz wrote that Bosch GmbH’s [REDACTED] told him that Bosch GmbH would
 20 be making certain changes to the “akustikfunktion” based on Volkswagen’s specifications.⁵¹
 21
 22
 23
 24

25 conditions and proposed it as a solution to the registration emissions certification problems in the
 26 U.S. (VW-MDL2672-02559528).

27 ⁴⁹ VW-MDL2672-02559526.

28 ⁵⁰ VW-MDL2672-02569895.

⁵¹ Translation at 00387135.

121. In sum, Bosch GmbH and Bosch LLC worked hand-in-glove with Volkswagen to develop and maintain the akustikfunktion/defeat device, and to market diesel technology and obtain necessary regulatory approval for Volkswagen's diesel offerings.⁵²

2. Volkswagen and Bosch Conspire to Conceal the Illegal "Akustikfunktion"

122. By 2007, and likely earlier, Bosch Diesel Systems employees at Bosch GmbH were critical not only in developing the "akustikfunktion," but also in concealing it. On March 9, 2007, Bosch's [REDACTED] emailed VW AG's Mathias Klaproth (a technical developer) and Dieter Mannigel with the subject of "Erweiterungen Akustikfunktion" (in English, "Further Development of the Acoustic Function").⁵³ [REDACTED] *confirmed that Bosch GmbH would remove the description of the enhanced "akustikfunktion" from Volkswagen's fuel pump specification sheets D2250 and D2278.* Klaproth and Mannigel agreed not to list the function in documentation in the U.S., but disagreed whether to disclose it in Europe. Klaproth then took [REDACTED] off the email chain and insisted the "akustikfunktion" would be applied to the European projects, to which Mannigel responded that he would contact Klaproth off-line.

123. Bosch GmbH was concerned about getting caught participating in the defeat device fraud. As reported in the German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen internal inquiry found that in 2007 Bosch warned Volkswagen by letter that using the emissions-altering software in production vehicles would constitute an "offense."^{54,55}

⁵² From the information available to date, it appears that at least [REDACTED] in [REDACTED] du [REDACTED] m Bosch [REDACTED] involved in the scheme to develop the illegal defeat device: [REDACTED], [REDACTED], and [REDACTED] (based on a July 2005 email from [REDACTED] G [REDACTED] cht); [REDACTED] [REDACTED] based on a March 2007 email with VWAG's Klaproth and Mannigel); [REDACTED] [REDACTED] d [REDACTED] (based on a June 2, 2008 letter attempting to limit Bosch GmbH's liability); and [REDACTED] (recipient of the letter attached to VWAG's June 6, 2008 response). VW-MDL2672-02570091; VW-MDL2672-02559611; VW-MDL2672-02559515.

⁵³ VW-MDL2672-02559515.

⁵⁴ Automotive News (Sept. 27, 2015) (<http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>); VW Scandal: Company Warned over Test Cheating Years Ago", *BBC*, Sept. 27, 2015, <http://www.bbc.com/news/business-34373637>.

⁵⁵ <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>.

124. Bosch GmbH expressed concerns that use of the defeat device it had created would violate U.S. law. These concerns culminated in a June 2, 2008 letter from Bosch GmbH's [REDACTED] to Volkswagen's Thorsten Schmidt on Bosch GmbH letterhead in which "Bosch" demanded that Volkswagen indemnify Bosch for any liability arising from the creation of a "defeat device," as Bosch itself called it in English. Through the letter, Bosch sought to clarify the roles and responsibilities of Volkswagen and Bosch regarding the development of the EDC 17, and demanded that Volkswagen indemnify Bosch for any legal exposure arising from work on the defeat device:

The further development [of the EDC17] requested by your company will result, in addition to the already existing possibility of activating enriched data manually, *in an additional path for the potential to reset data to act as a "defeat device."* We ask you to have the attached disclaimers executed by your company.^[56]

The letter uses the words "defeat device" in English, and further explained that "[t]he usage of a defeat device is prohibited pursuant to ... US Law (CARB/EPA) (see definition footnote 2)."⁵⁷

125. Bosch GmbH's June 2, 2008 letter also warned Volkswagen that the software modifications Volkswagen requested could allow "the certified dataset [to be] replaced with another, possibly non-certified data set[.]" which could, in turn, cause "the vehicle's general operating license (registration) [to] become void."⁵⁸ Creating two data sets on emission compliance was illegal under U.S. law. Bosch GmbH knew this, and that is why it requested indemnification from Volkswagen.

126. [REDACTED] and [REDACTED] at Bosch GmbH signed the proposed indemnification; the signature lines for Volkswagen were left blank. When Volkswagen's Hermann Middendorf responded to [REDACTED] at Bosch GmbH. He did not deny the existence of a defeat device, but instead attacked Bosch for involving "the lawyers."⁵⁹

⁵⁶ VW-MDL2672-02570091 (English translation) (emphasis added).

⁵⁷ *Id.* at -92 (emphasis added).

⁵⁸ *Id.* at -93.

⁵⁹ *Id.* at -90.

1 127. Following Bosch GmbH's June 2, 2008 letter, Bosch GmbH continued to develop
2 and sell to Volkswagen hundreds of thousands of the defeat devices for U.S. vehicles even after its
3 express, written recognition that its software was being used in the Affected Vehicles as a "defeat
4 device" that was "prohibited pursuant to . . . US Law."

5 128. VWAG and Bosch LLC and Bosch GmbH continued over the next few years to
6 refine the defeat device and market the diesel technology in VW's vehicle offerings. Refinement
7 of the defeat device was a lengthy and complicated process that required concealing its existence
8 from the onboard diagnostic system, which was intended to report emission controls to comply
9 with U.S., and particularly California's, requirements. In a July 18, 2011 email, Audi's Olaf Busse
10 proposed tying the activation of the "akustikfunktion" more directly to steering angle, instead of
11 vehicle temperature, which was proving to be problematic. This request coincided with inquiries
12 from CARB about on-board diagnostics issues. VWAG's Hanno Jelden (Head of Powertrain
13 Electronics), worried that the change would be too obvious and could not be explained to
14 regulators.⁶⁰

15 129. Top VW executives Denner, Winterkorn, Horn, Müller, and Stadler were also in on
16 the secret. Notes from a May 28, 2014 meeting between Bosch and Volkswagen executives at VW
17 headquarters reflect that the topic of "akustikfunktion" was discussed in the context of
18 Volkswagen's and Bosch's partnership in the U.S. market. VWAG's Friedrich Eichler (Powertrain
19 Development Chief) mentioned the importance of the "akustikfunktion" in Bosch diesel engines.
20 Bosch GmbH participants at the meeting included Denner, as well as [REDACTED] [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED], [REDACTED]
22 [REDACTED] [REDACTED], [REDACTED] [REDACTED] [REDACTED] [REDACTED] and
23 [REDACTED]. For VWAG, Winterkorn was also present.⁶¹

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27 ⁶⁰ VW-MDL2672-0259489. Jelden was subsequently suspended in connection with the
emissions scandal.

28 ⁶¹ VW-MDL2672-02569909.

1 **3. Volkswagen and Bosch GmbH and Bosch LLC Conspire in the U.S. and**
2 **Germany to deceive U.S. Regulators.**

3 130. The purpose of the defeat device was to evade stringent U.S. emissions standards.
4 Once Bosch GmbH and VW perfected the defeat device, therefore, VW, Bosch GmbH and Bosch
5 LLC turned their attention to deceiving U.S. regulators.

6 131. Evidence already shows that Bosch GmbH employees expressly conspired with VW
7 to hide the function of the defeat device. Shortly after the March 2007 email exchange detailed
8 above, in which VWAG's Klaproth and Mannigel confirmed to Bosch GmbH's [REDACTED] that the
9 "akustikfunktion" would not be listed in the U.S. documentation for the Affected Vehicles, an
10 internal email from VWAG's Frank Alich (Development, OBD Diesel) to various individuals at
11 VWAG about scheduling a May 9, 2007 meeting, lamented the trouble distinguishing between
12 acoustic and non-acoustic modes relating to soot simulation. Alich complained that he did not
13 know how he would explain the problem to CARB.⁶²

14 132. Bosch LLC was part of and essential to the fraud. Bosch LLC worked closely with
15 Bosch GmbH and Volkswagen, in the United States and in Germany, to ensure that the non-
16 compliant Affected Vehicles passed U.S. emission tests. As set forth below, Bosch LLC
17 employees frequently communicated with U.S. regulators and actively worked to ensure the
18 Affected Vehicles were approved by regulators.

19 133. Employees of Bosch LLC, Bosch GmbH and IAV provided specific information to
20 U.S. regulators about how Volkswagen's vehicles functioned and unambiguously stated that the
21 vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and clients
22 in Germany about ways to deflect and diffuse questions from US regulators about the Affected
23 Vehicles – particularly CARB. For example, in a May 15, 2008 email from Audi AG's Martin
24 Hierse to Bosch GmbH's [REDACTED] (Diesel Systems, Engineering Powertrain Diagnosis),
25 copying Audi's Stefan Forthmann, Hierse noted that auxiliary emission control devices ("AECDs")
26 were a very important subject for certification of U.S. diesels, and admitted discrepancies with the
27

28 ⁶² VW-MDL2672-02555825.

1 U.S. authorities in AECD documentation.⁶³ The regulators' questions were chipping away at the
2 discrepancies between on board diagnostic systems and the emission controls.

3 134. Accordingly, Hierse worried that there was a possibility that one of the Volkswagen
4 Group's representatives in the U.S. was providing the regulators too much information and data
5 concerning AECD disclosure. He then asked to discuss the matter with Bosch's [REDACTED] either
6 by telephone or in private at one of their offices due to the confidentiality of the issue.

7 135. Bosch GmbH, Bosch LLC and VW worked together to craft responses to CARB's
8 questions. For example, an April 2009 email, Suanne Thomas (VW America Regulatory
9 Strategist) and Bosch LLC's [REDACTED] discussed results from tests sent from an individual at
10 IAV showing defects in the Affected Vehicles' in-use ratios and missing readiness information.

11 136. On July 1, 2009, VGoA's Thomas emailed colleagues, again raising concerns about
12 documenting AECDs in Model Year 2010-11 Affected Vehicles to U.S. authorities. At issue was
13 the "low level of detail in the AECD documents [so that] ARB is not able to confirm which
14 strategies are for component protection." Thomas then relayed that CARB asked whether there
15 was a problem getting Bosch to disclose its strategy.⁶⁴ In a related email, Thomas commented: "I
16 was not involved in the discussions ... with ARB on diesel, however I get the impression that there
17 is a misunderstanding at VW regarding AECDs. That this misunderstanding is the root of the
18 issue – why ARB is not satisfied with the AECD disclosure for diesels."⁶⁵ CARB was asking the
19 right questions, and not getting honest answers.

20 137. Nor can Bosch GmbH persuasively distance itself from the communications with
21 regulators, as Bosch GmbH employees directly participated in meetings with CARB. For example,
22 in January, 2015, Bosch GmbH and Bosch LLC employees (including Bosch LLC's [REDACTED]
23 [REDACTED] [REDACTED] Quality Control, and [REDACTED] Sales
24 Quality and Warranty) conferred about setting up a conference call with Audi and CARB to
25 explain problems with the diagnostics relating to faulty fuel pumps, issues that likely arose because

26 ⁶³ VW-MDL2672-11873274.

27 ⁶⁴ VW-MDL2672-02469411.

28 ⁶⁵ VW-MDL2672-02120937.

1 the defeat device was causing problems with the on board diagnostic system in certain Affected
2 Vehicles. Suanne Thomas of VW coordinated the call between Bosch and CARB.

3 138. Volkswagen and Bosch LLC and Bosch GmbH held CARB and the EPA at bay
4 with finesse (and fraud) to obtain the necessary COCs and EOs to keep Affected Vehicles on the
5 road. An August 2009 email from VGoA shared a comment from CARB regarding 2009
6 Volkswagen Jetta TDIs test results that “VW ‘blatantly did the wrong thing’” and asked
7 Volkswagen if this “is a base strategy from Bosch.” Volkswagen responded, “yes.”⁶⁶

8 139. This is not the only document crediting Bosch strategies to obtain regulatory
9 approval. A May 17, 2011 email from CARB to Suanne Thomas regarding Volkswagen 2014
10 TDIs referenced a 2010 conference call where they discussed “the bosch ZFC [Zero Fuel
11 Calibration] strategy and a possible fuel rail pressure disablement.” VWAG’s Frank Alich then
12 relayed that “ARB accepted our proposal to implement the ZFC ‘time to closed loop’ monitor with
13 MY [model year] 2013.”⁶⁷ And in a May 31, 2013 email regarding 2.0-liter Affected Vehicles,
14 Thomas referenced a “[p]roposed strategy” to “get the executive order [from CARB] based on the
15 ‘Bosch’ strategy.”⁶⁸ These communications demonstrate Bosch LLC and Bosch GmbH’s deep
16 understanding of what regulators allowed and would not allow and what the Bosch entities did to
17 help VW obtain approval.

18 140. In short, there can be no argument that Bosch LLC and Bosch GmbH left
19 communications with the regulators to VW, or that Bosch Diesel Systems employees at Bosch
20 LLC and Bosch GmbH did not understand the regulatory implications of the defeat device software
21 VW paid Bosch GmbH to develop. Employees of Bosch GmbH and Bosch LLC worked together
22 with VW to convince U.S. regulators to approve the Affected Vehicles for sale and use in this
23 country. The examples below identify at least six additional instances in which Bosch entities
24 communicated directly with U.S. regulators to discuss concerns with emissions detection and
25 compliance in the Affected Vehicles. During each communication, Bosch LLC provided specific

26 ⁶⁶ VW-MDL2672-00912096.

27 ⁶⁷ VW-MDL-2672-02464246.

28 ⁶⁸ VW-MDL2672-00530556.

information about how Volkswagen's vehicles functioned and unambiguously stated that the vehicles met emissions standards:

- a. In December 2009, Bosch presented CARB with a strategy to allow usage of Injection Quantity Adjustment codes in 2013 Volkswagen diesel models.⁶⁹
- b. In or around December 2012, Volkswagen and Bosch submitted separate written responses, including requested documents, to the U.S. National Highway Traffic Safety Administration in response to its investigation into high-pressure fuel pump failures in certain Affected Vehicles.⁷⁰
- c. A January 15, 2014 email from CARB to Thomas with the subject, "RE: VW response Re: V6TDI clarifications," CARB's Peter Ho referenced "previous discussions with Bosch," and inquired about false detections in the field.⁷¹
- d. July 23, 2014 notes from Volkswagen referenced a phone call between Volkswagen, Bosch, CARB, and other automakers during which Bosch raised the issue of pin-pointing of wire faults of NO_x and particulate matter sensors with a separate control unit.⁷²
- e. A February 9, 2015 email from VWAG's Steffen Vieser relayed an update from Bosch GmbH about a discussion between CARB and Bosch LLC's [REDACTED] re: a "non-erasable permanent fault code issue of the fuel pump electronic driver stage diagnostic," which Volkswagen suggested could be fixed by a "software update" requiring Bosch's assistance, which CARB approved.⁷³
- f. Notes from a June 10-11, 2015 meeting between CARB and Volkswagen reference a "Bosch discussion with ARB regarding PM [particulate matter] sensor introduction with Fe-doping." The meeting notes also record that CARB told Volkswagen that CARB did not want the emission monitors in a "contrived condition."⁷⁴

141. Bosch did not disclose its knowledge of the illegal defeat device in any of these meetings or communications with U.S. regulators.

⁶⁹ VW-MDL2672-07235955.

⁷⁰ VW-MDL2672-00762181.

⁷¹ VW-MDL2672-00465156 (emphasis added). These discussions began in 2011.

⁷² VW-MDL2672-00887996.

⁷³ VW-MDL2672-00902633; VW-MDL2672-02449923.

⁷⁴ VW-MDL2672-02296983.

4. Bosch GmbH and Bosch LLC Keep Volkswagen's Secret Safe and Push "Clean" Diesel in the U.S.

142. The Bosch entities not only kept Volkswagen's dirty secret safe, they went a step further and actively lobbied lawmakers to push "Clean Diesel" in the U.S., including making Affected Vehicles available for regulators to drive.

143. As early as 2004, Bosch Diesel Systems announced a push to convince U.S. automakers that its diesel technology could meet tougher 2007 U.S. emission standards.⁷⁵ Its efforts ended up being a multiple-year, multi-million dollar effort, involving key players from both Bosch GmbH in Germany and Bosch LLC in the U.S. Following the launch of its new EDC systems in 2006, the Bosch entities hired mcapitol Managers, a lobbying firm to promote its "Clean Diesel" products on Capitol Hill and with the EPA. In Washington, DC, mcapitol Managers lobbied on Bosch GmbH and Bosch LLC's behalf to defeat a proposal that would have favored hybrid vehicle technology over "Clean Diesel" vehicles.

144. Bosch also coordinated studies to advance diesel technology in the U.S. In September 2006, Bosch LLC's [REDACTED] [REDACTED] reached out to Volkswagen and Audi to request their participation in the "Martec Light Duty Diesel Market Opportunity Assessment." The study's goal was to develop coordinated strategies to accelerate advancements of light duty diesel technology in the U.S.⁷⁶

145. Bosch's promotion of diesel technology specifically targeted the U.S. For example, Bosch LLC put on "Diesel Days in California," "Deer Conference: EGT Focus," and "SAE World Congress in Detroit." In 2008, Bosch LLC and VW America co-sponsored the "Future Motion Made in Germany-Second Symposium on Modern Drive Technologies" at the German Embassy in Washington, D.C., with the aim of providing a venue for "stakeholders to gain insight into the latest technology trends and engage in a vital dialogue with industry leaders and policymakers."⁷⁷

⁷⁵ Mar. 8, 2004, Edmund Chew, Autonews.

⁷⁶ VW-MDL2672-06136031.

⁷⁷ VW-MDL2672-00234383.

1 146. Bosch LLC hosted multi-day conferences open to many regulators and legislators
2 and held private meetings with regulators, in which it proclaimed extensive knowledge of the
3 specifics of Volkswagen technology, including calibrations necessary for the Affected Vehicles to
4 comply with emissions regulations.

5 147. For example, in April 2009, Bosch LLC organized and hosted a two-day “California
6 Diesel Days” event in Sacramento, California. Bosch LLC invited a roster of lawmakers,
7 journalists, executives, regulators, and NGOs with the aim of changing perceptions of diesel from
8 “dirty” to “clean.” The event featured Affected Vehicles as ambassadors of “Clean Diesel”
9 technology, including a 2009 VW Jetta “green car.” The stated goals were to “generat[e] a positive
10 perception of Clean Diesel in passenger vehicles” and to “educate California stakeholders about the
11 immediate benefits [of] Clean Diesel passenger vehicles” in reducing emissions. A key feature of
12 the event included “Bosch Vehicles Being Deployed.”⁷⁸ Attendees included [REDACTED] ([REDACTED]
13 [REDACTED], Diesel Systems, Bosch LLC); [REDACTED] ([REDACTED] Diesel
14 Engineering, Bosch Support Staff, Bosch GmbH); [REDACTED] ([REDACTED], Marketing, Diesel
15 Systems, Bosch LLC); and [REDACTED] ([REDACTED], External Affairs, Bosch LLC).

16 148. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced
17 Diesel Cars. One of this advocacy group’s purposes included “generating awareness to legislators
18 and regulators on the benefits of “Clean Diesel” technology for passenger cars, through
19 engagement in policy, regulatory and advocacy activities.”

20 149. Another example of Bosch LLC’s U.S. lobbying is the 2009 “California Green
21 Summit.” As part of its “Clean Diesel” partnership with Volkswagen, Bosch LLC deployed two
22 2009 Jetta TDI Volkswagens to attendees with the express purpose of “Influencing California,” and
23 inviting CARB, the Western Automotive Journalist Organization, and many others.

24 150. In September 2009, Bosch held a Diesel Technology Forum in California. [REDACTED]
25 [REDACTED] (Diesel Systems/Engineering; Vehicle and Engine Laboratory of Bosch GmbH) attended, as
26 did VW’s Stuart Johnson, R. Dorenkamp and G. Pamio, along with Juergen Peter. Following this
27

28 ⁷⁸ *Id.* 115-45; VW-MDL2672-03331605.

1 forum, in October 2009, Mightycomm (Bosch's California lobbyist) outlined a proposal for "OEM
 2 Vehicle Placement Program targeting influential California NGOs and Regulators."⁷⁹ This memo
 3 was addressed to Bosch's [REDACTED] and [REDACTED] at "Bosch Diesel Systems." **Mightycomm**
 4 **specifically stated "[v]ehicles placed with CARB would have to be ... newer models that can**
 5 **withstand possible dynamometer testing. While we do not anticipate a vehicle placed with CARB**
 6 **would be inspected, examined, or tested on a dynamometer, there is no assurance some CARB**
 7 **staff won't want to do this.**"⁸⁰ On the other hand, Mightycomm advised not to worry about a
 8 vehicle being tested by the California Energy Commission ("CEC") "as the CEC is not equipped to
 9 conduct such inspections."⁸¹

10 151. In 2010, Bosch LLC sponsored the Virginia International Raceway with the support
 11 of the 2010 Volkswagen Jetta Cup Series. This included the 2009 "Sidewinder" which Bosch
 12 featured for its "performance exhaust system."

13 152. In its lobbying on behalf of "Clean Diesel," Bosch LLC had to continually cover up
 14 the dirty secret of the defeat device in the Affected Vehicles. In a January 13, 2010 memo
 15 addressed to Bosch's [REDACTED] and [REDACTED] Mightycomm noted that "Clean Diesel has
 16 been ranked the green car of the year" two years in a row – 2009 and 2010. And yet Bosch Diesel
 17 Systems employees at Bosch GmbH and Bosch LLC knew the Affected Vehicles could not obtain
 18 the results being advertised without activating the defeat device.

19 153. Bosch LLC's [REDACTED] ([REDACTED])
 20 presented on "Clean Diesel" technology before the CEC on June 19, 2013, specifically pinpointing
 21 "key influencers," such as specific NGOs that have not traditionally engaged CARB, "who we
 22 need to reach, rally and motivate."⁸²

23 154. In its efforts to promote "Clean Diesel," including the Affected Vehicles, Bosch
 24 acted on behalf of its global Bosch Diesel Systems group. As an example, Bosch put on a two-day
 25

26 ⁷⁹ VW-MDL2672-15182932

27 ⁸⁰ *Id.* (emphasis added).

28 ⁸¹ *Id.*

⁸² VW-MDL2672-00885348.

1 presentation on June 27-28, 2007, about meeting the demands of U.S. emission legislation, where it
 2 focused on lowering emissions in diesel vehicles. Each of the presentation's 30 pages bears both
 3 the "Bosch" name and "Bosch Engineering GmbH" but makes no mention of Bosch LLC.⁸³ The
 4 aforementioned memo from Mightycomm was addressed to "Bosch Diesel Systems." And each
 5 page of the presentation for California Diesel Days bears the label "BOSCH" in emboldened red
 6 type without distinguishing between Bosch GmbH and Bosch LLC.⁸⁴ This is consistent with the
 7 ongoing representations that the Bosch entities, overseas and in the U.S., were "one-for-all-and-all-
 8 for-one" in promoting "Clean Diesel" technology to U.S. stakeholders.

9 **5. Bosch's Volkmar Denner Also Played a Critical Role in the Scheme.**

10 155. Prior to becoming CEO in 2012, Volkmar Denner climbed the corporate ladder in
 11 Bosch GmbH's Engine ECU Development division, managing the development and sale of
 12 automotive engine computers, such as the EDC units that Volkswagen used as defeat devices. In
 13 2006, Denner joined Bosch Germany's Board of Management and was later responsible for
 14 research and advance engineering, product planning, and technology coordination across the
 15 company's three business sectors from July 2010 until his appointment as CEO. Denner has
 16 agitated for the company to become more like a "start-up,"⁸⁵ and to develop a "culture of failure,"⁸⁶
 17 where risk taking is rewarded, in an attempt to replicate the "California venture capitalist model."⁸⁷
 18 Denner set the tone at the top of Bosch as a member of Bosch's Board of Management and later
 19
 20

21 ⁸³ VW-MDL2672-05676990.

22 ⁸⁴ VW-MDL2672-03331605.

23 ⁸⁵ See Interview with Bosch GmbH Director Volkmar Denner, Jan. 21, 2015, available at
http://www.uni-stuttgart.de/forschung-leben/forschung-persoendlich/persoendlich_artikel0005.en.html.

24 ⁸⁶ See Martin-Werner Budchenau, The Multinational Start-up: The engineering and electronics
 25 giant Bosch is putting aside its conservative tendencies and investing in a new innovation unit that
 26 it hopes will rival successful start-up incubators, Handelsblatt, Nov. 28, 2014, available at
<https://global.handelsblatt.com/edition/64/ressort/companies-markets/article/the-multinational-start-up>.

27 ⁸⁷ See Nick Gibbs, German auto firms try to nurture Silicon Valley boldness, Automotive
 28 News, Nov. 22, 2015, available at <http://www.autonews.com/article/20151122/OEM06/311239956/german-auto-firms-try-to-nurture-silicon-valley-boldness>.

1 CEO. He embraced the Silicon Valley culture of moving fast, taking risks, and asking for
2 forgiveness rather than permission.

3 156. As he rose in the ranks, Denner worked to foster Bosch GmbH's relationship with
4 key corporate partners, like Volkswagen, which brought in billions of dollars in annual revenues.
5 Denner immersed himself in the day-to-day business of Bosch's important customers. Illustrating
6 how important Volkswagen was to Bosch, Denner communicated directly with Volkswagen's
7 Winterkorn about the companies' relationship and Bosch products sold to Volkswagen. For
8 example, when Bosch ran out of oxygen sensor parts that Volkswagen ordered for its vehicles,
9 Denner reached out directly to Winterkorn. Denner and Winterkorn directly communicated over
10 parts delays and shortages, implying that each was not a manager who governed from afar, but
11 rather was intricately involved in the details of operations.

12 157. In May 28, 2014, Denner participated in a meeting with Winterkorn and other
13 Bosch GmbH, Bosch LLC and Volkswagen executives at Volkswagen headquarters concerning
14 their partnership in the U.S. market. Among other topics, participants discussed the
15 "akustikfunktion" in Volkswagen diesel vehicles.⁸⁸ Thus, Denner and Winterkorn were aware of
16 the illegal use of the defeat devices at least by May 2014.

17 158. In sum, Bosch GmbH and Bosch LLC each played a crucial role in the fraudulent
18 enterprise and profited handsomely from it. It is no exaggeration to say that Bosch GmbH
19 provided Volkswagen with the most critical elements necessary to create an engine capable of
20 being (fraudulently) represented as achieving the most stringent U.S. emission standards and Bosch
21 LLC directly participated in selling the fraud. All of the Bosch components provided to the
22 Volkswagen production line combined – including the ECU, software, fuel system, sensors, and
23 harness – accounted for a sizeable portion of the total material cost of the engines. Volkswagen is
24 very big business for Bosch Diesel Systems, in particular for Bosch GmbH and Bosch LLC.

25
26
27
28

⁸⁸ VW-MDL2672-02569909.

D. Volkswagen Falsely Pitched Itself as a Leader in Environmental Issues

159. Despite Volkswagen's ascension to become the world's biggest automaker, Volkswagen sales lagged in the United States. Volkswagen has sought to improve sales in the United States by touting the performance and reliability of its vehicles and its environmental leadership. Volkswagen's 2013 Annual Report emphasizes that "Volkswagen intends to become the global economic and environmental leader among automobile manufactures by 2018" and that "[w]e are focusing in particular on the environmentally friendly orientation and profitability of our vehicle projects." Volkswagen's false proclamations of environmental friendliness were calculated to, and did artificially increase its brand value – because it increased the value of Franchise Dealer Class members' relationships with their existing clients, and the volume and profitability of their relationships with prospective clients – and the price dealerships paid for the rights to sell VW cars.⁸⁹

E. Volkswagen Falsely Marketed its Diesel Engine Systems as Clean and Green

160. While secretly using defeat devices to bypass emission testing, Volkswagen publicly declared a landmark victory – touting that it had successfully optimized its engines to maintain legal emissions, while simultaneously enjoying the cost savings of a LNT system. Volkswagen claimed it accomplished this by monitoring and adjusting combustion conditions and using a two-stage exhaust gas recirculation system to reduce initial emissions, while neutralizing the remaining ones with a LNT to comply with U.S. law.⁹⁰ Volkswagen branded and advertised this purportedly revolutionary technology to American consumers as "Clean Diesel" TDI technology.

⁸⁹ The fraudulently inflated costs to dealers not only included amounts dealers paid to acquire dealerships and franchise rights, but also capital investment costs. By artificially and fraudulently inflating its brand value, VW could impose and require franchise dealers to make capital investments, such as building new showrooms. These investments are direct losses to Franchise Dealer Class members because the massive decrease in customers willing to buy VW cars has substantially diminished the actual returns that Dealers are getting from their investments.

⁹⁰ See Hadler, *et al.*, *Volkswagen's New 2.0l TDI Engine Fulfills the Most Stringent Emission Standards*, INTERNATIONALES WIENER MOTORENSYMPOSIUM 2008; see also *Self Study Program 826803: 2.0 Liter TDI Common Rail BinS ULEV Engine*, VOLKSWAGEN OF AMERICA, INC. (2008).

161. Volkswagen broadly boasted about the performance and environmental cleanliness of its engine systems. In an October 2008 release, Volkswagen bragged:

The Jetta TDI is amongst the ten most fuel efficient vehicles on the US market. In the recently published “Fuel Economy Guide 2009” the EPA (Environmental Protection Agency) listed the Jetta TDI in the top ten low consumption and low emissions vehicles.

In the current edition of the publication, the Jetta 2.0 l Clean TDI, introduced to the market two months ago, is praised particularly for its excellent consumption figures - it has a fuel consumption of 5.7 litre per 100 kilometre. Moreover, the Jetta Clean TDI also fulfils stringent Californian emission standards. This was achieved through modifications within the engine and *by implementing an exhaust treatment system developed especially by Volkswagen and which reduces nitrogen oxide emissions (NOx) by up to 90 percent.* The central element of the exhaust treatment system is the NOx storage catalytic converter.^[91]

162. Since introducing the 2.0L TDI Clean Diesel engine in 2008, Volkswagen has touted it as a “fantastic power train” that “gives very good fuel economy” and “is also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would ... cuts out the particulate emissions by 90% and the emissions of nitrous [sic] oxide are cut by 95% ... [and is] clean enough to be certified in all 50 states.”⁹²

163. The TDI Clean Diesel engines are turbocharged and directly inject fuel into each cylinder via fuel injectors. Volkswagen has stated, “[t]he superior qualities of the 2.0 Liter TDI engine with common rail injection systems are oriented towards future challenges in acoustics, comfort, and exhaust gas after-treatment ... confirming Volkswagen’s role as a pioneer in diesel technology.”

164. Volkswagen has marketed and advertised its Clean Diesel models as extraordinarily clean, EPA certified in all 50 states, and powerful. For example, the following promotional material was used in 2010, and similar materials have been used across the spectrum of models using the Clean Diesel engine system:

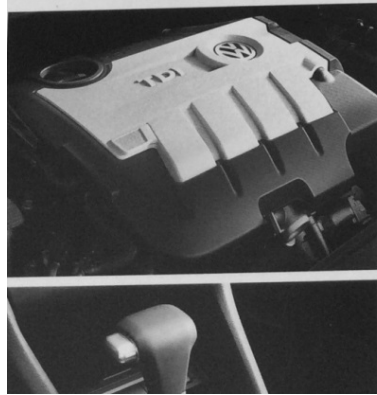
⁹¹ See http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2008/10/vw_in_fuel_economy_guide.html (last accessed Sept. 23, 2015) (emphasis added).

⁹² Statement of Volkswagen Group of America, Inc.’s Chief Operating Officer Mark Barnes, to The Business Insider, October 9, 2009.

Burn rubber, not money.

The all-new 2010 Golf TDI Clean Diesel offers fuel efficiency,* power, and performance. Or, in other words, it's a lean, mean, cleaner-burning machine. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% fewer sooty emissions than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It's powerful, with the kind of street-savvy torque that brings a smile to every stoplight. It's efficient, using a turbocharger and smart exhaust design to use fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars that are certified in all 50 states. And best of all, it will help save you money, with an out-of-this-world EPA-estimated mileage of 30 city/42 highway mpg (automatic)* and over 594 miles on a single tank of fuel.**

If efficiency and savings weren't enough, the Golf TDI model also gives you premium features like the multi-function leather steering wheel, the touchscreen Premium VIII radio with a Media Device Interface (MDI) and iPod® cable, SIRIUS® Satellite Radio, a 6-speed manual transmission, fog lights, and the optional navigation package with touchscreen navigation to efficiently find your way to the bank.



"Good, clean fun" takes on
a whole new meaning.



165. Volkswagen's advertising, which keyed on the unique combination of clean, efficient, and highly performing, was very effective. In fact, Volkswagen has become the largest seller of diesel passenger vehicles in the United States.

166. In an October 2009 interview with Business Insider, when asked "[w]hat is the advantage of a diesel over a hybrid," VGoA's Chief Operating officer, Mark Barnes, stated: "It's also good for the environment because it puts out 25% less greenhouse gas emissions than what a gasoline engine would. And thanks to the uniqueness of the TDI motor, it cuts out the particulate emissions by 90% and the emissions of nitrous[sic] oxide are cut by 95%. So, a very very clean running engine. Clean enough to be certified in all 50 states."⁹³

⁹³ Gayathri Vaidyanathan, *Volkswagen Preps for a Diesel Revolution*, The Business Insider, Oct. 9, 2009, <http://www.businessinsider.com/volkswagen-preps-for-adiesel-revolution-2009-10>.

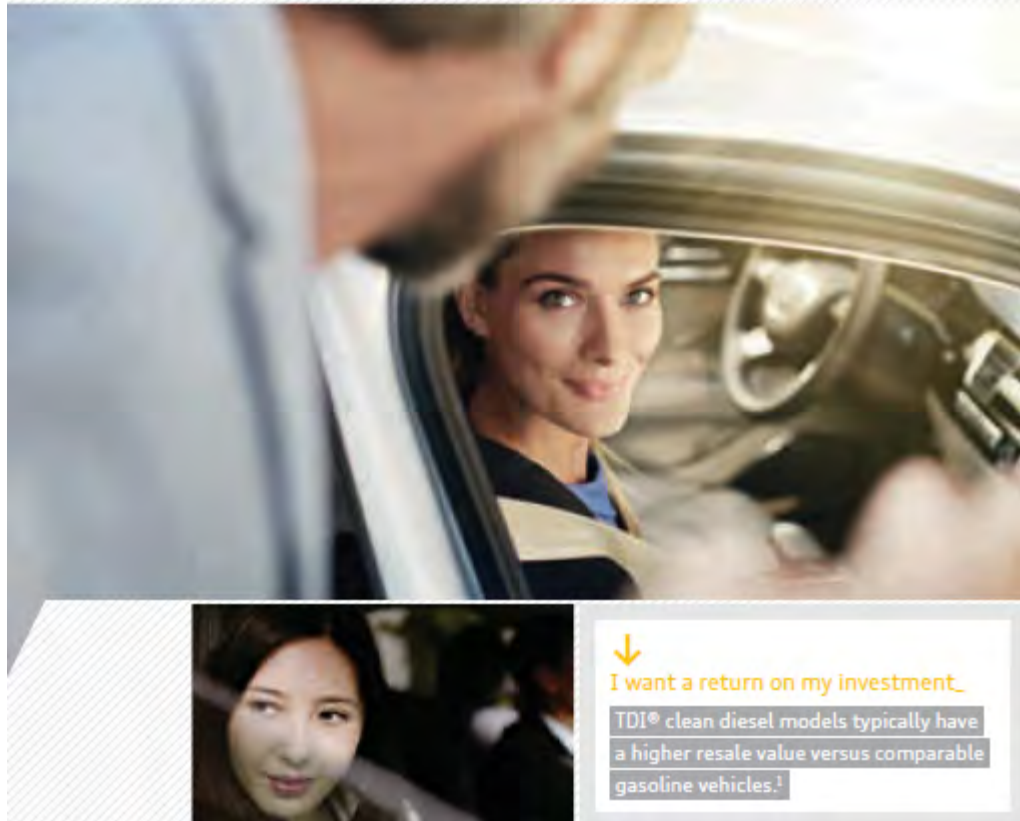
167. Volkswagen doubled-down on “clean” and “green” vehicles. Being highly efficient, fun, and “clean” are the central messages for Volkswagen’s diesel engine campaign.

168. Volkswagen also touted the performance characteristics of the TDI Clean Diesel, claiming that clean emission technology did not sacrifice its 236 lbs/ft of torque and turbocharged Clean Diesel engine. In a recent 2015 Volkswagen Golf sales brochure, Volkswagen stated “With the 2.0L TDI engine, you’ll appreciate every fuel-efficient mile with the EPA-estimated 45 hwy mpg. But that’s only half the story. Step on the pedal and feel the 236 lb-ft of torque and let the performance tell the other half.”



169. Volkswagen also claimed that TDI Clean Diesel models “typically have a higher resale value versus comparable gasoline vehicles”:

1 **More fuel for thought about diesel.**



16 170. But even when Volkswagen knew that EPA investigators had discovered – or at the
17 very least suspected – their fraud and the defeat device, it continued to deceive its customers and its
18 franchise dealers like Plaintiffs through false recalls and false advertising.

19 171. Beginning in April 2015, Volkswagen issued VW Action Code 2306, which was a
20 recall for Clean Diesel equipped vehicles. Volkswagen claimed that the recall was a “repair” and
21 that it “improved” the engine management system. But many owners recorded a marked decrease
22 in fuel efficiency and performance after the recall was completed.

172. Below is a copy of the Recall Notice sent to Clean Diesel owners in April 2015:



Das Auto.

Volkswagen of America, Inc.
3800 Hamlin Road
Auburn Hills, MI 48326

April 2015

This notice applies to your vehicle:

**Subject: Emissions Service Action 2306 – ECM Software
Certain 2010-2014 Model Year Volkswagen Vehicles Equipped with a 2.0L TDI®
Clean Diesel Engine**

Dear Volkswagen Owner,

As part of Volkswagen's ongoing commitment to our environment, and in cooperation with the United States Environmental Protection Agency and the California Air Resources Board, we are informing you of our decision to conduct an emissions service action on certain 2010-2014 model year Volkswagen vehicles equipped with a 2.0L TDI® Clean Diesel engine. Our records show that you are the owner of a vehicle affected by this action.

What is the issue, and what will we do?

The vehicle's engine management software has been improved to assure your vehicle's tailpipe emissions are optimized and operating efficiently. Under certain operating conditions, the earlier strategy may have increased the chance of the vehicle's MIL light illuminating. If the MIL illuminates for any reason, your vehicle will not pass an IM emissions inspection in some regions.

To address this issue, your authorized Volkswagen dealer will update the ECM software in your vehicle. This work will take about one hour to complete and will be performed for you free of charge. Please keep in mind that your dealer may need additional time for the preparation of the repair, as well as to accommodate their daily workshop schedule.

IMPORTANT!

Please note that if the ECM in your vehicle has been "chipped," "tuned," or otherwise modified from original factory specifications with aftermarket components and/or software, work needed to repair, replace, or return the ECM to original factory specifications is NOT covered under this action.

What should you do?

In order to limit any possible inconvenience, please contact your authorized Volkswagen dealer as soon as possible to schedule this service.

2306/D8 CALI

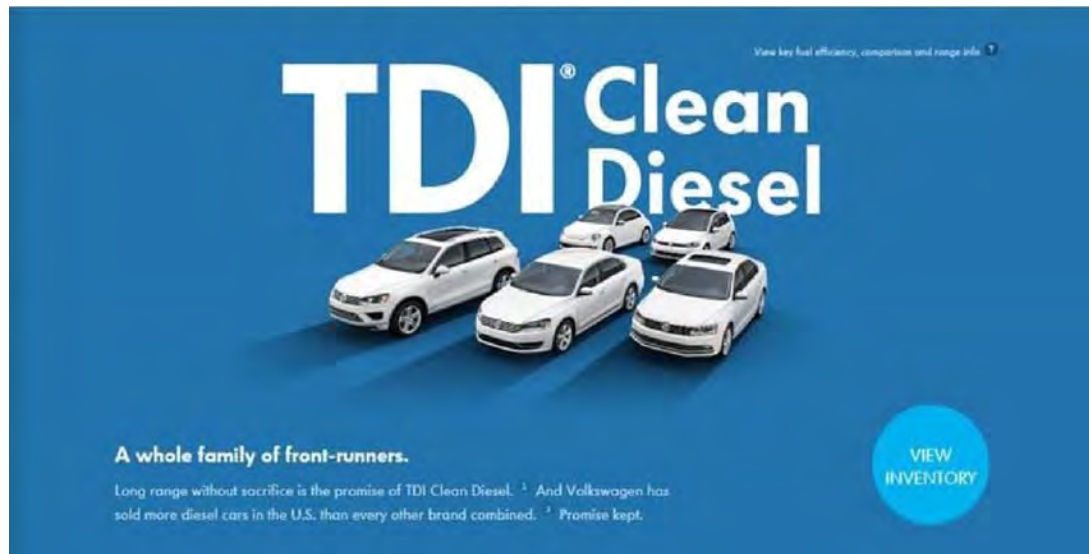
173. But after having the recall installed, A3 owners made posts on enthusiast blogs such as the following two posts:

Had my update done couple weeks ago and I've noticed a sizable performance hit afterwards, compared to previous tanks pre-update.
38.00 MPG
36.42 MPG

37.77 MPG
 37.51 MPG
 37.05 MPG
 /////Recall performed
 34.13 MPG
 33.12 MPG

edt: real data...
 bought car in jan in CA (first two is drive back)
 38.14
 36.63
 32.10
 32.99
 32.77
 32.15
 29.94 (recall done during this tank)
 26.67
 25.79
 26.10

174. Volkswagen continued its aggressive campaign to dupe its customers and dealers into believing its cars were clean and environmentally friendly. In advertisements appearing on its webpage as recently as September 21, 2015, Volkswagen extended the deceit. These ads have now been stripped from Volkswagen's websites.



175. Volkswagen's now dubious concern for the environment extended beyond its Clean Diesel campaigns. On the "Environment" page of its website, Volkswagen claims that it takes "environmental responsibility very seriously. When it comes to making our cars as green as

possible, Volkswagen has an integrated strategy focused on reducing fuel consumption and emissions, building the world's cleanest diesel engines and developing totally new power systems, which utilize new fuel alternatives."

176. Volkswagen trumpeted its apparent environmental *bone fides* when the Audi A3 TDI and VW Jetta TDI were named the 2010 Green Car of the Year and the 2009 Green Car of the Year. Ironically, the tag line of the most recent Clean Diesel advertisements was "***Promise kept.***"⁹⁴

177. On the Volkswagen Clean Diesel webpage, it continued to mislead consumers, touting the supposedly reduced greenhouse gas emission of the Clean Diesel engine system.⁹⁵



178. Through its "Think Blue" program, Volkswagen claimed to have a policy of being "more responsible on the road and more environmentally conscious—not just in our cars." But whether Volkswagen had any care at all for the environment is now, at best, debatable.

179. On its website to promote its "clean" diesel technology, www.clearlybetterdiesel.org, Volkswagen falsely claimed that its Clean Diesel engine system reduces smog and "meets the highest standards in all 50 states, thanks to ultra-low sulfur diesel (ULSD) fuel and innovative engine technology that burns cleaner."

⁹⁴ See <http://www.vw.com/features/clean-diesel/> (last visited Sept. 21, 2015). The content has since been removed.

⁹⁵ See <http://www.audiusa.com/technology/efficiency/tdi?csref=116751439289858719> (last visited Sept. 21, 2015). The content has since been removed.

180. These themes extended to print brochures at dealerships and to VW's website. The brochures emphasized that VW's "clean" diesel was "clean," "green," and low emission. For example, a "2012 Volkswagen Family" brochure for all VW models, states:

Let TDI "clean" diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That's all thanks to the TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.** On most models, you can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.^[96] [Emphasis added.]

181. Similarly, a "2013 Volkswagen Family" brochure, applicable to all models, states:

When you've had your fill of filling stations, hit the road in your TDI "clean" diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That's all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels.** Far and away, it's our best diesel yet.^[97] [Emphasis added.]

182. And a 2012 "Volkswagen TDI "clean" diesel" brochure for the six models of Volkswagen TDIs then on the market (Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg) states:

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle.

...

Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet.^[98]

⁹⁶ Brochure: 2012 Volkswagen Family, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

⁹⁷ Brochure: 2013 Volkswagen Family, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2013-volkswagenfamily.pdf>.

⁹⁸ Brochure: 2012 Volkswagen TDI[®] Clean Diesel, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2012-family.pdf>.

183. Further, a Volkswagen 2010 TDI Jetta and Jetta SportWagen brochure states:

The 2.0L TDI® “clean” diesel engine gives you 140hp and 236 lbs-ft of torque. This engine is the toast of Europe for its quickness, low emissions, and fuel efficiency—a staggering 38 city/44 highway mpg (automatic) based on real-world AMCI-certified testing (30 city/42 highway mpg. EPA estimates).

...

Jetta TDI “clean” diesel offers fuel efficiency, power, performance, and a \$1,300 tax credit from Uncle Sam because it qualifies as an Advanced Lean Burn Credit. **Or, in other words, lean, mean, cleaner burning machines. Volkswagen believes in delivering a no-compromise German-tuned auto that performs, and still leaves a small carbon footprint. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% less soot than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur.** It’s powerful, with the kind of low-end torque that racers and tuners demand. It’s efficient, using a turbocharger and smart exhaust design to burn fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars certified in all 50 states. And best of all, it will help save you money with an out-of-this-world AMCI-estimated mileage of 38 city/44 highway mpg (automatic) and over 594 miles on a single tank of fuel.

There’s even a Jetta SportWagen TDI “clean” diesel, with the same astonishing clean diesel technology, plus a whopping 66.9 cubic feet of cargo room.^[99] [Emphasis added.]

184. And a Volkswagen 2011 Golf TDI brochure states:

Regardless of which Golf model you get, you’ll be seeing a lot fewer gas stations and a lot more road. The 2.5L Golf comes standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg. Opt for the Golf TDI model and you’ll enjoy a turbocharged clean diesel engine with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That’s up to 609 miles per tank. **And you’ll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet.** So whether you’re in the market for IntelliChoice’s 2010 “Best Overall Value Compact Car over \$17,000,” or you want to go for a variation on that theme and get the ever-popular TDI model, you can’t go wrong. In fact, you can go very right for a long, long time.”^[100]

⁹⁹ Brochure: 2010 Volkswagen Jetta and Jetta SportWagen, <http://www.slideshare.net/SteveWhiteVW/2010-volkswagen-jetta-brochure-greenville>.

¹⁰⁰ Brochure: 2011 Volkswagen Golf, <http://cdn.dealereprocess.com/cdn/brochures/volkswagen/2011-golf.pdf>.

185. A Volkswagen 2012 Passat TDI brochure states:

Let the Passat TDI “clean” diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles on a single tank without sacrificing one bit of turbocharged performance. **That’s all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines.** You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

...

The TDI “clean” diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. **So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.**^[101] [Emphasis added.]

186. A Volkswagen 2013 Beetle TDI brochure states:

Start the TDI® “clean” diesel model and hear the surprisingly quiet purr of **the first clean diesel Beetle**, designed for both power and efficiency.^[102] [Emphasis added.]

187. A Volkswagen 2014 Beetle TDI brochure states:

2.0L TDI “clean” diesel engine. Engineered with the idea that less is more. The Beetle TDI has lower CO₂ emissions compared to 84% of other vehicles. **So every getaway you make will be a cleaner one.**^[103] [Emphasis added.]

188. A Volkswagen 2014 TDI Touareg brochure states:

3.0L TDI “clean” diesel engine. Engineered with the idea that less is more. The Touareg TDI has lower CO₂ emissions compared to 88% of other vehicles. **So every getaway you make will be a clean one.**^[104] [Emphasis added.]

F. Volkswagen’s Clean Diesel Engine Systems Were a Fraud

189. Defendants’ illegal scheme started to unravel approximately five years after Volkswagen introduced its first diesel model containing the defeat device into the U.S. stream of commerce. In May 2014, West Virginia University’s Center for Alternative Fuels, Engines &

¹⁰¹ Brochure: 2012 Volkswagen Passat, <https://static.beepi.com/Brochures/17001.pdf>.

¹⁰² Brochure: 2013 Volkswagen Beetle, <https://static.beepi.com/Brochures/22980.pdf>.

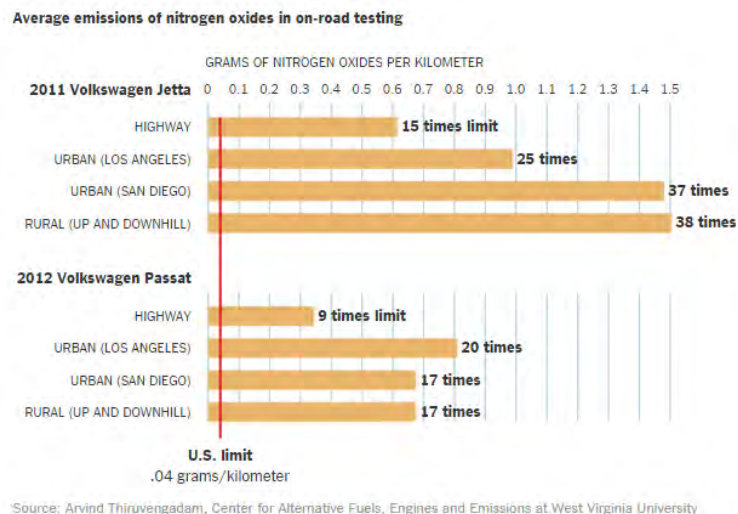
¹⁰³ Brochure: 2014 Volkswagen Beetle, <https://static.beepi.com/Brochures/23900.pdf>.

¹⁰⁴ Brochure: 2014 Volkswagen Touareg, <https://static.beepi.com/Brochures/18663.pdf>.

Emissions published results of a study commissioned by the International Council on Clean Transportation (“ICCT”), which found that certain of the Affected Vehicles’ real world NO_x and other emissions exceeded the allowable EPA emission standards.¹⁰⁵

190. The ICCT researchers had been comparing the real-world performance of “clean” diesel vehicles in Europe with reported results and noted numerous discrepancies. Since the U.S. emission regulations were significantly more stringent than its European counterparts, the ICCT sought to test the equivalent U.S. “clean” diesel cars, presuming that they would run cleaner. West Virginia University was a qualified and enthusiastic partner, as they had already been engaged in the study of heavy truck emissions.

191. Shockingly, the study showed that, contrary to testing lab results, real world driving of Volkswagen “clean” diesel vehicles produced levels of NO_x up to 40 times higher than legal limits promulgated by the EPA and CARB:



192. VW, and key members of the conspiracy, learned of the results of this study prior to its publication on or around May 15, 2014. Oliver Schmidt was the General Manager in charge of VW’s Engineering and Environmental Office in Auburn Hills, Michigan from around 2012 to around February 2015. In the course of that work, he knew of the illegal defeat device and, at

¹⁰⁵ See *Final Report: In Use Emissions Testing of Light-Duty Diesel Vehicles in the United States*, International Council on Clean Transportation (May 15, 2015), http://www.theicct.org/sites/default/files/publications/WVU_LDDVin-use_ICCT_Report_Final_may_2014.pdf.

1 various times, concealed it from the EPA and the public. Between March and September 2015
2 Schmidt worked in Wolfsburg, Germany as a principal deputy to Neusser (Head of Engine
3 Development).

4 193. On or around April 2, 2014, Oliver Schmidt opened an email which, in part, stated
5 that “current diesel PEMS measurements in USA on road by CARB, WVU with ICCT show
6 significantly increased NO_x-RDE factors. (study to be published soon.)” In this email, the term
7 PEMS refers to the device used to measure vehicle emission on the road and RDE refers to real-
8 drive emissions. Later that day, Schmidt wrote to a colleague about VW’s compliance with U.S.
9 emissions regulations, saying: “[i]t should first be decided whether we are honest. If we are not
10 honest, everything stays as it is. ICCT has stupidly just published measurements of N[orth]
11 A[merica] R[egion] diesel off-cycle, not good.” In this context, NAR refers to the North America
12 region.

13 194. On or about April 7, 2014, ICCT engineers received an e-mail from a VW of
14 America official seeking to verify which vehicles in the study were manufactured by VW.

15 195. On or about April 15, 2014, Schmidt forwarded a copy of the ICCT presentation to
16 Bernard Gottweis. Gottweis formally led a team called the “Product Safety Taskforce,” which
17 concentrated on crisis prevention and management. But he was primarily known within VW as the
18 “fire-fighter.” He had come out of retirement to help with the diesel emissions issue. Schmidt’s
19 email to Gottweis concluded by saying “[w]ithin VW GOA, the study is known only to EEO, and
20 we want to keep it that way for the time being.”

21 196. On or about April 28, 2014, members of the VW task force presented the findings of
22 the ICCT study to Bernard Gottweis. Their presentation included an explanation of the potential
23 financial consequences VW could face if the defeat device was discovered by U.S. regulators,
24 including but not limited to fines per vehicle, which were substantial.

25 197. Around the same time (late April 2014), a presentation in Wolfsburg noted that
26 “[o]ne option was for Volkswagen to offer to update the engine software. But the update would
27 not bring emissions down to the required levels.”
28

1 198. Michael Horn, former President and CEO of VW America, admitted in his
2 December 14, 2015 responses to additional questions from the House of Representatives
3 Subcommittee on Oversight and Investigations Committee on Energy and Commerce he may have
4 learned of the study as early as April 2014 and no later than May of 2014.

5 199. On or about May 9, 2014, a VW employee emailed to Schmidt and others which, in
6 part, read:

7 As mentioned orally, VW currently in [North American Region] has
8 the problem of high off cycle emissions, that the EPA has now found
9 out about and we must respond. Oliver Schmidt as head of EEO
10 plans to speak directly with [a VW supervisor] here in Herndon at the
end of May. I cannot tell you anything before that because the
investigations are still underway in [Wolfsburg]. Dr. Neusser is
directly involved in it as head of development.

11 Schmidt replied “Are you crazy? Recall the email.”

12 200. The ICCT study was formally published on May 15, 2014. On that same day,
13 Schmidt emailed to Michael Horn with an attachment that, in part, says “[t]he contents of this
14 [ICCT] study cannot be ignored.” The attachments also outlined the possible penalties VW was
15 facing. The fines and cars in the attachment could justify a fine of up to \$18 billion dollars.
16 Michael Horn admitted that, shortly after the publication of the study, he was briefed about the
17 penalties for non-compliance with U.S. emissions standards and that the EPA may detect “defeat
18 devices.”

19 201. The results of this study prompted an immediate investigation by the EPA and
20 CARB, both of whom demanded an explanation from Volkswagen. Despite knowing that the
21 Affected Vehicles contained illegal emission systems – and defeat devices intentionally designed to
22 comply with emission standards on a test bench but not under normal driving operation and use –
23 Volkswagen failed to come clean. Instead, Volkswagen denied the allegations and blamed faulty
24 testing procedures.

25 202. On or around May 23, 2014, Gottweis sent a memo to Winterkorn about possible
26 repercussions from the ICCT study. He warned that “[t]here is no well-founded explanation for the
27 dramatically higher NOx emissions that can be given to the authorities,” so “[i]t is to be suspected,
28 that the authorities will examine the VW systems to see whether Volkswagen has installed engine

1 management software (a so-called Defeat Device).”¹⁰⁶ A Volkswagen press release later
 2 acknowledged that Winterkorn received this memo in May 2014 “in his extensive weekend mail.”

3 203. Audi conducted internal testing on the 3.0-Liter TDI engine starting in Fall 2014,
 4 and found driving emissions of NOx that greatly exceeded U.S. standards. Volkswagen officials
 5 conveyed this information to CARB, but without disclosing the true source and nature of the
 6 problem.

7 204. On or about October 1, 2014, VW employees gave a presentation to CARB
 8 regarding the ICCT study results and discrepancies identified in NOx emissions between
 9 dynamometer testing and road driving. In responding to questions, VW employees did not reveal
 10 that the existence of the defeat device explained the discrepancies in NOx emissions. Instead, they
 11 gave CARB false reasons for the discrepancies in NOx emissions, including driving patterns and
 12 technical issues.

13 205. On or around November 14, 2014, VW employees sent another email to Winterkorn
 14 estimating that it would cost €20 million to fix the emissions problems.

15 206. In December 2014, Volkswagen issued a recall purportedly to update emission
 16 control software in the Affected Vehicles, and CARB (with the EPA) conducted follow-up testing
 17 of the Affected Vehicles in the laboratory and during normal road operation. CARB attempted to
 18 identify the source and nature of the Affected Vehicles’ poor performance and determine why their
 19 on-board diagnostic systems did not detect the increased emissions. None of the technical issues
 20 suggested by Volkswagen adequately explained the NO_x test results as confirmed by CARB.

21 207. In February 2015, Ferdinand Piëch was the chairman of the supervisory board of
 22 VW AG responsible for monitoring the executive management board (which included Defendant
 23 Winterkorn).¹⁰⁷ Piëch served as supervisory board chairman of VW AG from 2002 to (April of)
 24 2005 and, as noted earlier, was CEO of VW AG from 1993 to 2002. Piëch received information

25
 26 ¹⁰⁶ Geoffrey Smith, *VW’s ex-CEO Winterkorn ‘Knew About Defeat Device in Early 2014,’*
 Fortune (Feb. 15, 2016), <http://fortune.com/2016/02/15/vw-ceo-winterkorn-defeat-device/>.

27 ¹⁰⁷ William Boston, *Volkswagen Ex-Chairman’s Account Is Latest Plot Twist in Emissions*
 28 *Scandal*, Wall Street Journal (Feb. 9 2017), <https://www.wsj.com/articles/volkswagen-ex-chairmans-account-is-latest-plot-twist-in-emissions-scandal-1486689385?mod=e2tw>.

1 indicating that the company may be cheating U.S. and diesel emissions standards in or around
 2 February of 2015 from an Israeli security firm and/or service.¹⁰⁸ He provided testimony to German
 3 prosecutors that he brought this information to the attention of VW directors, including Winterkorn
 4 in or around February or March of 2015.¹⁰⁹ He also testified that in or around March 2015, he
 5 informed the steering committee of VW's supervisory board (including Michael Horn) that he had
 6 information indicating that VW was cheating U.S. diesel emissions standards.¹¹⁰ According to
 7 German media sources, this account has been confirmed by VW supervisory board members and at
 8 least one other witness.¹¹¹

9 208. On or about March 3, 2015, VW employees discussed providing a vehicle to CARB
 10 so they could test the effectiveness of VW's software fix. They did so in an email chain that
 11 included Liang and had the subject line "VW TDI test at [C]AR13." A VW employee concluded
 12 "check the [s]oftware with James [Liang]."

13 209. On or about April 28, 2015, a VW employee emailed on which the employee copied
 14 Liang and other VW employees. The VW employee wrote (in German) "we 'only just need a
 15 plausible explanation' as to why the emissions are still high!!!"

16 210. In June of 2015, Peter Jurgen, a VW liaison with U.S. regulatory agencies, wrote to
 17 VW employees saying they needed to come up with "good arguments" to tell regulators asking
 18 about the emissions discrepancies.¹¹²

19 211. On or about June 29, 2015, a VW employee emailed, with the subject "[C]ARB
 20 Status," and stated (in German): "We must be sure to prevent the authority (sic) from testing the
 21
 22

23 ¹⁰⁸ *Id.*

24 ¹⁰⁹ *Id.*; Bertel Schmitt, *Lies, Damned Lies, And Volkswagen's Dieseldgate*, Forbes (Feb. 12 2017)
[http://www.forbes.com/sites/bertelschmitt/2017/02/12/lies-damned-lies-and-volkswagens-](http://www.forbes.com/sites/bertelschmitt/2017/02/12/lies-damned-lies-and-volkswagens-dieseldgate/#34dfa16918eb)
 25 [dieseldgate/#34dfa16918eb](http://www.forbes.com/sites/bertelschmitt/2017/02/12/lies-damned-lies-and-volkswagens-dieseldgate/#34dfa16918eb).

26 ¹¹⁰ *Id.*

27 ¹¹¹ *Id.*

28 ¹¹² McLaughlin, David et al. *VW Officials Destroyed Files, E-Mails as Diesel Scheme Unraveled* Bloomberg (Jan. 11 2017), <https://www.bloomberg.com/news/articles/2017-01-12/vw-officials-destroyed-files-e-mails-as-diesel-scheme-unraveled>.

1 [EA 189 engine]! If the [EA 189 engine] goes onto the roller at the CARB, then we'll have
2 nothing more to laugh about!"

3 212. On or about July 2, 2015, a VW employee emailed to Liang and other VW
4 employees, with the subject "RE: Status Update USA," seeking input on how to respond to U.S.
5 regulators, and noting (in German), "the key word 'creativity' would be helpful here."

6 213. On or about July 23, 2015, a VW employee sent a calendar invite to Liang and other
7 VW employees, with the subject "Status Update" and with an agenda that stated, "[C]ARB is still
8 waiting for Answers We still have no good explanations!!!!!"

9 214. Dissatisfied with Volkswagen's explanations, EPA and CARB officials finally
10 threatened to withhold the COCs for Volkswagen's 2016 diesel vehicles until it adequately
11 explained the anomaly of the higher emissions. Then, and only then, did Volkswagen finally relent
12 and start to lift the curtain on its illegal scheme.

13 215. Prior to this meeting, VW employees fully briefed Schmidt and Neusser on the
14 defeat device. Their briefing included a chart showing the possible consequence of a meeting that
15 Schmidt was scheduled to have with CARB the following week. That chart showed that if the
16 outcome was "positive for VW," VW would obtain approval for model year 2016 vehicles, but that
17 if it was "negative for VW" and there was "no explanation for [the vehicles with EA 189 engines],"
18 there could be an "Indictment."

19 216. On July 27, 2015, Schmidt and other VW employees gave a presentation to VW
20 executive management in Wolfsburg, Germany. Winterkorn, Neusser, Diess, and another manager
21 named Thorsten Duesterdieck were present.¹¹³ Briefing documents for the presentation described
22 the change in emissions which were released by Affected Vehicles in "acoustic mode," which was
23
24

25 ¹¹³ See Bertel Schmitt, *VW's Winterkorn Directly Involved, Damning Dieselgate Revelations*
26 *Say*, Forbes (Jan. 15, 2017), [http://www.forbes.com/sites/bertelschmitt/2017/01/15/vws-winterkorn-](http://www.forbes.com/sites/bertelschmitt/2017/01/15/vws-winterkorn-directly-involved-damning-dieselgate-revelations-say/#2edea991f4b)
27 [directly-involved-damning-dieselgate-revelations-say/#2edea991f4b](http://www.forbes.com/sites/bertelschmitt/2017/01/15/vws-winterkorn-directly-involved-damning-dieselgate-revelations-say/#2edea991f4b); Volkswagen Press Release,
28 *Volkswagen considers shareholder lawsuit to be without merit* (March 2 2016),
[https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-considers-](https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-considers-shareholder-lawsuit-to-be-without-merit/view/3259846/45d3a7a50202286bd358a98c25c96a2a?p_p_auth=99hkJR8)
[shareholder-lawsuit-to-be-without-](https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-considers-shareholder-lawsuit-to-be-without-merit/view/3259846/45d3a7a50202286bd358a98c25c96a2a?p_p_auth=99hkJR8)
[merit/view/3259846/45d3a7a50202286bd358a98c25c96a2a?p_p_auth=99hkJR8](https://www.volkswagen-media-services.com/en/detailpage/-/detail/Volkswagen-considers-shareholder-lawsuit-to-be-without-merit/view/3259846/45d3a7a50202286bd358a98c25c96a2a?p_p_auth=99hkJR8)

1 a code word for the defeat device software.¹¹⁴ The presentation outlined (in German) two possible
 2 approaches to the upcoming discussions with American authorities.¹¹⁵ The first was a “defensive”
 3 strategy which the German newspaper BILD summarized as “continue lying.”¹¹⁶ It noted that this
 4 approach risked “very high financial penalties.”¹¹⁷ During the meeting, managers preliminarily
 5 settled on an “offensive” strategy of disclosure but they subsequently failed to implement it.¹¹⁸
 6 Winterkorn’s demeanor throughout the presentation was “surprisingly calm.”¹¹⁹ The most
 7 disparaging comment he was reported making during or after the meeting was a short remark to a
 8 VW engineer who was part of the defeat device development to the effect of: “[y]ou and your
 9 software.”¹²⁰

10 217. On or about August 17 and 18, 2015, Schmidt and other co-conspirators developed
 11 a plan for what VW employees would say during a meeting scheduled with CARB on August 19,
 12 2015, in El Monte, California. The plan, approved by senior VW managers, envisioned VW
 13 employees continuing to conceal the existence of the defeat device and cheating on U.S. emissions
 14 tests from U.S. regulators to obtain certification for the model year 2016 vehicles. Top executives,
 15 including Neusser, even approved a script for employees to use in response to questions. On or
 16 about August 17, 2015, Schmidt wrote to a manager at VW that another manager had just
 17 “explained to me on the telephone why [one of his colleagues] should not come along [to the
 18 CARB meeting]—so he would not have to consciously lie.”

19 218. On or about August 19, 2015, in a meeting with CARB in El Monte, California, that
 20 colleague (who Schmidt had been warned about) disclosed, in direct contravention of instructions
 21 from his management, that certain VW diesel vehicles used different emissions treatment
 22

23 ¹¹⁴ *Id.*

24 ¹¹⁵ *Id.*

25 ¹¹⁶ *Id.*

26 ¹¹⁷ *Id.*

27 ¹¹⁸ *Id.*

28 ¹¹⁹ *Id.*

¹²⁰ *Id.*

1 depending on whether the vehicles were on the dynamometer or on the road, thereby effectively
2 admitting that VW had cheated U.S. emissions tests.

3 219. That very day, back in Germany, “some executives and engineers began deleting
4 documents related to U.S. emissions. [REDACTED] told an assistant to dispose of a hard drive containing
5 e-mails from him and other supervisors”.

6 220. In fact, from around August 2015 through around September 2015, approximately
7 forty or more VWAG and Audi employees altered, concealed, or destroyed or caused to be altered,
8 concealed, or destroyed thousands of documents. On or about August 26, 2015, as VW employees
9 were preparing to possibly admit to the use of a defeat device in 2.0-Liter vehicles, a VW attorney
10 in Wolfsburg received an email from another VWAG attorney entitled: “Legal Hold Notice—
11 Emissions Certification of MY-2009-2016 2.0L TDI Volkswagen and Audi vehicles.” The email
12 indicated that a litigation hold notice would be issued to certain VW employees the following day.
13 On or about August 27, 2015, that Wolfsburg attorney met with several VWAG engineers to
14 discuss the technology behind the defeat device. The attorney indicated that a litigation hold would
15 be issued imminently, and that these engineers should check their documents. At least several
16 engineers at this meeting understood that to mean that they should delete documents prior to the
17 hold being issued. The attorney had a similar discussion with supervisors in the VW Brand Engine
18 Development on or around August 31, 2015, before they were formally issued litigation holds.
19 Those supervisors subsequently deleted documents related to U.S. emissions issues with diesel
20 vehicles.

21 221. On or about September 1, 2015, a litigation hold was issued to VWAG. On or about
22 September 1, 2015, several employees in the VW Brand Engine Development department at VW
23 AG discussed the fact that their counterparts at Bosch also possessed documents related to the
24 defeat device and/or emissions of diesel vehicles. At least two VWAG employees contacted Bosch
25 employees and asked them to delete documents relating to the defeat device and emissions of
26 diesel vehicles. On or about September 3, 2015, [REDACTED] approached [REDACTED]’s assistant and
27 requested that [REDACTED]’s assistant search in [REDACTED]’s office for a hard drive on which documents
28 were stored containing emails of VWAG supervisors, including [REDACTED] [REDACTED]’s assistant

1 recovered the hard drive and gave it to [REDACTED] [REDACTED] later asked his assistant to throw away
2 the hard drive.

3 222. On or about September 15, 2015, a supervisor within the VW Brand Engine
4 Development department convened a meeting with approximately 30–40 employees, during which
5 the Wolfsburg attorney described above informed the VWAG employees present about the current
6 situation regarding disclosure of the defeat device in the United States. During this meeting, a VW
7 AG employee asked the attorney what the employees should do with new documents that were
8 created, because they could be harmful to VWAG. The attorney indicated that new data should be
9 kept on USB drives and only the final versions saved on VWAG’s system, and then, only if
10 “necessary.”

11 **G. Once Caught, Volkswagen Admitted its Fraud – in Part**

12 223. On September 3, 2015, Volkswagen officials finally disclosed at a meeting with the
13 EPA and CARB that it had installed a sophisticated software algorithm on the 2.0-liter Affected
14 Vehicles, which could detect when the car was undergoing emission testing on a test bench and
15 switch the car into a cleaner running mode. During that meeting, Volkswagen admitted that the
16 software was a “defeat device” forbidden by the CAA and state regulations.

17 224. On September 18, 2015, the EPA issued a Notice of Violation of the CAA (the
18 “First NOV”) to VWAG, Audi AG, and VW America for installing illegal defeat devices in 2009-
19 2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. That same day,
20 CARB sent a letter to VWAG, Audi AG, and VW America, advising that it had initiated an
21 enforcement investigation of Volkswagen pertaining to the vehicles at issue in the First NOV.

22 225. Two days later, Volkswagen made its first public admission of wrongdoing in a
23 written statement and video by VWAG’s then-CEO Winterkorn (who would soon resign as a result
24 of this scandal), posted on VWAG’s website. Winterkorn’s statement read, in pertinent part:

25 I personally am deeply sorry that we have broken the trust of our
26 customers and the public. We will cooperate fully with the
27 responsible agencies, with transparency and urgency, to clearly,
28 openly, and completely establish all of the facts of this case.
Volkswagen has ordered an external investigation of this matter....

1 We do not and will not tolerate violation of any kind of our internal
2 rules or of the law.^[121]

3 226. In his video, Winterkorn further apologized by stating:

4 The irregularities in our group's diesel engines go against everything
5 Volkswagen stands for. To be frank with you, manipulation at
6 Volkswagen must never happen again.... I personally am deeply
sorry that we have broken the trust of our customers. I would like to
make a formal apology to our customers to the authorities and to the
general public for this misconduct.^[122]

7 227. That same day, Volkswagen confirmed that it had ordered dealers to stop selling
8 both new and used vehicles with 2.0-liter diesel engines.¹²³ Volkswagen continued to sell its 3.0-
9 liter diesel models, despite containing similar, but not-yet-disclosed defeat devices.

10 228. On September 21, 2015, Volkswagen spokesman John Schilling stated in an email
11 that Volkswagen was "committed to fixing this issue as soon as possible" and to "developing a
12 remedy that meets emissions standards and satisfies our loyal and valued customers."¹²⁴

13 229. Michael Horn, President and CEO of VGoA, echoed this sentiment when he took
14 the stage later that evening at a launch event for the 2016 Volkswagen Passat in Brooklyn, New
15 York, telling reporters:

16 Our company was dishonest, with the EPA and the California Air
17 Resources Board, and with all of you and in my German words, *we*
18 *have totally screwed up*. We have to make things right, with the
government, the public, our customers, our employees and also very
important, our dealers.^[125] [Emphasis added.]

20 ¹²¹ See *Statement of Prof. Dr. Martin Winterkorn, CEO of Volkswagen AG*, Volkswagen AG
21 (Sept. 20, 2012), [http://www.volkswagenag.com/content/vwcorp/info_center/en/news/](http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/statement_ceo_of_volkswagen_ag.html)
22 2015/09/statement_ceo_of_volkswagen_ag.html.

23 ¹²² See Joe Lorio, *VW Chairman Martin Winterkorn Releases Video Addressing Scandal, Is Not*
24 *Stepping Down*, Car and Driver (Sept. 22, 2015), [http://blog.caranddriver.com/vw-chairman-](http://blog.caranddriver.com/vw-chairman-martin-winterkorn-releases-video-addressing-scandal-is-not-stepping-down/)
25 martin-winterkorn-releases-video-addressing-scandal-is-not-stepping-down/.

26 ¹²³ Jack Ewing, *Volkswagen to Stop Sales of Diesel Cars Involved in Recall*, N.Y. Times
27 (Sept. 20, 2015), [http://www.nytimes.com/2015/09/21/business/international/volkswagen-chief-](http://www.nytimes.com/2015/09/21/business/international/volkswagen-chief-apologizes-for-breach-of-trust-after-recall.html)
28 apologizes-for-breach-of-trust-after-recall.html.

¹²⁴ Jad Mouadwad, *et al.*, *The Wrath of Volkswagen's Drivers*, N.Y. Times (Sept. 21, 2015),
<http://www.nytimes.com/2015/09/22/business/the-wrath-of-volkswagens-drivers.html>.

¹²⁵ Christine Seib, *Volkswagen's US Boss: We Totally Screwed Up*, CNBC (Sept. 22, 2015),
[http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-](http://www.cnbc.com/2015/09/21/volkswagen-us-ceo-screwed-up-on-eca-emissions-diesel-test-rigging.html)
rigging.html.

230. While Horn spoke of “customers” as the ultimate consumer purchasers of VW cars, in fact, Franchise Dealers are the direct purchasers of cars from VW and consumers, in turn, are the customers of the Franchise Dealers. This distinction is important because it illustrates that the severe harm visited upon consumers through Volkswagen and Bosch’s fraudulent scheme necessarily had a direct and substantial effect upon Franchise Dealers, because it is their lifeblood – their customer base – that has been left feeling cheated and defrauded by the only brand that Franchise Dealers are permitted to sell.

231. Horn’s presentation on the new Passat, notably, did not promote the environmental efficiency of the car’s “clean” diesel model.

232. On September 22, 2015, Volkswagen announced that 11 million diesel cars worldwide were installed with the same defeat device software that had evaded emission testing by U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of 6.5 billion euros (\$7.3 billion) in the third quarter to address the matter.¹²⁶

233. On September 23, 2015, Winterkorn resigned from his position as CEO of VWAG. In his resignation statement, Winterkorn insisted that he was not personally involved in the emissions scandal: “Above all, I am stunned that misconduct on such a scale was possible in the Volkswagen Group. I am doing this in the interests of the company even though I am not aware of any wrongdoing on my part.”¹²⁷

234. Following Winterkorn’s resignation, Volkswagen released a statement that it had set up a special committee to lead its own inquiry into the scandal and expected “further personnel consequences in the next days.” It added: “The internal group investigations are continuing at a high tempo. All participants in these proceedings that have resulted in immeasurable harm for

¹²⁶ Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected, USA Today* (Sept. 22, 2015), <http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions-scandal/72605874/>.

¹²⁷ Graham Ruddick, *Volkswagen chief quits over emissions scandal as car industry faces crisis*, *The Guardian* (Sept. 23, 2015), <http://www.theguardian.com/business/2015/sep/23/volkswagen-chief-martin-winterkorn-quits-emissions-scandal>.

1 Volkswagen will be subject to the full consequences.” However, the committee insisted that
 2 Winterkorn “had no knowledge of the manipulation of emissions data.”¹²⁸

3 235. On September 25, 2015, Matthias Müller, the Chairman of Porsche AG, was named
 4 as Winterkorn’s successor. Immediately upon assuming his new role, Müller issued a press release
 5 stating:

6 My most urgent task is to win back trust for the Volkswagen Group –
 7 by leaving no stone unturned and with maximum transparency, as
 8 well as drawing the right conclusions from the current situation.
 9 Under my leadership, Volkswagen will do everything it can to
 10 develop and implement the most stringent compliance and
 11 governance standards in our industry.^[129]

12 236. Meanwhile, in Auburn Hills, Michigan, where VGoA houses its Information
 13 Technology Group, VW employees were ignoring a Department of Justice Directive to stop
 14 deleting and maintain any electronic records related to the Dieselgate scandal. In a lawsuit filed
 15 March 8, 2016, a former VW Technical Manager named Daniel Donovan alleges that he was fired
 16 for his refusal to participate in, and attempt to stop, destruction of electronic evidence relevant to
 17 the Dieselgate scandal.

18 237. Donovan alleges in his lawsuit that on the day the NOV was issued, September 18,
 19 2015, he was instructed by his supervisor, Robert Arturi, to contact VW Executive Vice President
 20 and Chief Information Officer, Abdallah Shanti, and advise him to “stop deleting data effective
 21 immediately pursuant to a Department of Justice hold.” Donovan further alleges that when he
 22 relayed this message to Shanti, Shanti swore at him and did not stop deletion jobs at VW until
 23 September 21, 2015. Donovan alleges that thereafter, VW did not stop deleting back-up data
 24 relevant to the Dieselgate scandal, even though it knew that it was supposed to preserve such back-
 25 ups. And he alleges that VW did not provide to its outside investigator full access to the
 26 electronically stored information available. Finally, Donovan alleges that after contacting VW’s

27 ¹²⁸ *Id.*

28 ¹²⁹ *Matthias Müller appointed CEO of the Volkswagen Group*, Volkswagen AG (Sept. 25, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/09/CEO.html.

1 Office of General Counsel to report his concerns with these practices, he was fired in retaliation for
2 whistle-blowing.¹³⁰

3 238. On October 8, 2015, Horn made frank admissions of culpability in his testimony
4 before the House Committee on Energy and Commerce's Subcommittee on Oversight and
5 Investigations. Under oath, Horn testified: "On behalf of our Company, and my colleagues in
6 Germany, I would like to offer a sincere apology for Volkswagen's use of a software program that
7 served to defeat the regular emissions testing regime."¹³¹ In response to a question from the
8 Subcommittee Chairman, Representative Tim Murphy, whether the software was installed "for the
9 express purpose of beating tests," Horn testified, "it was installed for this purpose, yes."¹³²

10 239. On November 2, 2015, the EPA issued a second Notice of Violation of the CAA
11 (the "Second NOV") to VWAG, Audi AG, and VGoA, this time directed at the larger 3.0-liter, 6-
12 cylinder diesel models – the same vehicles that Volkswagen continued to sell through its dealers
13 after the First NOV.¹³³ The Second NOV, which was also issued to Porsche AG and Porsche
14 America, alleged that Volkswagen had installed illegal defeat devices in certain vehicles equipped
15 with 3.0-liter diesel engines for model years 2014-16. Although not identical, the cheating alleged
16 of Volkswagen in the Second NOV concerned essentially the same mechanism Volkswagen used –
17 and admitted to using – in the First NOV.

18 240. However, shortly after it received the Second NOV, Volkswagen fired back at the
19 EPA's new claims of fraud, denying that it installed defeat device software in the identified 3.0-
20 liter diesel vehicles. In response to the Second NOV, Volkswagen issued the following bold
21
22
23

24 ¹³⁰ See *Donovan v. Volkswagen Group of America, Inc. and Abdallah Shanti*, Case No. 2016-
25 151877-CD (Oakland County Circuit Court March 8, 2016).

26 ¹³¹ *Supra* note 1.

27 ¹³² *Id.*

28 ¹³³ Letter from Susan Shinkman, Director, EPA Office of Civil Enforcement to Volkswagen
dated Nov. 2, 2015, <http://www.epa.gov/sites/production/files/2015-11/documents/vw-nov-2015-11-02.pdf>.

1 statement: “Volkswagen AG wishes to emphasize that no software has been installed in the 3.0-
2 liter V6 diesel power units to alter emissions characteristics in a forbidden manner.”¹³⁴

3 241. Yet, the following day, despite Volkswagen’s insistence that the 3.0-liter diesel
4 emission system was legal, Volkswagen ordered dealers to stop selling all six models at issue in the
5 Second NOV, in addition to the Audi Q7, which was also equipped with a 3.0-liter diesel engine.¹³⁵

6 242. On November 4, 2015, following its directive to halt sales of the 3.0-liter diesel
7 models, Volkswagen announced that an internal investigation revealed “unexplained
8 inconsistencies” with the carbon-dioxide output of 800,000 of its gasoline-powered vehicles.¹³⁶

9 243. On November 22, 2015, after almost three weeks of denying the EPA’s allegations
10 contained in the Second NOV, Audi finally admitted that defeat device software was installed in all
11 of its diesel vehicles. Specifically, Audi stated that it had failed to disclose three auxiliary
12 emissions control devices in its 3.0-liter diesel engines to U.S. regulators, and further admitted:
13 “One of them is regarded as a defeat device according to applicable U.S. law. Specifically, this is
14 the software for the temperature conditioning of the exhaust-gas cleaning system.”¹³⁷ This
15 admission came almost three months after Volkswagen’s initial, more limited *mea culpa*.

16 244. Still, despite the admissions and apologies that followed each time a Volkswagen lie
17 was exposed, it became apparent that Volkswagen was not ready to fully accept responsibility for
18 its actions. Indeed, merely one month after Volkswagen admitted to the findings in the Second
19 NOV, Hans-Gerd Bode, Volkswagen’s Group Communications Chief, told a group of reporters: “I
20 can assure you that we certainly did not, at any point, knowingly lie to you.... We have always

21
22 ¹³⁴ Emily Field, *Volkswagen Slams Newest EPA Emissions Fraud Claims*, Law360 (Nov. 3,
2015), <http://www.law360.com/articles/722478/volkswagen-slams-newest-epa-emissions-fraud-claims>.

23 ¹³⁵ Paul Lienert, *Volkswagen tells dealers to stop selling some 3.0 V6 diesel models*, Reuters
24 (Nov. 4, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-stopsale-idUSKCN0ST2E420151104>.

25 ¹³⁶ Benedikt Kammel, *VW Emissions Issues Spread to Gasoline Cars*, Bloomberg (Nov. 3,
26 2015), <http://www.bloomberg.com/news/articles/2015-11-03/volkswagen-emissions-woes-deepen-as-800-000-more-cars-affected>.

27 ¹³⁷ *Statement on Audi’s discussions with the US environmental authorities EPA and CARB*,
28 Volkswagen AG (Nov. 23, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/news/2015/11/epa.html.

1 tried to give you the information which corresponded to the latest level of our own knowledge at
2 the time.”¹³⁸

3 245. On January 4, 2016, the DOJ, on behalf of the EPA, filed a civil complaint against
4 VWAG, VGoA, Volkswagen Group of America Chattanooga Operations LLC, Audi AG, Audi,
5 Porsche AG, and Porsche America for injunctive relief and the assessment of civil penalties for
6 their violations of the CAA. In addition to alleging the various violations of the CAA, the
7 complaint states that the Defendants impeded the government’s efforts to learn the truth about the
8 emission irregularities related to the Affected Vehicles with material omissions and misleading
9 information.

10 246. On January 10, 2016, in an interview with NPR at the North American International
11 Auto Show, Müller claimed that Volkswagen *did not lie* to U.S. regulators about emissions
12 problems with its diesel engines, and suggested that the whole thing had been a misunderstanding
13 of U.S. law. Müller stated:

14 Frankly spoken, it was a technical problem. We made a default, we
15 had a ... not the right interpretation of the American law. And we
16 had some targets for our technical engineers, and they solved this
17 problem and reached targets with some software solutions which
18 haven’t been compatible to the American law. That is the thing.
And the other question you mentioned – it was an ethical problem? I
cannot understand why you say that. ... We didn’t lie. We didn’t
understand the question first. And then we worked since 2014 to
solve the problem.^[139]

19 247. Moreover, since the fraud was first exposed, Volkswagen has consistently denied
20 that its top executives were involved with, or had knowledge of, the fraudulent scheme, instead
21 pinning the blame on the work of a few rogue engineers.

22 248. As an alternative tactic, during Horn’s Congressional hearing on October 8, 2015,
23 Horn testified that the installation of the defeat device in certain Volkswagen diesel vehicles was
24

25 ¹³⁸ Andreas Cremer, *Das Auto’ no more: Volkswagen plans image offensive*, Reuters (Dec. 22,
26 2014), <http://www.reuters.com/article/us-volkswagen-emissions-communications-i-idUSKBN0U514L20151222>.

27 ¹³⁹ Sonari Ginton, *‘We Didn’t Lie,’ Volkswagen CEO Says Of Emissions Scandal*, NPR
28 (Jan. 11, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/11/462682378/we-didnt-lie-volkswagen-ceo-says-of-emissions-scandal>.

1 the work of “a couple of software engineers who put this in for whatever reason.”¹⁴⁰ Horn’s
 2 explanation is not only contrary to prior admissions, but entirely implausible.

3 249. To date, at least a dozen of Volkswagen’s top executives have either resigned under
 4 pressure or been fired. Among the top executives dismissed are Winterkorn, CEO and Chairman
 5 of Volkswagen, who resigned almost immediately once the scandal became public; Dr. Ulrich
 6 Hackenberg, a top engineering boss in the Audi Group, who was suspended and later resigned;
 7 Heinz-Jakob Neusser, described as a Volkswagen “development” boss, who was suspended and
 8 later resigned; and Wolfgang Hatz, Porsche’s “development” boss and previously Volkswagen’s
 9 head of engine development, who was suspended and then resigned. Furthermore, one of
 10 Volkswagen’s top advertising executives purportedly “resigned” (although the company has said
 11 that the resignation was unrelated to the present scandal), and VGoA has replaced their general
 12 counsel and head of public affairs, David Geanacopoulos. Just recently, Frank Tuch, VWAG’s
 13 head of quality assurance, also resigned, his departure likely tied to leadership overhauls as
 14 Volkswagen’s internal investigations continue. Finally, Michael Horn, the centerpiece of VW’s
 15 Congressional responses and head of VGoA, has also recently departed the company.

16 250. That a few rogue engineers could orchestrate this massive, worldwide scheme is
 17 implausible not only because of the firings of the above-listed executives, but also because
 18 Volkswagen has been implicated using not just one, but *two* sophisticated defeat device software
 19 programs, in *two* separate engines designed and manufactured by different engineers in different
 20 corporate facilities. In addition, more than a dozen different Affected Vehicles, involving three
 21 separate brands – Volkswagen, Audi and Porsche – have been implicated in a fraud that began
 22 more than a decade ago.

23 251. On October 17, 2015, Reuters reported that anonymous insiders, including a
 24 Volkswagen manager and a U.S. official close to the government’s investigation of the company,
 25 claimed that Volkswagen made several modifications to its emission defeat device software over
 26

27 ¹⁴⁰ Paul A. Eisenstein, *Could Rogue Software Engineers Be Behind VW Emissions Cheating?*,
 28 NBC News (Oct. 9, 2015), <http://www.nbcnews.com/business/autos/could-rogue-software-engineers-be-behind-vw-emissions-cheating-n441451>.

1 the seven years the company has admitted to cheating.¹⁴¹ Such incremental updates to the
 2 software, which were made to accommodate new generations of engines during that timeframe,
 3 evidences a larger group of employees making an ongoing effort to continue their deception.

4 252. For example in or around 2012, Volkswagen engineers looking into hardware
 5 failures in 2.0-liter Affected Vehicles determined that many vehicles were improperly operating in
 6 test mode (with reduced performance) while driving in normal conditions. They hypothesized that
 7 remaining in test mode for too long, which the cars were not designed to do, was stressing their
 8 exhaust systems. In or around July 2012, engineers from the VW Brand Engine Development
 9 department explained this theory to Neusser and Gottweis in separate meetings. Neusser and
 10 Gottweis encouraged further concealment of the software and instructed the engineers to destroy
 11 the document(s) they had used to illustrate the operation of the defeat device and the effects it
 12 could have on the exhaust system.

13 253. In or around February 2013, during a “Summer Drive” event in South Africa,
 14 Volkswagen and Audi management discussed the defeat device software.¹⁴² According to
 15 witnesses, and the minutes from the meeting, Axel Eiser, the head of Audi’s powertrain division,
 16 said “the shifting program needs to be configured so that it runs at 100% on the treadmill but only
 17 0.01% with the customer.”¹⁴³

18 254. In or around April 2013, Neusser authorized engineers to add a new steering wheel
 19 angle detecting function to the software, to optimize its performance and prevent Affected Vehicles
 20 from operating under testing protocols unnecessary (and ensure it properly recognized test
 21 conditions). These new software functions were added to new 2.0-Liter Affected Vehicles sold in
 22 the United States. It was later installed in existing 2.0-Liter Affected Vehicles during maintenance.
 23 In or around 2014, this function was part of the software updates that VW employees falsely told
 24

25 ¹⁴¹ Andreas Cremer, *et al.*, *VW made several defeat devices to cheat emissions tests: sources*,
 26 Reuters (Oct. 17, 2015), <http://www.reuters.com/article/us-volkswagen-emissions-software-idUSKCN0SB0PU20151017>.

27 ¹⁴² Wall Street Journal (Nov. 11 2016), “New Cheating Allegation Broadens VW’s Crisis.”

28 ¹⁴³ *Id.*

1 U.S. regulators would fix the problems with the 2.0-Liter Affected Vehicles when, in fact, they
2 were actually improving the accuracy of the defeat device.

3 255. As discussed above, on January 22, 2016, Germany's *Sueddeutsche Zeitung*
4 newspaper reported that Volkswagen's development of defeat device software to cheat diesel
5 emissions tests was an "open secret" in its engineering development department. Staff members in
6 engine development have stated that they felt pressure from the top of Volkswagen's corporate
7 hierarchy to find a cost-effective solution to develop clean diesel engines to increase U.S. market
8 share. Rather than concede that such engines could not be built (*i.e.*, were "impossible" as R&D
9 chief Hatz once proclaimed), the development team decided to push ahead with manipulation.¹⁴⁴

10 256. Quoting documents from Volkswagen's internal investigation, which included
11 testimony from a staff member who took part in the fraud, the German newspaper said: "Within
12 the company there was a culture of 'we can do everything', so to say something cannot be done,
13 was not acceptable.... Instead of coming clean to the management board that it cannot be done, it
14 was decided to commit fraud."¹⁴⁵ The newspaper further reported that staff in Volkswagen's
15 engine development department took comfort from the fact that regulators would not be able to
16 detect the fraud using conventional examination techniques.

17 257. The role of Volkswagen's top management in the fraud has recently come under
18 increased scrutiny after reports have emerged that Winterkorn was aware that Volkswagen was
19 rigging emissions tests on its vehicles more than a year before the scandal emerged, yet did nothing
20 to stop the practice.¹⁴⁶

21 258. According to German newspaper *Bild-Zeitung*, Winterkorn and other high-level
22 Volkswagen managers were warned by a senior executive about the risk of a U.S. investigation
23
24

25 ¹⁴⁴ Georgina Prodhan, *Volkswagen probe finds manipulation was open secret in department:*
26 *newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>.

27 ¹⁴⁵ *Id.*

28 ¹⁴⁶ Geoffrey Smith, *VW's ex-CEO Winterkorn 'Knew About Defeat Device in Early 2014,'*
Fortune (Feb. 15, 2016), <http://fortune.com/2016/02/15/vw-ceo-winterkorn-defeat-device/>.

1 into the use of the defeat devices back in May 2014.¹⁴⁷ The newspaper reported that the warning
 2 came in the form of a letter from Bernd Gottweis, an employee known internally as the “fire-
 3 fighter,” who led a team called the “Product Safety Taskforce,” which concentrated on crisis
 4 prevention and management. The letter, which was uncovered by the internal investigation carried
 5 out on Volkswagen’s order, stated: “There is no well-founded explanation for the dramatically
 6 higher NO_x emissions that can be given to the authorities. It is to be suspected, that the authorities
 7 will examine the VW systems to see whether Volkswagen has installed engine management
 8 software (a so-called Defeat Device).”

9 259. The newspaper also reported that a senior Volkswagen manager had admitted the
 10 true level of emissions to a CARB official on August 5, 2015, over a month before the EPA issued
 11 the First NOV I, and that Volkswagen brand chief Herbert Diess had convened meetings on
 12 August 24th and August 25th to discuss how to react to the scandal that was about to break.¹⁴⁸

13 260. The letter, of which *Bild-Zeitung* claims to have a copy, is the second leak
 14 suggesting that knowledge of the emissions problems and use of the defeat devices extended far
 15 higher, far earlier, than Volkswagen has admitted. Indeed, the German magazine *Manager* has
 16 reported that Volkswagen’s management had already discussed the issue in the spring of 2014 in
 17 reference to a letter received from the EPA.¹⁴⁹ The revelations from these reports directly
 18 contradict arguments made by Winterkorn and Horn that they were unaware of the use of defeat
 19 devices applied specifically to circumvent U.S. regulations.

20 261. At a December 10, 2015, press conference, during which Volkswagen discussed
 21 preliminary results of their internal investigation, executives summed up the state of affairs, and
 22 admitted that Volkswagen had installed defeat devices to take shortcuts around engineering
 23 challenges. Faced with “[s]trict and significantly toughening NO_x limits,” Volkswagen knew those
 24 “NO_x limits could not be met with [their] technological design” for lean NO_x traps so instead they
 25 dealt with the problem by installing defeat devices. The Affected Vehicles with urea treatments

26 ¹⁴⁷ *Id.*

27 ¹⁴⁸ *Id.*

28 ¹⁴⁹ *Id.*

1 faced a separate problem: the urea tanks were too small for consumers to maintain urea levels at
 2 standard maintenance intervals. Volkswagen also took shortcuts around these engineering
 3 challenges by implementing a defeat device to reduce urea consumption and illegally stretch the
 4 capacity of its urea tanks outside of test conditions. Volkswagen concluded this presentation by
 5 implicitly acknowledging the toxicity of its corporate culture, as Volkswagen announced it would
 6 establish a “new mindset” among Volkswagen leadership that has “[m]ore capacity for
 7 criticism.”¹⁵⁰

8 262. The entire after-the-fact chronology and explanation of how and why Volkswagen
 9 perpetrated its fraud is set forth in its December 10, 2015, presentation, as follows:



¹⁵⁰ Volkswagen AG, *The Volkswagen Group is moving ahead: Investigation, customer solutions, realignment*, Volkswagen AG (Dec. 10, 2015), http://www.volkswagenag.com/content/vwcorp/info_center/en/talks_and_presentations/2015/12/Presentation_MUE_POE.bin.html/binarystorageitem/file/2015_12_10_Pr%C3%A4sentation+PK_Final_ENG.pdf.



17

263. By manufacturing and selling cars with defeat devices manufactured by Bosch GmbH and promoted and fraudulently presented for certification by Bosch LLC that allowed for higher levels of emissions than were certified to the EPA, Volkswagen violated the Clean Air Act, defrauded its customers and dealers, placed in commerce vehicles that were illegal to drive on U.S. roadways, and engaged in a criminal conspiracy with Bosch LLC and Bosch GmbH. VW breached its dealer agreements and violated state and federal laws designed to protect franchise dealers from coercive, fraudulent, and intimidating acts by powerful vehicle manufacturers.

264. Moreover, Volkswagen's fraud and conspiracy with Bosch LLC and Bosch GmbH harmed not just consumers and Franchise Dealers it duped into buying its heavily polluting "Clean Diesels," but it harmed the environment. Through six years of fraud, Volkswagen put on the United States roadways over 483,000 cars that spewed up to 40 times the permitted level of NO_x and other pollutants. These emissions invariably have harmed the air quality and environment and, as a result, harmed the United States and its citizens. And these acts, no doubt, have and will harm the goodwill value of any franchise dealership that sells VW products.

265. The harm Volkswagen has caused by selling its illegally polluting "Clean Diesel" cars equipped with Bosch-made defeat devices is ongoing and will be for many years. Horn testified before Congress on October 8, 2015, admitting the purposeful use of the defeat device by

1 Volkswagen to defraud regulators, dealers, consumers and the public at large. Horn testified that
 2 any fix for at least 420,000 of the Affected Vehicles would require *software and hardware* changes
 3 and would take at least many months, and perhaps years to implement.¹⁵¹ All the while,
 4 Volkswagen is not offering replacement cars or a buyback program, thereby forcing unhappy and
 5 embarrassed owners to knowingly spew noxious fumes into the environment or make alternative
 6 arrangements at their own sole expense.

7 266. Concomitant to the hundreds of thousands of defrauded and unhappy consumers is a
 8 direct and measurable harm to Franchise Dealers who are now faced with *their* most loyal and
 9 engaged customers feeling profoundly betrayed by Volkswagen: a betrayal that consumers
 10 associate directly with the face of Volkswagen that they dealt with – the dealers. The legion of
 11 bitterly disappointed Volkswagen owners distance themselves from dealers and have turned 180
 12 degrees from reliable referral sources to vocal detractors.

13 267. Beyond the loss of their customers, Franchise Dealers, including Plaintiffs, have
 14 been stuck with unsalable cars, new, used, and certified used, that take up valuable inventory space
 15 and carrying costs. Further, thousands of Franchise Dealers' customers who might be ready to
 16 trade-in or trade-up their Affected Vehicles and buy new cars from dealers cannot do so because
 17 the value of the Affected Vehicles has so precipitously plummeted.

18 268. Plaintiffs and the Franchise Dealer Class have invested millions, collectively
 19 hundreds of millions of dollars in the Volkswagen brand, expecting a return concomitant with the
 20 value of the brand up until the dieselgate scandal became public. But now the brand value has
 21 plummeted, sales of VW diesels have completely halted, and sales of all VW cars have plummeted.
 22 Plaintiffs and the Franchise Dealer Class now own VW dealerships that lose money day after day,
 23 or at best make far less money than they did prior to the disclosure of the massive dieselgate
 24 emissions scandal.

25
 26
 27 ¹⁵¹ See <http://www.autonews.com/article/20151008/OEM02/151009826/older-vw-diesels-will-need-software-and-hardware-fixes-horn-tells>.
 28

H. Volkswagen and Bosch GmbH and Bosch LLC Profited From the Dieselgate Fraud

269. Volkswagen has charged a substantial premium for the Affected Vehicles, ironically marketed by Volkswagen as “Clean Diesel.” For example, for the 2015 Volkswagen Jetta, the base S model has a starting MSRP of \$18,780. The base TDI S Clean Diesel, however, has a starting MSRP of \$21,640, a price premium of \$2,860. The Clean Diesel premium for the highest trim Jetta model is substantially higher. The highest level gas Jetta SE has a starting MSRP of \$20,095, while the Clean Diesel TDI SEL MSRP is \$26,410, a staggering \$6,315 premium.

270. These premiums occur across all of the vehicles lines in which Volkswagen installed its defeat device for emissions testing. The table below sets forth the price premium in 2015 for each base, mid-level and top-line trim for each affected model. Similar premiums existed for each Affected Vehicle for every model year:

2015 Clean Diesel Price Premiums

Model	Base	Mid-level	Top-line
VW Jetta	\$2,860	\$4,300	\$6,315
VW Beetle	\$4,635	n/a	\$2,640
VW Golf	\$2,950	\$1,000	\$1,000
VW Passat	\$5,755	\$4,750	\$6,855
Audi A3	\$2,805	\$3,095	\$2,925

271. The ability of Plaintiffs and the Franchise Dealer Class to sell these vehicles at a premium was a significant contributor to the high value of goodwill and franchise rights associated with owning a Volkswagen dealership. Since the NOV, however, there are no such premiums because the Affected Vehicles cannot be legally sold in the U.S., and all Volkswagen sales have been negatively affected by the diminution in brand value and brand loyalty. As a result, franchise dealer profitability and franchise value have markedly decreased.

272. Likewise, the Bosch entities profited immensely from the diesel emissions fraud. Bosch GmbH sold over 11 million EDC17 unites containing defeat devices to VW. Had Bosch not agreed to develop and supply the EDC17 controller comprising the defeat device, either VW could

not have sold its TDIs for they would have failed emissions tests, or VW would have sought out a different supplier. Under either scenario, Bosch would have lost out on at least the 11 million in EDC17 sales, if not the additional components it provided to VW (its largest customer) for use in the Affected Vehicles.

I. Volkswagen's False Advertising and Fraud Has Profoundly Harmed Franchise Dealers

273. As set forth above, consumers paid large premiums to purchase Affected Vehicles. They paid these premiums as a result of Volkswagen's false claims that the Clean Diesel engine system was environmentally friendly, clean, efficient, and EPA compliant. Dealers, in turn, stocked large numbers of the Affected Vehicles and paid top dollar for trade-ins, knowing that (prior to the NOV) they held value remarkably well and could be sold used and/or "certified" for top dollar.

274. As a direct result of the disclosure of Volkswagen's Clean Diesel fraud, Affected Vehicles have sharply decreased in value and are presently unsalable. In fact, Volkswagen has halted all sales of Affected Vehicles, new or used, so that Franchise Dealers are stuck with Affected Vehicles that they cannot sell. Within two weeks of the announcement of Volkswagen's emissions fraud the following decreases in model values were documented:

Diesel models (MY 2009 – 2015):

	Pre-Announcement	Post-Announcement	Percent change
Audi	\$16,075	\$16,085	0.1%
A3	\$16,075	\$16,085	0.1%
Volkswagen	\$12,822	\$11,146	-13.1%
Beetle	\$16,197	\$13,852	-14.5%
Golf	\$13,551	\$12,069	-10.9%
Jetta	\$11,901	\$10,248	-13.9%
Passat	\$16,586	\$15,253	-8.0%
Grand Total	\$12,830	\$11,160	-13.0%

Each Franchise Dealer Class member therefore suffered a direct pecuniary loss in the form of the decreased value of the Affected Vehicles in their new and used dealership inventory.¹⁵²

¹⁵² See <http://www.buzzfeed.com/matthewzeitlin/resale-value-of-vw-diesels-down-13-percent#.kvRJEo96L>.

1 275. The loss in value is particularly acute and affects Plaintiffs and Franchise Dealer
2 Class members because consumers do not want to own cars that pollute and harm the environment.
3 Cleanliness was the core of Volkswagen's marketing efforts and a driving factor in purchase
4 decisions. Franchise Dealer Class members want to sell their Affected Vehicles but they cannot
5 legally do so, and instead must store them at least until Volkswagen successfully deploys an
6 approved fix (for which there is presently no time table). Franchise Dealer Class members are also
7 saddled with the expense of secure storage costs for these vehicles.

8 276. Moreover, many Franchise Dealers purchased their inventory with financing or have
9 limited cash available for inventory – new and used. Because the Affected Vehicles are unsalable,
10 Franchise Dealers members cannot shift their inventory investments to vehicles that they can sell,
11 meaning that they have fewer non-diesel vehicles in their showrooms and inventory, leading to
12 additional loss of sales and diminution in franchise value.

13 277. Volkswagen has been ordered by the EPA to recall the Affected Vehicles and repair
14 them so that they comply with EPA emissions requirements at all times during normal operation.
15 However, Volkswagen will not be able to make the Affected Vehicles comply with emissions
16 standards without substantially degrading their performance characteristics, including their
17 horsepower and their efficiency. As a result, even if Volkswagen is able to make the Affected
18 Vehicles EPA compliant, Franchise Dealers will nonetheless suffer actual harm and damages
19 because the vehicles on their lots will no longer perform as they did when acquired for resale and
20 as advertised. This will necessarily result in a diminution in value of every Affected Vehicle and a
21 diminution in inventory value, franchise value, and brand value of VW.

22 278. As a result of Volkswagen's unfair, deceptive, and/or fraudulent business practices,
23 and its failure to disclose that under normal operating conditions the Affected Vehicles emit up to
24 40 times the allowed levels, Franchise Dealers have suffered losses in money and/or property. Had
25 Plaintiffs and Franchise Dealers known of the defeat device scheme at the time they purchased
26 their franchise, or entered into dealer agreements to maintain their franchise or purchase inventory,
27 they would not have purchased or maintained their franchise, would not have purchased inventory
28

1 in the quantity, or at the prices that they paid, or would have paid substantially less for the
2 franchise or to continue as a franchise.

3 **J. The Fraudulent Scheme Continues to Profoundly Harm Consumers, Franchise**
4 **Dealers and the Environment**

5 279. For decades, consumers who have been buying VWs were not just buying cars; for
6 many, the purchase also made a statement about contributing to a cleaner environment. This
7 consumer sentiment and substantial consumer loyalty was a significant contributing factor to the
8 value of owning a franchise dealership that sold and serviced Volkswagen cars. VW purchasers
9 were proud of their choice, as were dealers operating VW franchises. This is true, and perhaps
10 even especially true, for those who purchased, and dealers who sold, vehicles with the “Clean
11 Diesel” engine in 2009-2015, including the Jetta, Beetle, Passat, and Audi A3, the Golf in 2012-
12 2015 and vehicles equipped with the larger 3.0 liter diesel engines from 2009-15, including VW
13 Taureg, Audi A6 and A8, and Porsche Cayenne. Owning and driving these Clean Diesel cars was
14 a source of pride for consumers, and, as a result, selling them was a source of pride and profit for
15 Franchise Dealers and created substantial value in owning and operating a VW franchise.

16 280. Now, consumers report their pride has turned to humiliation, knowing they are
17 driving vehicles – and are *seen* driving vehicles – that are spewing oxides of nitrogen emissions far
18 in excess of what is legal or responsible. This is not the choice consumers made. Likewise, it is
19 not the choice that Franchise Dealers, including Plaintiffs, made. They bought into and have
20 invested substantially in the VW brand based on its prior reputation for remarkable engineering and
21 environmentally friendly culture and product offerings. That brand is now demonstrably and
22 permanently tainted. VW is known as a liar and a cheat; and that image is reflected on Plaintiffs
23 and Franchise Dealers as they are the sole point of interaction with consumers, who are their
24 customers.

25 281. This sharply negative consumer sentiment has a direct and palpable effect on the
26 value of a Volkswagen franchise dealership and the value of the inventory of Volkswagen cars on
27 any dealer’s lot. Consumers used to brag about their VW cars and send their friends and family
28 into the dealerships to buy additional cars. Now they just want to hide. Franchise Dealers are left

1 holding the bag with tens of thousands of unsalable Clean Diesel cars, and hundreds of thousands
 2 of other Volkswagen vehicles, all of which will be harder to sell and will not command the prices
 3 they would have absent the disclosure of Volkswagen's outrageous emissions fraud.

4 282. Volkswagen has stated that unidentified fixes are in development.¹⁵³ Volkswagen
 5 representatives have told lawmakers and the media that any remedy will take significant time. Mr.
 6 Horn told the congressional committee on October 8 that fixing the affected vehicles "will take
 7 years and require approval from regulators."¹⁵⁴ While a small number of vehicles will get by with
 8 a software fix, according to Mr. Horn, most affected cars will "require more extensive changes
 9 including possible installation of urea tanks that neutralize harmful emissions and particulates,"¹⁵⁵
 10 which will not even get started until next year at the earliest and could take up to two years to
 11 complete.¹⁵⁶ Because this is a worldwide problem, with over 550,000 Affected Vehicles in the
 12 U.S. alone,¹⁵⁷ two years seems optimistic.

13 283. Sales are plummeting, losses escalating, and Franchise Dealers' customers are afraid
 14 to bring their cars in for routine servicing for fear that a change will be made to the cars rendering
 15
 16

17 ¹⁵³ The Associated Press, *VW May Compensate Owners of Diesel Cars for Loss of Value*, N.Y.
 18 Times (Oct. 9, 2015), [http://www.nytimes.com/aponline/2015/10/08/us/ap-us-volkswagen-](http://www.nytimes.com/aponline/2015/10/08/us/ap-us-volkswagen-consumers.html)
 19 [consumers.html](http://www.nytimes.com/aponline/2015/10/08/us/ap-us-volkswagen-consumers.html). See also Angelo Young, *Volkswagen Diesel Scandal: Most Recalled Cars Will*
 20 *Require Work To Exhaust Systems, Not Just Software*, International Business Times (Oct. 8, 2015),
[http://www.ibtimes.com/volkswagen-diesel-scandal-most-recalled-cars-will-require-work-exhaust-](http://www.ibtimes.com/volkswagen-diesel-scandal-most-recalled-cars-will-require-work-exhaust-systems-not-2132764)
[systems-not-2132764](http://www.ibtimes.com/volkswagen-diesel-scandal-most-recalled-cars-will-require-work-exhaust-systems-not-2132764) ("The necessary hardware fix ... has yet to be worked out at the company's
 Wolfsburg, Germany, headquarters").

21 ¹⁵⁴ Reuters, *House Slams Regulators for Not Catching VW for Years*, N.Y. Times (Oct. 9,
 22 2015), [http://www.nytimes.com/reuters/2015/10/09/business/09reuters-volkswagen-](http://www.nytimes.com/reuters/2015/10/09/business/09reuters-volkswagen-emissions.html)
 23 [emissions.html](http://www.nytimes.com/reuters/2015/10/09/business/09reuters-volkswagen-emissions.html). See also *VW's U.S. chief tells Congress: no timetable to fix diesel cars*, The Dallas
 24 Morning News (Oct. 9, 2015), [http://www.dallasnews.com/business/headlines/20151008-vws-u.s.-](http://www.dallasnews.com/business/headlines/20151008-vws-u.s.-chief-tells-congress-no-timetable-to-fix-diesel-cars.ece)
[chief-tells-congress-no-timetable-to-fix-diesel-cars.ece](http://www.dallasnews.com/business/headlines/20151008-vws-u.s.-chief-tells-congress-no-timetable-to-fix-diesel-cars.ece) ("Hundreds of thousands of owners of
 Volkswagen diesel cars that skirt emissions standards may have to wait a year or more to get their
 cars fixed, the head of the automaker's U.S. unit said at a contentious House hearing Thursday.").

25 ¹⁵⁵ *Id.*

26 ¹⁵⁶ Danielle Ivory and Keith Bradsher, *Regulators Investigating 2nd VW Computer Program on*
 27 *Emissions*, N.Y. Times (Oct. 8, 2015), [http://www.nytimes.com/2015/10/09/business/](http://www.nytimes.com/2015/10/09/business/international/vw-diesel-emissions-scandal-congressional-hearing.html)
[international/vw-diesel-emissions-scandal-congressional-hearing.html](http://www.nytimes.com/2015/10/09/business/international/vw-diesel-emissions-scandal-congressional-hearing.html).

28 ¹⁵⁷ *Id.*

1 them less fuel-efficient and/or less powerful. And they do not want to spend any money
 2 maintaining or servicing cars that they believe will be imminently subject to a recall or buy-back.

3 284. Again, the sentiment of consumers – i.e., past and potential VW purchasers – has a
 4 direct effect on the bottom line of Plaintiffs and Franchise Dealers. When present and future car
 5 buyers feel betrayed by Volkswagen, there is little they can do to Volkswagen directly, but there is
 6 much at stake for Franchise Dealers. Franchise Dealers’ customer visits have sharply decreased,
 7 sales premiums have vanished, profits have eroded; plus Franchise Dealers are saddled with
 8 massive inventory carrying costs for vehicles that they cannot sell, and they cannot repurpose their
 9 working capital toward vehicles that are salable. Moreover, Franchise Dealers no longer have
 10 offerings from Volkswagen (with whom Franchise Dealers have exclusive sales agreements) to
 11 compete with other brands in the high-mileage efficient car space, and thus are losing sales to VW
 12 competitors.

13 **K. Things at Volkswagen Will Not Get Better Anytime Soon**

14 285. VW released a stop-sale order instructing dealers to immediately stop selling the
 15 Affected Vehicles.¹⁵⁸ VW has also withdrawn its application to the EPA for approval to sell its
 16 model year 2016 diesel vehicles, leaving them quarantined in ports until it resolves the presence of
 17 auxiliary emissions control devices to the satisfaction of the EPA.¹⁵⁹ VW has announced that it
 18 will no longer sell diesel vehicles in the United States. There is no way for Plaintiffs and Franchise
 19 Dealers to replace the lost inventory with gas-powered models and these actions, of course, have
 20 caused serious and long-lasting financial harm to Plaintiffs and Franchise Dealers.

21 286. Experts now point to the “uniquely awful” corporate governance at VW as a major
 22 factor in the fraudulent scheme.¹⁶⁰ VW’s “peculiar corporate culture” and “lax boardroom
 23 controls,” combined with highly centralized decision-making and a culture that encouraged the
 24

25 ¹⁵⁸ <http://www.detroitnews.com/story/business/autos/foreign/2015/09/19/vw-us-dealers-halt-sales-diesel-cars/72488232/> (last visited on Oct. 16, 2015).

26 ¹⁵⁹ <http://bigstory.ap.org/urn:publicid:ap.org:5c7a66fe0bd448f999b2c59379622488> (last visited on Oct. 16, 2015).

27 ¹⁶⁰ <http://www.cnbc.com/2015/10/04/volkswagens-uniquely-awful-governance-at-fault-in-emissions-scandal.html> (last visited on Oct. 16, 2015).
 28

concealment of problems, greatly increased the risk of corporate fraud and abuse.¹⁶¹ Alexander Juschus, director of German proxy advisor IVOX, noted that “[t]here have been warnings about VW’s corporate governance for years [including prostitution and bribery scandals in 2006], but they didn’t take it to heart and now you see the result.”¹⁶²

287. As speculated by Karl Brauer, senior analyst for Kelley Blue Book: “It’s really unknown, but I think there’ll be an extended period of reduced value for [used VW vehicles]. The resolution will probably not leave as big of an impression and won’t counteract the initial impression that [consumers] are getting with these diesel cars.”¹⁶³ Of course, reduced values for the Affected Vehicles will directly impact profits for Plaintiffs and the Franchise Dealer Class, which are the primary market for used and certified used VW cars.

L. Volkswagen’s Illegal Scheme Has Triggered Global Scrutiny

288. The Department of Justice (“DOJ”) launched a criminal investigation into Volkswagen and several of its executives over the emissions cheating scandal.¹⁶⁴ VW has been charged criminally, and it recently pleaded guilty. In its plea agreement with the Department of Justice, Volkswagen AG admitted to knowingly conspiring to commit wire fraud by materially misrepresenting Eligible Vehicles’ compliance with the Clean Air Act and that they did so intending to defraud the buyers and lessees of those vehicles.¹⁶⁵ Volkswagen AG also stipulated to certain factual allegations in Exhibit 2 of the plea agreement, which it agreed it will “neither contest the admissibility of, nor contradict . . . in any proceeding.”¹⁶⁶ Plaintiffs have included these admissions as Exhibit A and incorporate by reference each allegation in Exhibit A as though fully set forth herein.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ <http://www.cnn.com/2015/09/24/as-volkswagen-loses-other-automakers-could-benefit.html> (last visited on Sept. 28, 2015).

¹⁶⁴ <http://www.wsj.com/articles/u-s-justice-department-conducts-criminal-probe-of-volkswagen-sources-say-1442869059> (last visited on Oct. 16, 2015).

¹⁶⁵ See Rule 11 Plea Agreement at 3–6, *United States of America v. Volkswagen AG*, 16-CR-20394, available at <https://www.justice.gov/opa/press-release/file/924436/download>.

¹⁶⁶ *Id.* at 43-73; 7.

289. Additionally, the U.S. Senate has investigated Volkswagen's dealings with the IRS in obtaining green energy tax credits,¹⁶⁷ the U.S. Congress's Energy and Commerce committee has called upon Horn to testify to his knowledge of the scheme,¹⁶⁸ 45 state attorneys general have initiated investigations,¹⁶⁹ and the Federal Trade Commission has opened an investigation into Volkswagen's fraudulent advertising.¹⁷⁰ As opined by National Highway Traffic Safety Administration Administrator Mark Rosekind, because of Volkswagen's fraud, "[w]e're questioning everything now."¹⁷¹

290. The German government is also reportedly investigating Defendant Winterkorn for criminal fraud, while several other countries in Europe and Asia are likewise investigating both Winterkorn and VW.¹⁷² After becoming CEO of VWAG, Winterkorn personally appointed the head engineers that were directly involved in the diesel strategy and implementation of the defeat devices.¹⁷³

291. As part of their investigation into Volkswagen's conduct, German prosecutors have raided VWAG's Wolfsburg headquarters.¹⁷⁴

292. On October 15, 2015, VWAG reportedly announced that "Germany's automotive regulator has rejected the company's remediation plan for diesel vehicles equipped with software

¹⁶⁷ <http://www.forbes.com/sites/kellyphillipserb/2015/10/07/senate-investigates-volkswagen-dealings-with-irs-on-tax-credits/> (last visited on Oct. 16, 2015).

¹⁶⁸ <http://www.cnbc.com/2015/10/08/vw-us-ceo-i-had-no-knowledge-in-2014-of-defeat-devices-on-vehicles.html> (last visited on Oct. 16, 2015).

¹⁶⁹ <http://www.bloomberg.com/news/articles/2015-10-08/texas-sues-volkswagen-claiming-deception-emissions-violations-ifiqscqq> (last visited on Oct. 16, 2015).

¹⁷⁰ <http://consumerist.com/2015/10/15/federal-trade-commission-opens-probe-into-volkswagens-clean-diesel-advertising/> (last visited on Oct. 16, 2015).

¹⁷¹ <http://www.detroitnews.com/story/business/autos/foreign/2015/09/22/nhtsa-head-vw-diesel-deception-another-reason-question-assumptions/72614662/> (last visited on Oct. 16, 2015).

¹⁷² <http://www.reuters.com/article/2015/09/28/us-volkswagen-emissions-idUSKCN0RP14U20150928> (last visited on Oct. 16, 2015); <http://www.bloomberg.com/news/articles/2015-09-30/diesel-scandal-undercuts-one-of-vw-s-few-strengths-in-showroom> (last visited on Oct. 16, 2015).

¹⁷³ <http://www.wsj.com/articles/vw-emissions-probe-zeroes-in-on-two-engineers-1444011602> (last visited on Oct. 16, 2015).

¹⁷⁴ <http://www.bbc.com/news/business-34475408> (last visited on Oct. 16, 2015).

1 designed to cheat emissions tests, and has instead instructed the automaker to initiate a recall
 2 covering about 8.5 million vehicles across the European Union.”¹⁷⁵

3 293. Further, the scale and brazenness of the fraud prompted VW to set aside a 6.5
 4 billion Euro fund to address affected consumers and the EPA.¹⁷⁶

5 294. German authorities have also opened an investigation of Bosch’s role in the diesel
 6 emissions scandal. One report stated that at least three employees of Bosch GmbH, all managers,
 7 were being investigated by the Stuttgart public prosecutor’s office over emission cheating.¹⁷⁷

8 295. In total, Defendants’ illegal scheme deceived the public into buying over 550,000
 9 Affected Vehicles at a total cost of billions of dollars to consumers nationwide, not even
 10 considering the cost of the harm already caused to the environment and public health, or the
 11 ongoing and immediate threat to the same. The illegal scheme defrauded Plaintiffs and the
 12 Franchise Dealer Class into paying inflated costs for franchise dealerships and investing millions of
 13 dollars in such dealerships based on fraudulently inflated brand value. Moreover, the defrauded
 14 consumers will vote with their feet, turning away from Volkswagen franchise dealers like Plaintiffs
 15 and the Franchise Dealer Class, causing even further harm and damages to their ongoing
 16 businesses.

17 **V. FACTUAL ALLEGATIONS CONCERNING PLAINTIFFS**

18 **A. J. Bertolet Volkswagen**

19 296. Bertolet VW has expended considerable capital investing in the VW brand during
 20 all relevant times to include significant expenditures on employee compensation and training,
 21 vehicle purchases and carrying costs, sales and service facility costs, advertising and real estate
 22 costs. Bertolet VW has otherwise met or exceeded all material requirements of the Dealer
 23 Agreement as well as VW policies and procedures.

24 ¹⁷⁵ [http://www.law360.com/environmental/articles/714628?nl_pk=b1bf5f0b-4477-40d3-95dc-](http://www.law360.com/environmental/articles/714628?nl_pk=b1bf5f0b-4477-40d3-95dc-ea7e5b9e1e58&utm_source=newsletter&utm_medium=email&utm_campaign=environmental)
 25 [ea7e5b9e1e58&utm_source=newsletter&utm_medium=email&utm_campaign=environmental](http://www.law360.com/environmental/articles/714628?nl_pk=b1bf5f0b-4477-40d3-95dc-ea7e5b9e1e58&utm_source=newsletter&utm_medium=email&utm_campaign=environmental)
 (last visited on Oct. 16, 2015).

26 ¹⁷⁶ [http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-of-](http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-of-sweating-the-details-now-haunts-him)
 27 [sweating-the-details-now-haunts-him](http://www.bloomberg.com/news/articles/2015-09-22/volkswagen-ceo-s-history-of-sweating-the-details-now-haunts-him) (last visited on Oct. 16, 2015).

28 ¹⁷⁷ [https://www.thelocal.de/20170629/bosch-executives-come-under-investigation-in-](https://www.thelocal.de/20170629/bosch-executives-come-under-investigation-in-dieselgate-probe)
[dieselgate-probe](https://www.thelocal.de/20170629/bosch-executives-come-under-investigation-in-dieselgate-probe)

B. Napleton's Acquisition of Plaintiffs' Volkswagen Dealerships

297. On or about February 17, 2014, Plaintiffs Napleton VW Orlando and Napleton VW Sanford, and on September 14, 2015, Plaintiff Napleton VW Orlando, entered into Dealer Sales and Service Agreements with VGoA (the "Dealer Agreements").¹⁷⁸

298. The Dealer Agreements are each a "franchise agreement" as that term is defined in section 320.60(1), Florida Statutes and 815 ILCS 710/4 of the Illinois Motor Vehicle Franchise Act. Pursuant to the Dealer Agreements, Napleton VW Orlando, Napleton VW Sanford and Napleton VW Urbana operate dealerships for the sale and service of Volkswagen motor vehicles at the Florida and Illinois dealership locations.

299. Napleton VW Urbana entered into a Dealership Acquisition Agreement with O'Brien Automotive of Urbana, LLC ("O'Brien") to purchase, among other things, O'Brien's Volkswagen dealership rights, related real estate, personal property and goodwill only because it was part of an overall transaction involving six (6) other franchises. O'Brien required that all of the franchises be sold together as a condition of sale.

300. Napleton VW Orlando, Napleton VW Sanford and Napleton VW Urbana undertook an exhaustive and time consuming process to obtain approval from Volkswagen Group of America, Inc., to be granted the Dealer Agreements and completed their acquisition of the Volkswagen dealership rights, real estate, personal property, and goodwill and franchise rights (the "VW Dealerships"). Pursuant to the Dealer Agreements, Napleton Plaintiffs currently operate the VW Dealerships for the sale and service of Volkswagen motor vehicles, parts and accessories.

C. Volkswagen and Bosch

301. VGoA represents to its dealers that its "stands for reputable and honest business dealings in the course of everyday business which comply with relevant rules and regulations." VGoA characterizes its collaboration with its dealers, such as Plaintiffs, as exemplifying integrity,

¹⁷⁸ A true and correct copy of the Dealer Agreement for Napleton VW Orlando is attached hereto and made a part hereof as Exhibit B. A true and correct copy of the Dealer Agreement for Napleton VW Sanford is attached hereto and made a part hereof as Exhibit C. A true and correct copy of the Dealer Agreement for Napleton VW Urbana is attached hereto and made a part hereof as Exhibit D.

1 fairness, transparency, and partnership. However, as set forth more fully herein, the practices of
2 the Defendants are the polemic opposite of these stated principals. Rather than adhering to their
3 espoused principles, VW and VGoA engaged in a pattern of fraud and deception and a criminal
4 enterprise with Bosch LLC and Bosch GmbH.

5 302. Defendants' actions have been willful and wanton. Upon Plaintiffs' knowledge
6 VWAG, VGoA, VCI and Bosch LLC and Bosch GmbH have utilized the mail or wires to engage
7 in the fraudulent conduct and racketeering activities set forth herein.

8 303. At all times material hereto, Plaintiffs have acted in substantial compliance with all
9 material terms of the Dealer Agreements.

10 304. The purchase by Napleton Plaintiffs of their Volkswagen franchises all occurred
11 prior to when VW's fraudulent acts were made public, and before Plaintiffs learned of same. There
12 can be no doubt but that VWAG and VGoA were aware of the massive deception that was being
13 foisted on the American public and its Volkswagen dealers when Napleton Plaintiffs acquired their
14 Volkswagen franchises. Perhaps most jarring was the acquisition by Napleton VW Urbana of the
15 Volkswagen franchise and the adulterated inventory which went with it, which proceeded
16 approximately fifty-eight (58) hours before the issuance of the NOV exposing the massive
17 Dieselgate fraud. Notwithstanding that the scandal that was about to break, VWAG and VGoA
18 proceeded with the acquisition by Napleton VW Urbana in a completely "business as usual"
19 fashion. Neither VWAG or VGoA gave Napleton VW Urbana any indication of the impending
20 tsunami of bad publicity, public fallout and inventory expense resulting from the inability to sell
21 the diesel vehicles.

22 305. In the case of Napleton VW Urbana – and other dealerships similarly situated – the
23 negative impact was magnified because that particular Volkswagen franchise is part of an auto mall
24 with other franchises (Hyundai, Kia, Mazda, Mitsubishi and Toyota/Scion). The fixed expenses of
25 Napleton VW Urbana's operations are shared at the auto mall. As such, Napleton VW Urbana
26 does not simply generate income, but provides incremental gross income of approximately
27 \$800,000.00 per year to the overall net profit of the combined operations at the auto mall. Thus,
28 the price that was paid for the auto mall would have been reduced greatly had VGoA disclosed the

1 impending tsunami of bad publicity and the destruction of goodwill that has accompanied the
2 Clean Diesel scandal.

3 306. The price paid by Napleton VW Orlando, Napleton VW Sanford and Napleton VW
4 Urbana for goodwill and franchise/going concern value of the franchised Volkswagen dealerships
5 at the Florida Locations and Illinois Location was based, among other things, upon the reputation
6 of VWAG and VGoA for producing-high quality, safe, and compliant motor vehicles, parts, and
7 accessories.

8 307. As a direct result of VWAG's and VGoA's willful and wanton violations of
9 applicable law through their criminal enterprise with Bosch LLC and Bosch GmbH, the goodwill
10 and franchise/going concern value of all of Plaintiffs has been devalued and gross profits have
11 plummeted. Moreover, Plaintiffs have and will continue to suffer additional expenses resulting
12 from the continuing cost to finance their existing inventory of Clean Diesel Vehicles which are
13 ineligible for sale by virtue of the Defeat Device and Volkswagen's apparent inability to construct
14 a viable "fix."

15 308. VGoA, being aware of the catastrophic effect that its conduct was going to have on
16 its dealers, made a furtive attempt to buy the peace by offering to exchange "commitments" with
17 the Volkswagen dealership community through a "Transaction Assistance Agreement" (hereinafter
18 referred to as "TAA"), which included Plaintiffs. The TAA would seem like an attractive offer.
19 Indeed, the TAA would provide Napleton Plaintiffs credits with a minimum cumulative value of
20 \$240,000. In exchange for Napleton Plaintiffs' participation in the TAA, VGoA was to receive a
21 release which is almost unlimited in scope and excludes only the following claims, to wit:

22 (T)his release shall not be effective to relieve VGoA of any
23 obligation to ... (Plaintiffs) ... by reason of, or any liability arising
24 out of (a) any warranty obligations, (b) any sales incentive program
25 current as of the Effective Date... (of the TAA) ... or (c) any product
26 liability claim alleging a defect in a vehicle manufactured or
27 distributed by VGoA.

28 309. The insidious nature of this language cannot be overstated for Volkswagen's
vehicles are not "defective" in the classic sense. In fact, the gravamen of the claims against
Volkswagen as they relate to the Clean Diesel is that they operate exactly as they were designed.

1 They were designed to cheat. Rather than a product defect, it is the affirmative fraud committed by
2 Volkswagen which Plaintiffs may unwittingly been released had they accepted this offer of
3 “assistance” from VW. This, of course, was all done without ever disclosing the existence of the
4 diesel emissions scheme and/or its fraudulent conduct to conceal its actions. Napleton Plaintiffs
5 declined to enter into any agreement with VWAG and/or VGoA which may have been intended by
6 VW to result in a waiver of rights. Instead, Napleton Plaintiffs notified VW and VGoA that they
7 intend to seek all available remedies through legal recourse.

8 **D. Volkswagen’s Tier Pricing and Manipulation of DSI Sales Metric**

9 310. At all times pertinent hereto, VGoA has advised its dealers that its metrics to
10 determine performance and allocation are applied uniformly, fairly, without bias and in-good faith.
11 As is set forth more fully herein, this is simply not true.

12 311. Each of VGoA’s dealers are assigned to Primary Area of Influence (“PAI”). VGoA
13 uses a metric that it refers to as Dealer Sales Index (“DSI”) to measure its dealer’s sales
14 performance. DSI is supposed to measure of the dealer’s sales penetration in the PAI to which the
15 dealer has been assigned or, in other words, the dealer’s sales effectiveness. Because a dealer is
16 held responsible for selling into or “penetrating” the entire PAI, the size of the PAI has a direct
17 effect on a dealer’s DSI percentage. In other words, the larger the PAI (thus the greater sales
18 responsibility to which the dealer is held) the lower the sales effectiveness score the dealer will
19 generally have.

20 312. The size and geographic composition of the PAI assigned to the dealer also impacts
21 incentives and discounts for which dealers can qualify. The sales objectives assigned to each
22 dealer are assigned based, in part, on a sales expectancy for each dealer. That sales expectancy is
23 based upon the number of vehicles competitive to VGoA products that are registered within the
24 PAI. Thus, the greater the PAI, the greater the sales expectancy and sales objective for the dealer.

25 313. Those dealers who do not achieve the sales objectives assigned by VGoA, do not
26 qualify for the same incentive/discount money received by those VGoA dealers who do reach the
27 VGoA assigned objectives. Those dealers achieving the assigned objective numbers are charged a
28

1 lower effective price for the vehicles that they purchase from VGoA, making them more
2 competitive and able to achieve sales levels that result in benefits, incentives and increased
3 allocations of vehicles based on inventory turnover.

4 314. When Napleton VW Orlando and Napleton VW Sanford, entered into the Dealer
5 Agreements with VGoA in 2013, there were three dealers in the Central Florida Market area.
6 Plaintiffs and David Maus VW North and David Maus VW South (hereinafter collectively referred
7 to as “Maus VW”) were split into four PAI’s with each of the dealers being assigned to one PAI for
8 each of its dealership locations. Leesburg Volkswagen (“Leesburg VW”) had an adjoining PAI.

9 315. Maus VW has two stores in the general proximity of the Clermont area, each being
10 approximately 24 miles away. Napleton VW Orlando and Napleton VW Sanford locations are
11 both an additional ten miles and 14 miles further distant from the Clermont area than Maus VW
12 and Leesburg VW, respectively.

13 316. When a new location for the establishment of a dealership is proposed, a test market
14 study is conducted and a new market area (in this instance a PAI) must be created for that location.
15 In this instance, a test market study was conducted for the establishment of a new dealership
16 location in Clermont, Florida (hereinafter referred to as “Clermont Open Point”). In order to
17 accommodate the Clermont Open Point, a new PAI was created for that location (hereinafter
18 referred to as the “Clermont PAI”).

19 317. Due to the fact that both Maus VW and Leesburg VW are significantly closer to the
20 Clermont Open Point than are either Napleton VW Orlando or Napleton VW Sanford, the creation
21 of the Clermont PAI has disproportionately shrunk the PAIs for both Maus VW and Leesburg
22 VW. Thus, Maus VW and Leesburg VW are being measured with reduced PAIs and performance-
23 based discounts and allocations are more readily available to them than to Napleton VW Orlando
24 and Napleton VW Sanford.

25 318. Maus VW and Leesburg VW are being enabled to operate on an unlevel playing
26 field, getting preferential allocations and more desirable vehicle inventory due to the fact that they
27 are more easily able to achieve their performance objectives. As a result, Napleton VW Orlando
28 and Napleton VW Sanford have been, and will be otherwise be forced in the future, to compete for

1 the sale of Volkswagen motor vehicles with competitors who receive greater discounts, benefit
2 from lower vehicle acquisition costs and get preferential allocations without selling substantially
3 more vehicles. To make matters worse, Volkswagen has purposefully played favorites as between
4 its dealers, distributing advertising (co-op) monies disproportionately and irrationally to favored
5 dealers only.

6 319. As a result of this wrongful manipulation of the DSI Sales Metric, Plaintiffs
7 Napleton VW Orlando and Napleton VW Sanford have and will continue to both lose sales and see
8 their margins reduced.

9 320. Napleton VW Orlando and Napleton VW Sanford are not seeking to assert statutory
10 rights to protest the establishment of the Clermont Open Point, but rather, assert that VGoA's
11 scheme to establish multiple tiered pricing is independently actionable.

12 **E. Volkswagen's Tier Pricing and Coercion to Force Franchise Dealers to Floor Plan**
13 **Finance with VCI**

14 321. VCI is a wholly owned subsidiary of VGoA who offers inventory financing ("Floor
15 Plan Financing") for Volkswagen dealers. VCI also offers consumer financing ("Consumer
16 Financing") to its dealers' customers, whether or not they Floor Plan Finance with VCI. However,
17 as set forth more fully herein, Napleton Plaintiffs and other Volkswagen dealers who do not Floor
18 Plan Finance with VCI are placed at a distinct competitive disadvantage with their competitors who
19 do.

20 322. No Volkswagen dealer should have to worry that its business operations are going
21 to be affected by the incestuous relationship which exists between VGoA and VCI. VCI is wholly
22 owned by VGoA and is a major profit center for VGoA. However, VGoA and VCI offer
23 Volkswagen dealers direct floor plan financing discounts ("Floor Plan Discounts") as well as
24 discounts associated with VCI Consumer Financing ("Consumer Financing Discounts") which are
25 either unavailable or available to a lesser extent to those Volkswagen dealers, such as Napleton
26 Plaintiffs, who do not utilize VCI for their financing. These corrupt practices have enabled VCI to
27 generate upwards of fourteen percent (14%) of VW and VGoA's reported income and become an
28 integral part of VW's and VGoA's worldwide operations.

1 323. An example of VW's corrupt practices is found in the Transaction Assistance
2 Agreements ("TAA") VW offered to dealers shortly before the Dieselgate scandal broke. VGoA
3 made a direct offer to provide two years' worth of free VCI floorplan financing which, Napleton
4 Plaintiffs estimate, (based on floorplan financing of \$5,500,000) would have saved Napleton
5 Plaintiffs \$330,000 in floorplan financing costs. But accepting that offer may have eliminated
6 Napleton Plaintiffs' ability to seek redress for any of Volkswagen's abusive and fraudulent
7 behavior, as described herein.

8 324. VGoA and VCI use direct Floor Plan Discounts to funnel money to its Volkswagen
9 dealers who Floor Plan Finance with VCI lowering acquisition costs and establishing a punitive
10 system of multiple-tiered pricing which penalizes dealers who refuse to Floor Plan Finance with
11 VCI. This pattern of behavior is motivated wholly by greed and is ingrained with VGoA and VCI
12 who have most recently been canvassing Volkswagen dealers with offers for interest free loans and
13 direct parts subsidies to try to entice them to jump ship with their established lending institutions
14 and Floor Plan Finance with VCI.

15 325. Multiple-tiered pricing has also been created through the use of "dealer reserve
16 coupons" ("Coupons") from VCI which are to be submitted along with VCI contracts for
17 Consumer Financing and result in a Consumer Finance Discount to the dealer with every Coupon
18 submitted. VCI does not directly distribute Coupons. Rather, this is done by VGoA which doles
19 out Coupons in far greater numbers to those dealers who do their Floor Plan Financing with VCI
20 than those, like Napleton Plaintiffs, who do not. Coupons were, in fact, offered to Napleton VW
21 Orlando and Napleton VW Sanford but this offer came with the admonition that more would be
22 forthcoming if they Floor Plan Financed with VCI. VCI has also made it known that dealers who
23 do their Floor Plan Financing with VCI also receive the benefit that VCI will "buy-deeper" in the
24 consumer market making it easier for them to finance less credit worthy customers and to write a
25 greater number of deals.

26 326. Just as is the case where VGoA has manipulated the DSI sales metric to the
27 competitive disadvantage of Napleton Plaintiffs, VGoA's actions in persisting to attempt to engage
28 in extortionate conduct to force Napleton Plaintiffs to use VCI for their Floor Plan Financing has

1 and will continue to result in lower acquisition costs to Napleton Plaintiffs competitors thereby
2 reducing sales and profit margins.

3 327. As early as 2007, VGoA vowed to reach annual sales of 800,000 units, tripling its
4 sales volume at the time. VGoA has continued to tout artificially inflated sales goals which, even
5 before the Clean Diesel scandal, would have required Volkswagen to increase its sales by 100,000
6 each year for the next four years, “a monumental task in the hypercompetitive U.S. Market.”¹⁷⁹
7 Indeed, prior to the acquisition of Napleton VW Orlando and Napleton VW Sanford, Volkswagen
8 was promoting its plans to freshen its brand with huge research and development spending. Of
9 course, none of this came to fruition and Volkswagen announced in November, 2015 that it was
10 cutting 1.1 billion euros from its 2016 budget, which includes research and development.¹⁸⁰

11 328. Regarding its product line, VWAG and VGoA purposely and fraudulently induced
12 its dealers to continue to invest in their dealership facilities and to otherwise benefit VWAG and
13 VGoA. Indeed, VWAG and VGoA, while touting its sales goals and its plans to develop strategies
14 that would enable it to be competitive in the market, have purposely and intentionally ignored
15 vagaries of the retail market choosing to sell stratospherically priced niche products and being
16 badly outsold by its competitors.

17 329. Volkswagen has mismanaged supplies and allocations and Volkswagen’s brand
18 chief, Herbert Diess, has, in a complete turnaround, expressed skepticism that Volkswagen could
19 compete viably in the U.S. with mass volume brands such as Honda and Toyota. A decision (given
20 the investments that Plaintiffs have made based upon Volkswagen’s avowed aspirations to become
21 a serious competitor in the mass volume U.S. market) that was recently characterized as
22 “catastrophic” by Alan Brown, head of Volkswagen’s national dealer counsel.¹⁸¹

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24
25 ¹⁷⁹ <http://www.autonews.com/article/20150126/RETAIL01/301269949/how-vw-veered--off-target> (last visited April 4, 2016).

26 ¹⁸⁰ <http://www.reuters.com/article/volkswagen-emissions-idUSL8N13F2BE20151121> (last
27 visited April 4, 2016).

28 ¹⁸¹ <http://www.autonews.com/article/20160312/RETAIL/303149945/vw-dealers-demand:-stop-the-insanity> (last visited April 4, 2016).

1 330. Moreover, VGoA has abandoned long standing “stair-step” programs to provide
2 financial assistance to its dealers while, all the time, representing to their dealers that VGoA would
3 replace them with new programs providing its Volkswagen dealers an equal or greater benefit than
4 before. This egregious sham was calculated to quell poor publicity as well as dealer outrage at
5 VGoA’s conduct and was otherwise calculated to fraudulently induce its dealers and prospective
6 dealers to continue to invest in the Volkswagen brand.

7 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

8 **A. Discovery Rule Tolling**

9 331. Plaintiffs and Franchise Dealer Class members had no way of knowing about
10 Volkswagen’s deception with respect to its Clean Diesel engine system and “defeat device.” It
11 took federal EPA and California Air Resources Board investigations to uncover Volkswagen’s
12 deception, which involved sophisticated software manipulation on Defendants’ part. As reported
13 by the *Los Angeles Times* on September 18, 2015, it took California Air Resources Board testing
14 on a special dynamometer in a laboratory, open road testing using portable equipment, and the use
15 of special testing devised by the Board to uncover Volkswagen’s scheme and to detect how
16 software on the engine’s electronic control module was deceiving emissions certifications tests.
17 Plainly, Volkswagen was intent on expressly hiding its behavior from regulators and consumers.
18 This is the quintessential case for tolling.

19 332. Within the time period of any applicable statutes of limitation, Plaintiffs and
20 members of the proposed class could not have discovered through the exercise of reasonable
21 diligence that Volkswagen was concealing the conduct complained of herein and misrepresenting
22 the Company’s true position with respect to the emission qualities of its vehicles.

23 333. Plaintiffs and the other Class members did not discover, and did not know of facts
24 that would have caused a reasonable person to suspect, that Volkswagen did not report information
25 within its knowledge to federal and state authorities, its dealerships, or consumers; nor would a
26 reasonable and diligent investigation have disclosed that Volkswagen had information in its
27 possession about the existence of its sophisticated emissions scheme and that it opted to conceal
28

1 that information, which was discovered by Plaintiffs only shortly before this action was filed. Nor
2 in any event would such an investigation on the part of Plaintiffs and other Class members have
3 disclosed that Volkswagen valued profits over compliance with federal and state law, or the trust
4 that Plaintiffs and other Class members had placed in its representations, or that, necessarily,
5 Volkswagen actively discouraged its personnel from raising or disclosing issues with regard to the
6 true quality and quantity of the emissions, and the emissions software, of its vehicles, or of
7 Volkswagen's emissions scheme.

8 334. For these reasons, all applicable statutes of limitation have been tolled by operation
9 of the discovery rule with respect to claims as to all vehicles identified herein.

10 **B. Fraudulent Concealment Tolling**

11 335. All applicable statutes of limitation have also been tolled by Volkswagen's knowing
12 and active fraudulent concealment and denial of the facts alleged herein throughout the time period
13 relevant to this action.

14 336. Instead of disclosing its emissions scheme, or that the quality and quantity of
15 emissions from the subject vehicles were far worse than represented, and of its disregard of federal
16 and state law, Volkswagen falsely represented that its vehicles complied with federal and state
17 emissions standards, and that it was a reputable manufacturer whose representations could be
18 trusted.

19 **C. Estoppel**

20 337. Volkswagen was under a continuous duty to disclose to Plaintiffs and the other
21 Franchise Dealer Class members the true character, quality, and nature of emissions from the
22 vehicles at issue, and of those vehicles' emissions systems, and of the compliance of those systems
23 with applicable federal and state law.

24 338. Volkswagen knowingly, affirmatively, and actively concealed the true nature,
25 quality, and character of the emissions systems, and the emissions, of the vehicles at issue.

26 339. Volkswagen was also under a continuous duty to disclose to Plaintiffs and Franchise
27 Dealer Class members that it had engaged in the scheme complained of herein to evade federal and
28

1 state emissions and clean air standards, and that it systematically devalued compliance with, and
2 deliberately flouted, federal and state laws regulating vehicle emissions and clean air.

3 340. Based on the foregoing, Volkswagen is estopped from relying on any statutes of
4 limitations in defense of this action.

5 **VII. CLASS ALLEGATIONS**

6 341. Plaintiffs bring this action pursuant to the provisions of Rules 23(a), (b)(2), and
7 (b)(3) of the Federal Rules of Civil Procedure, on behalf of itself and the following class:

8 **The Franchise Dealer Class**

9 All persons or entities who owned a Volkswagen-branded franchise
10 dealership that operated in the United States as of September 18,
2015.

11 342. Excluded from the Franchise Dealer Class are Volkswagen and its subsidiaries and
12 affiliates; Bosch Defendants and their subsidiaries and affiliates; all persons who make a timely
13 election to be excluded from the Franchise Dealer Class. Plaintiffs reserve the right to revise the
14 Franchise Dealer Class definition based upon information learned through discovery.

15 343. Certification of Plaintiffs claims for class-wide treatment is appropriate because
16 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
17 would be used to prove those elements in individual actions alleging the same claim.

18 344. This action has been brought and may be properly maintained on behalf of the
19 Franchise Dealer Class under Federal Rule of Civil Procedure 23.

20 345. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the
21 Franchise Dealer Class are so numerous and geographically dispersed that individual joinder of all
22 Franchise Dealer Class members is impracticable. Plaintiffs are informed and believe that there are
23 not less than 652 members of the Franchise Dealer Class. The precise number of Class members
24 may be ascertained from Volkswagen's books and records. Franchise Dealer Class members may
25 be notified of the pendency of this action by recognized, Court-approved notice dissemination
26 methods, which may include U.S. mail, electronic mail, express mail, Internet postings, and/or
27 published notice.

1 346. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and
2 23(b)(3): This action involves common questions of law and fact, which predominate over any
3 questions affecting individual Class members, including, without limitation:

4 a) Whether Volkswagen, Bosch LLC and Bosch GmbH engaged in the conduct
5 alleged herein;

6 b) Whether Volkswagen designed, advertised, marketed, distributed, leased,
7 sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;

8 c) Whether the Clean Diesel engine system in the Affected Vehicles contains a
9 defect in that it does not comply with U.S. EPA requirements and federal and state emissions
10 regulations;

11 d) Whether the Clean Diesel engine systems in Affected Vehicles can be made
12 to comply with EPA and state standards without substantially degrading the performance and/or
13 efficiency of the Affected Vehicles;

14 e) Whether Volkswagen and Bosch LLC and Bosch GmbH knew about the
15 defeat device and, if so, how long Volkswagen and the Bosch entities have known;

16 f) Whether Bosch GmbH and Bosch LLC designed and manufactured a defeat
17 device and worked with VW to obtain approval for sale of cars equipped with such device;

18 g) whether Bosch GmbH supplied the “defeat device” to Volkswagen with the
19 knowledge that Volkswagen would use it in production of Affected Vehicles;

20 h) whether Bosch LLC and Bosch GmbH acted in concert with Volkswagen
21 and aided and abetted Volkswagen’s fraud;

22 i) Whether Volkswagen marketed, and distributed Affected Vehicles with a
23 defeat device;

24 j) Whether Volkswagen’s conduct violates the federal Dealers’ Day in Court
25 Act;

26 k) Whether Volkswagen’s and Bosch’s conduct violates RICO and other laws
27 as asserted herein;
28

1 l) Whether Volkswagen's conduct violates consumer protection statutes, false
2 advertising laws, sales contracts, warranty laws, and other laws;

3 m) Whether Plaintiffs and the other Class members overpaid for their
4 dealerships and their inventory of Affected Vehicles;

5 n) Whether Plaintiffs and the other Class members are entitled to equitable
6 relief, including, but not limited to, restitution or injunctive relief; and

7 o) Whether Plaintiffs and the other Class members are entitled to damages and
8 other monetary relief and, if so, in what amount.

9 347. Typicality: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs claims are typical of
10 the other Class members' claims because, among other things, all Class members were comparably
11 injured through Volkswagen's wrongful conduct as described above. Moreover, all Class members
12 entered into like form dealership agreements with VGoA.

13 348. Adequacy: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class
14 representatives because their interests do not conflict with the interests of the other members of the
15 Franchise Dealer Class they seek to represent; Plaintiffs have retained counsel competent and
16 experienced in complex class action litigation; and Plaintiffs intend to prosecute this action
17 vigorously. The Franchise Dealer Class's interests will be fairly and adequately protected by
18 Plaintiffs and their counsel.

19 349. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2):
20 Volkswagen has acted or refused to act on grounds generally applicable to Plaintiffs and the other
21 members of the Franchise Dealer Class, thereby making appropriate final injunctive relief and
22 declaratory relief, as described below, with respect to the Franchise Dealer Class as a whole.

23 350. Superiority: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to
24 any other available means for the fair and efficient adjudication of this controversy, and no unusual
25 difficulties are likely to be encountered in the management of this class action. It would be
26 impracticable for the members of the Franchise Dealer Class to individually seek redress for
27 Volkswagen's wrongful conduct. Even if Franchise Dealer Class members could afford individual
28 litigation, the court system could not. Individualized litigation creates a potential for inconsistent

1 or contradictory judgments, and increases the delay and expense to all parties and the court system.
 2 By contrast, the class action device presents far fewer management difficulties, and provides the
 3 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

4 **VIII. VIOLATIONS ALLEGED**

5 **A. Claims Brought on Behalf of Plaintiffs and the Franchise Dealer Class**

6 **COUNT I** 7 **VIOLATIONS OF THE AUTOMOBILE DEALERS' DAY IN COURT ACT** 8 **15 U.S.C. § 1221, ET SEQ.** 9 **(BROUGHT AGAINST VGOA)**

10 351. Plaintiffs incorporate by reference all preceding allegations as though fully set forth
 11 herein.

12 352. The Federal Automobile Dealer's Day in Court Act, 15 U.S.C. § 1221, *et seq.*,
 13 provides a cause of action for dealers against manufacturers that fail "to act in good faith in
 14 performing or complying with any of the terms or provisions of the franchise, or in terminating,
 15 canceling, or not renewing the franchise with said dealer." 15 U.S.C. § 1222. VGoA is wholly
 16 owned by VWAG. VGoA is an agent under the complete control of VWAG and acts in concert
 17 with VWAG for the purpose of selling cars to Plaintiffs.

18 353. Pursuant to 15 U.S.C. § 1221(e), the term "good faith" is defined as "the duty of
 19 each party to any franchise, and all officers, employees, or agents thereof to act in a fair and
 20 equitable manner toward each other so as to guarantee the one party freedom from coercion,
 21 intimidation, or threats of coercion or intimidation from the other party: Provided, that
 22 recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to
 23 constitute a lack of good faith."

24 354. Coercion and intimidation in violation of the statute are not limited to exercise of
 25 positive force or direct threats, but may result from any pressure which puts one in actual fear of
 26 loss of property or injury to business; unfair and inequitable conduct may be of such a nature as to
 27 constitute coercion and intimidation.

28 355. As set forth above, VWAG and VGoA have purposely and knowingly defrauded
 Plaintiffs regarding the legality, efficacy and environmental compliance of the Affected Vehicles.

1 356. Volkswagen and VGoA have known of the use of the “defeat device” and the true
2 nature of its Clean Diesel engine system for at least six years, but concealed all of that information
3 until recently.

4 357. Volkswagen was also aware that it valued profits over environmental cleanliness,
5 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
6 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
7 this information as well.

8 358. By failing to disclose and by actively concealing the “defeat device” and the true
9 cleanliness and performance of the Clean Diesel engine system, by marketing its vehicles as safe,
10 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
11 reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood
12 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices.

13 359. In the course of Volkswagen’s business, it willfully failed to disclose and actively
14 concealed the use of the “defeat device” and true cleanliness and efficiency of the Clean Diesel
15 engine system and serious defects discussed above. Volkswagen compounded the deception by
16 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,
17 and of high quality, and by claiming to be a reputable manufacturer that valued safety,
18 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

19 360. Volkswagen’s unfair or deceptive acts or practices were likely to and did in fact
20 deceive Franchise Dealers, including Plaintiffs, about the true cleanliness and efficiency of the
21 Clean Diesel engine system, the quality of the Volkswagen, Audi and Porsche brands, the
22 devaluing of environmental cleanliness and integrity at Volkswagen, and the true value of the
23 Affected Vehicles; all causing the true value of franchise dealerships to be substantially lower than
24 the prices paid for such franchise dealerships.

25 361. Volkswagen owed Plaintiffs a duty to disclose the true safety, cleanliness, efficiency
26 and reliability of the Affected Vehicles and the devaluing of environmental cleanliness and
27 integrity at Volkswagen, because Volkswagen:
28

- 1 a. Possessed exclusive knowledge that it valued profits over
- 2 environmental cleanliness, efficiency, and lawfulness, and
- 3 that it was manufacturing, selling and distributing vehicles
- throughout the United States that did not comply with EPA
- regulations;
- 4 b. Intentionally concealed the foregoing from Plaintiffs; and/or
- 5 c. Made incomplete representations about the safety,
- 6 cleanliness, efficiency and reliability of the Affected Vehicles
- 7 generally, and the “defeat device” and true nature of the
- 8 Clean Diesel engine system in particular, while purposefully
- withholding material facts from Plaintiffs that contradicted
- these representations.

9 362. Because Volkswagen fraudulently concealed the “defeat device” and the true
10 cleanliness and performance of the Clean Diesel engine system, resulting in a raft of negative
11 publicity once the use of the “defeat device” and true characteristics of the Clean Diesel engine
12 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished and
13 the value of Volkswagen franchise dealerships and the value of the improved real property used for
14 such dealerships has greatly diminished. In light of the stigma attached to those vehicles by
15 Volkswagen’s conduct, they are now worth significantly less than they otherwise would be and are
16 significantly harder to sell at any price, and may not be sold, and must be stored until such time as
17 Volkswagen renders them legal in the United States.

18 363. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
19 characteristics of the Clean Diesel engine system were material to Plaintiffs and the Franchise
20 Dealer Class. A dealership that sells vehicle made by a reputable manufacturer of environmentally
21 friendly vehicles is worth more than an otherwise comparable dealership that sells vehicles made
22 by a disreputable manufacturer of environmentally dirty vehicles that conceals its polluting engines
23 rather than promptly remedying them.

24 364. The actions of VGoA clearly violate the express prohibition set forth in 15 U.S.C.
25 § 1222.

26 365. As a result of the illegal conduct of VWAG and VGoA, Plaintiffs and the Franchise
27 Dealer Class have suffered damages including, but not limited to, lost profits, increased financing
28

1 and related expenses, increased inventory carrying costs, loss of sales, loss of servicing revenue
2 and profit and the loss of value of the business as a going concern.

3 **COUNT II**
4 **VIOLATIONS OF RACKETEER INFLUENCED AND**
5 **CORRUPT ORGANIZATIONS ACT (RICO)**
6 **VIOLATION OF 18 U.S.C. § 1962(C) - (D)**

7 366. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
8 though fully set forth herein.

9 367. Plaintiffs bring this Count individually and on behalf of the Franchise Dealer Class
10 and against Defendants Volkswagen AG; Volkswagen Group of America, Inc.; Robert Bosch
11 GmbH, Inc.; and Robert Bosch, LLC (collectively, “RICO Defendants”).

12 368. The RICO Defendants are all “persons” under 18 U.S.C. § 1961(3) because they are
13 capable of holding, and do hold, “a legal or beneficial interest in property.”

14 369. Section 1962(c) makes it “unlawful for any person employed by or associated with
15 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to
16 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a
17 pattern of racketeering activity.” Section 1962(d), in turn, makes it unlawful for “any person to
18 conspire to violate.”

19 370. For many years now, the RICO Defendants have aggressively sought to increase the
20 sales of Affected Vehicles in an effort to bolster revenue, augment profits and increase
21 Volkswagen’s share of the diesel vehicle market. Finding it impossible to achieve their goals
22 lawfully, however, the RICO Defendants resorted instead to orchestrating a fraudulent scheme and
23 conspiracy. In particular, the RICO Defendants, along with other entities and individuals, created
24 and/or participated in the affairs of an illegal enterprise (“Emissions Fraud Enterprise”) whose
25 direct purpose was to deceive the regulators and the public into believing the Affected Vehicles
26 were “clean” and “environmentally friendly.” As explained in greater detail below, the RICO
27 Defendants’ acts in furtherance of the Emissions Fraud Enterprise violate §§ 1962(c) and (d).
28

1. The Members of the Emissions Fraud Enterprise.

371. Upon information and belief, the Emissions Fraud Enterprise consisted of the following entities and individuals.

a. Volkswagen Defendants.

372. The Volkswagen Defendants include Volkswagen AG, Volkswagen Group of America, and Volkswagen Credit. Although each Volkswagen Defendant is a distinct legally entity, they are all wholly-owned¹⁸² and controlled¹⁸³ by Volkswagen AG.

373. As noted previously, in 2007, the Volkswagen Defendants made it their mission to become the dominant automotive manufacturing conglomerate in the world. At the time they articulated this goal, however, the Volkswagen Defendants were struggling to retain their foothold in the American market. Their strategy of wooing customers with premium products was not paying off and VGoA's costly plant in Chattanooga, Tennessee was "woefully underutilized."¹⁸⁴

374. In response to these obstacles, Defendant Volkswagen AG and its leader at the time, Martin Winterkorn, set in motion an ambitious plan to triple the Volkswagen Defendants' sales in the United States. The linchpin of this strategy was increasing sales of "diesel-powered cars ... [and] promising high mileage and low emissions without sacrificing performance."¹⁸⁵

375. Additionally, to achieve their lofty sales goal, the Volkswagen Defendants made a business-driven decision to move away from the selective catalytic reduction ("SCR") emission control systems they had previously used in their vehicles and that were industry standard at the time. Instead, they sought to replace the SCR systems with the less expensive and easier to

¹⁸² http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Shareholdings.bin.html/binarystorageitem/file/Anteilsbesitz+VW+AG+31.12.2014_englisch.pdf.

¹⁸³ http://www.volkswagenag.com/content/vwcorp/content/en/brands_and_products.html; http://www.volkswagenag.com/content/vwcorp/info_center/en/publications/2015/03/Y_2014_e.bin.html/binarystorageitem/file/GB+2014_e.pdf.

¹⁸⁴ Anton Watts. VW Drama: Why Piech Wants Winterkorn Out-and What the Future May Hold. Car and Driver (Apr. 16, 2015).

¹⁸⁵ Danny Kim, Aaron Danny Hakim, Aaron Kessler, and Jack Ewing, "As Volkswagen Pushed to Be No. 1, Ambitions Fueled a Scandal," New York Times (Sept. 26, 2015).

maintain lean NO_x trap (“LNT”) systems.¹⁸⁶ Critically, however, the LNT technology the Volkswagen Defendants sought to implement had not been shown to effectively reduce toxic NO_x emissions to lawful levels under normal operating conditions.

376. Accordingly, working with the other members of the Emissions Fraud Enterprise, the Volkswagen Defendants devised a scheme to circumvent the United States’ stringent emissions standards by incorporating a “defeat device” into their LNT emissions control system and their later TDI vehicles equipped with SCR emissions systems. The “defeat device” automatically increases exhaust gas recirculations and activates emissions controls during *testing conditions only*.¹⁸⁷ Employing this technology, Affected Vehicles routinely pass emissions tests even though in normal operating conditions they emit unlawful levels of toxic pollutants into the atmosphere, when the emissions treatment system is de-rated or disabled.¹⁸⁸

377. Making matters worse, in order to profit from the scheme and increase their sales according to plan, the Volkswagen Defendants, with the active participation of the Bosch Defendants, unabashedly billed the Affected Vehicles as “*clean*” and “*environmentally friendly*” vehicles.¹⁸⁹

378. In sum, as part of their effort to become the dominant automotive manufacturing conglomerate in the world, the Volkswagen Defendants controlled and directed an eight-year-long enterprise whose purpose was to deceive regulators, Franchise Dealers and the public through lies and deception.

¹⁸⁶ The term “NO_x trap” refers to any device whose purpose is to reduce the oxides of nitrogen. See https://en.wikipedia.org/wiki/NOx_adsorber. However, the term here is used as a shorthand, informal reference to the emissions control system developed by the Volkswagen Defendants as an alternative to the SCR system. Unlike the NO_x trap, SCR systems require vehicles to carry an onboard tank of an exhaust additive, often urea crystals in mineralized water that has to be refilled every 10,000 miles at a cost of around \$300. Additionally, SCR systems also increase the vehicles’ initial purchase price.

¹⁸⁷ Testimony of Michael Horn, President and CEO of Volkswagen Group of America, Inc. Before H. Comm. on Energy and Commerce, 114th Cong. (2015).

¹⁸⁸ *Id.*

¹⁸⁹ See Jad Mouawad & Sydney Ember. VW’s Pitch to Americans Relied on Fun and Fantasy. New York Times (Sept. 27, 2015), <http://nytimes.com/2015/09/28/business/media/vws-pitch-to-americans-relied-on-fun-and-fantasy.html?ref=business>.

b. The Volkswagen Defendants’ Executives, Officers and Engineers.

379. Upon information and belief, the Volkswagen Defendants’ leaders – including Martin Winterkorn, Ulrich Hackenberg, Frank Tuch, and Wolfgang Hatz – played central roles in the Emissions Fraud Enterprise’s unlawful scheme.

(1) Martin Winterkorn.

380. Winterkorn took the helm of Volkswagen AG in 2007 and was the chief architect of the Volkswagen Defendants’ strategy to triple sales in the American market by relying more heavily on their purportedly revolutionary “clean” diesel offerings.¹⁹⁰

381. Still, Winterkorn quickly realized his strategy could not succeed if the Volkswagen Defendants relied on the same SCR technology they had used in their pre-2009 diesel vehicles and that all their competitors used on more expensive diesel offerings. Winterkorn instead advocated an alternative course of action that enabled the Volkswagen Defendants to cut costs and offer the public lower-priced diesel vehicles. To that end, he appointed Ulrich Hackenberg and Wolfgang Hatz, two former Audi engineers and members of the Emissions Fraud Enterprise, to lead the research and development facet of the “clean” diesel project.

382. Despite Hackenberg and Hatz’ best efforts, the technological hurdles were too formidable and a viable, lawful LNT-based system could not be found. Although Winterkorn was routinely apprised of these obvious technical setbacks, he continued to pursue the aggressive cost-cutting, profit driven plan he had originally envisioned. In doing so, he directly participated in the scheme to defraud regulators and consumers.

(2) Ulrich Hackenberg

383. On February 1, 2007, Hackenberg was appointed to Volkswagen’s Brand Board of Development. In this capacity, he was responsible for the technical development of all of the Volkswagen Defendants’ brands.¹⁹¹

¹⁹⁰ *Volkswagen AG, TDI: U.S. Market Success*, Clean Diesel Delivers (March, 2015), http://cleandieseldelivers.com/media/Douglas-Skorupski-VGoA_DTF_March2015.pdf.

¹⁹¹ <https://www.audiusa.com/newsroom/corporate/audi-ag-board-of-management/ulrich-hackenberg>.

384. On July 1, 2013, Hackenberg was appointed to the Board of Management of Audi AG and made responsible for its Technical Development department. In this capacity, Hackenberg spearheaded the development of Audi's TDI "Clean Diesel" engines. As he explained in a press release, his strategy for Audi's technical development included the following:

[P]ushing forward with development in ... our TDI engines in the USA – our clean diesel offensive is bearing substantial fruit. In China, too, we are already introducing the first clean diesel models and watching developments there very closely. We also expect a great deal from g-tron technology, the most sustainable type of gas drive.^[192]

385. Hackenberg's statement is illustrative of the Volkswagen Defendants' efforts to falsely bill Affected Vehicles as "clean," "environmentally friendly," and "fuel efficient" when the opposite was true.

(3) Frank Tuch

386. In 2010, Tuch was appointed head of quality control across several of the Volkswagen Defendants' brands. Winterkorn hoped Tuch would bring the Volkswagen Defendants "forward in the USA."¹⁹³ Volkswagen's in-house magazine reported that Tuch and Winterkorn worked closely to honor that pledge, meeting "every Monday to discuss quality issues, often taking test drives in vehicles manufactured by the company." In his role as head of quality assurance, Tuch was also intimately familiar with Volkswagen, Audi, and Porsche engines and transmissions. Among his duties was "the development and production of components such as engines, transmissions, seats and suspension parts" for small, compact, midsize, and full size product lines, including all the Affected Vehicles.¹⁹⁴

387. Significantly, Tuch also oversaw "36 laboratory locations throughout the world in terms of training and auditing and also finds staff to fill laboratory manager positions," including

¹⁹² "Gentlemen Start Your Engines," <http://audi-encounter.com/magazine/technology/01-2015/126-gentlemen-start-your-engines> (2014).

¹⁹³ <http://www.marketwatch.com/story/volkswagen-suspends-quality-control-chief-2015-10-20-84855452>.

¹⁹⁴ Jack Ewing, "Volkswagen Suspends 5th Executive in Emissions Scandal," The New York Times (Oct. 20, 2015).

1 the Volkswagen Defendants' laboratories in the United States, which were primarily responsible
2 for emissions testing of the Affected Vehicles.¹⁹⁵

3 388. On information and belief, Tuch knew Affected Vehicles used defeat devices to
4 evade federal and state vehicle emissions standards.

5 **(4) Wolfgang Hatz**

6 389. Hatz directed engine development for the Porsche, Audi and Volkswagen brands.
7 In this role, he supervised the development of the engines and transmissions for Affected Vehicles
8 and had knowledge of their technical details. On information and belief, Hatz knew the Affected
9 Vehicles used defeat devices to evade federal and state vehicle emissions standards.

10 **(5) James Robert Liang**

11 390. Liang is a VW engineer who pled guilty on September 9, 2016 to one count of
12 conspiracy to commit wire fraud and to violate the Clean Air Act. In connection with pleading
13 guilty, Liang admitted that he helped his co-conspirators continue to lie to the EPA, CARB and
14 VW customers even after the regulatory agencies started raising questions about the vehicles' on-
15 road performance following an independent study commissioned by the International Council on
16 Clean Transportation, which showed that the diesel vehicles' emissions on the road were up to 40
17 times higher than shown on the dynamometer.

18 **c. Bosch Defendants**

19 391. The Bosch Defendants are Bosch LLC and Bosch GmbH. Employees at Bosch LLC
20 and Bosch GmbH who worked in the cross-entity Bosch Diesel Systems group, tested,
21 manufactured and sold the electronic control module ("ECM") that managed the emissions control
22 system used by the Volkswagen Defendants in the Affected Vehicles. This particular ECM is more
23 formally referred to as the Electronic Diesel Control Unit 17 ("EDC17").¹⁹⁶

24 392. Defendant Bosch GmbH is a multinational engineering and electronics company
25 headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It

26
27 ¹⁹⁵ http://www.volkswagen-larriere.de/en/what_we_do/corporate_divisions/quality_assurance.html.

28 ¹⁹⁶ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108.

1 wholly owns defendant Bosch LLC, a Delaware Limited Liability Company headquartered in
2 Farmington Hills, Michigan. As explained above, Bosch's sectors and divisions are grouped by
3 subject matter, not location. The Mobility Solutions (formerly Automotive Technology) is the
4 Bosch sector at issue, particularly its Diesel Services group, and it encompasses employees of
5 Bosch GmbH and Bosch LLC. These individuals were responsible for the design, manufacture,
6 development, customization, and supply of the defeat device to Volkswagen for use in the Affected
7 Vehicles. In addition, employees of Bosch LLC were actively involved in promoting fraudulent
8 "clean diesel" technology, lobbying politicians, and communicating with state and federal
9 regulators.

10 393. Volkmar Denner has been Chairman and CEO of Bosch since July 2012, after
11 decades of working in Bosch's Engine ECU Development division, managing the development and
12 sale of automotive engine computers, such as the EDC units that Volkswagen and Bosch GmbH
13 modified to serve as defeat devices. Denner fostered Bosch's relationship with key corporate
14 partners, such as Volkswagen, which brought in billions of dollars in annual revenue for Bosch
15 GmbH. Denner communicated directly with Winterkorn about products sold to Volkswagen. For
16 example, when Bosch GmbH had a shortage of oxygen sensor parts that Volkswagen had ordered,
17 Denner reached out directly to Winterkorn. Further, Denner met in 2014 in person with
18 Winterkorn at VWAG headquarters to discuss, among other topics, the "akustikfunktion" in diesel
19 engines.

20 394. Engineers and other employees at Bosch GmbH and Bosch LLC worked with
21 Volkswagen to develop and implement a specific and unique set of software algorithms to
22 surreptitiously evade emissions regulations. Bosch GmbH customized their EDC17s for
23 installation in the Affected Vehicles with unique software code to detect when vehicles were
24 undergoing emissions testing, as described above.¹⁹⁷

25 395. Bosch GmbH and Bosch LLC were well aware that the EDC17 would be used by
26 Volkswagen to cheat on emissions testing. As described above, on June 2, 2008, Bosch GmbH's
27

28 ¹⁹⁷ <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

1 [REDACTED] wrote to his counterparts at Volkswagen, seeking legal indemnification from
2 Volkswagen for the “expanded use” of the EDC17s which it called a “defeat device.”¹⁹⁸ [REDACTED]
3 explained that “[t]he usage of a defeat device is prohibited pursuant to ... US Law (CARB/EPA)
4 (see definition footnote 2),”¹⁹⁹ and warned that the agreed-to software modifications would allow
5 “the certified dataset [to be] replaced with another, possibly non-certified data set,” which could
6 cause “the vehicle’s general operating license (registration) [to] become void.”²⁰⁰ Volkswagen
7 rebuffed Bosch’s request, yet Bosch GmbH nonetheless shipped the modified software to
8 Volkswagen for use in the Affected Vehicles for another seven years. Bosch GmbH and Bosch
9 LLC were also critical to the concealment of the defeat device in communications with U.S.
10 regulators and went even further to actively lobby U.S. lawmakers on behalf of Volkswagen and its
11 “Clean Diesel” vehicles.

12 396. The emission systems in the Affected Vehicles could not effectively lower NO_x
13 emissions to legal levels during normal operating conditions. In order to pass the emissions test,
14 then, the EDC17 is equipped with a “defeat device,” which is software that allows the vehicle to
15 determine whether it is being operated under normal conditions or testing conditions. Under
16 normal operating conditions, the software downgrades exhaust gas recirculations and shuts off the
17 LNT or SCR after-treatment system thereby allowing the vehicle to perform with high power and
18 efficiency, but also allowing many times more toxic pollutants than is allowable under law. By
19 contrast, under testing conditions, the software ups exhaust gas recirculation and turns on the LNT
20 or SCR after-treatment system, which reduces the NO_x emissions enough to pass the emissions test
21 with flying colors, but negatively impacts the vehicle’s gas mileage and performance.²⁰¹

22 397. As was publicly reported, Bosch GmbH, seeking to shield itself for its and Bosch
23 LLC’s involvement in the unlawful Emissions Fraud Enterprise, sent a letter to Volkswagen AG in
24

25
26 ¹⁹⁸ VW-MDL2672-02570091 (English translation).

27 ¹⁹⁹ *Id.* at -92.

28 ²⁰⁰ *Id.* at -93.

²⁰¹ <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

2007 stating that Affected Vehicles *could not be lawfully operated* if the LNT or SCR after-treatment system was disabled.²⁰²

398. Indeed, notwithstanding their knowledge that the Affected Vehicles *could not be lawfully operated* if the emissions system was disabled, the Bosch Defendants, driven to cement their position as a leading supplier of diesel emissions equipment, went on to sell approximately eleven million EDC17s to the Volkswagen Defendants over an eight year period.²⁰³

399. Bosch GmbH's decision to continue the sale of EDC17s to the Volkswagen Defendants for years on end is remarkable considering that:

a. Upon information and belief, the Bosch Defendants knew the "defeat device" was not necessary for any legitimate purpose.

b. None of the varied emissions control systems the Bosch Defendants tested, manufactured and sold to other diesel vehicle manufacturers relied on the same technology the Volkswagen Defendants were utilizing. Indeed, the Volkswagen Defendants' competitors, including technologically sophisticated brands like BMW, continued using exclusively the more expensive SCR technology.²⁰⁴

c. Even for SCR systems in Volkswagen's Gen2 and Gen3 SCR-equipped engine systems, the amount of exhaust fluid the system used and was able to store was too low for normal driving conditions, suggesting that the quantity was calculated to meet just the testing time and not meant to be engaged during normal usage.

400. Absent an extraordinary engineering breakthrough – for which there was no external evidence – the programming of the EDC17 presented a practical impossibility. Bosch Diesel Systems, including employees at Bosch GmbH and Bosch LLC, as highly sophisticated actors in the engine control space must have known that the Volkswagen Defendants had *not* actually

²⁰² <http://jalopnik.com/feds-are-now-investigating-volkswagen-supplier-bosch-ov-1743624448>.

²⁰³ <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

²⁰⁴ http://www.nytimes.com/2015/09/27/business/as-vw-pushed-to-be-no-1-ambitions-fueled-a-scandal.html?_r=0.

1 engineered revolutionary emissions control systems that enabled Affected Vehicles to maintain
 2 performance, fuel efficiency, reduce emissions *and* reduce costs.²⁰⁵

3 **d. IAV**

4 401. IAV engineers were part of the enterprise that developed the emissions systems that
 5 contained a defeat device. In the plea agreement of Volkswagen engineer Robert Liang, IAV is
 6 identified as “Company A” that aided and abetted Liang and other co-conspirators.

7 **2. Criminal Pleas that Relate to the RICO Claims and Enterprise.**

8 402. On June 1, 2016, an indictment was filed in the United States District court, Eastern
 9 District of Michigan in *United States of America v. James Robert Liang*. The indictment arises
 10 from Robert Liang’s role in VW’s violations of the Clean Air Act and wire fraud and alleges that
 11 he and others at VW and elsewhere engaged in a conspiracy:

12 The purpose of the conspiracy was for LIANG and his co-
 13 conspirators to unlawfully enrich VW and themselves by, among
 14 other things, (a) deceiving U.S. regulators in order to obtain the
 15 necessary certificates to sell diesel vehicles in the United States; (b)
 16 selling VW diesel vehicles to U.S. customers knowing that those
 17 vehicles did not meet U.S. emissions standards; (c) deceiving U.S.
 18 customers by marketing VW diesel motor vehicles as “clean diesel”
 19 knowing that those vehicles emitted NOx at levels well above U.S.
 20 standards; and (d) concealing the defeat device from U.S. regulators,
 21 VW customers, and the U.S. public.

22 403. On September 9, 2016, Liang entered into a Plea Agreement for one count of wire
 23 fraud. The factual basis of the plea supports the plausibility of the RICO claim set forth below and
 24 states in pertinent part:

25 The following facts are a sufficient and accurate basis for defendant’s
 26 guilty plea:

27 From 1983 to May 2008, defendant JAMES ROBERT LIANG was
 28 an employee of Volkswagen AG (“VW AG”), working in VW AG’s
 diesel development department in Wolfsburg, Germany.

25 ²⁰⁵ Upon information and belief, sophisticated entities like the Bosch Defendants were also
 26 likely aware that Wolfgang Bernhard, a former high-level executive with Mercedes-Benz with a
 27 reputation for implementing cost-cutting measures, had been removed from the “clean diesel”
 28 project at Volkswagen AG shortly before the Volkswagen Defendants abandoned the SCR systems
 and inexplicably developed what was purportedly an even cheaper technology. *See*,
<http://www.foxbusiness.com/features/2015/10/05/vw-emissions-probe-zeroes-in-on-two-engineers.html>.

1 In about 2006, LIANG and his co-conspirators began to design a new
2 "EA 189" diesel engine. They soon realized, however, that the
3 engine could not meet both customer expectations as well as new,
4 stricter U.S. emissions standards. As a result, LIANG and his co-
5 conspirators pursued and planned the use of a software function to
6 cheat standard U.S. emissions tests (the "defeat device"). LIANG
7 used the defeat device software while working on the EA 189 and
8 assisted in making the defeat device software work. The co-
9 conspirators needed to do so to obtain a certificate of conformity
10 from the United States Environmental Protection Agency ("EPA") in
11 order to sell vehicles in the United States. LIANG understood that
12 EPA would not certify vehicles for sale in the United States if EPA
13 knew that the vehicles contained a defeat device.

14 In or around 2008, LIANG worked with his co-conspirators to
15 calibrate and refine the defeat device. This defeat device recognized
16 whether the affected VW diesel vehicles were undergoing standard
17 U.S. emissions testing on a dynamometer or being driven on the road
18 under normal driving conditions. The defeat device accomplished
19 this by recognizing the standard drive cycles used in EPA's
20 emissions tests. If the vehicle's software detected that it was being
21 tested, the vehicle performed in one mode, which satisfied U.S.
22 emissions standards for nitrogen oxide ("NOx"). If the defeat device
23 detected that the vehicle was not being tested, it operated in a
24 different mode, in which the vehicle's emissions control systems
25 were reduced substantially, causing the vehicle to emit substantially
26 higher amounts of NOx, sometimes forty times higher than U.S.
27 standards.

28 LIANG moved to the United States in May 2008 to assist in the
launch of VW's diesel vehicles with EA 189 engines. From about
May 2008 to the present, LIANG was the Leader of Diesel
Competence for VW Group of America ("VW GOA"), a VW
subsidiary. In that role, LIANG assisted in certification, testing, and
warranty issues for VW diesel vehicles in the United States.

For each new model year of VW's diesel vehicles, VW employees
met with EPA to seek the certifications required to sell the vehicles
to U.S. customers. During one of these meetings, which LIANG
attended personally in Ann Arbor, Michigan with EPA on March 19,
2007 and on March 21, 2007 with the California Air Resources
Board ("CARB"), LIANG participated as his co-conspirators
misrepresented that VW diesel vehicles complied with U.S. NOx
emissions standards. During this meeting, LIANG's co-conspirators
described VW's diesel technology and emissions control systems in
detail to the staffs of the EPA and CARB but intentionally omitted
LIANG and his co-conspirators' plan to include a defeat device in
VW diesel vehicles. LIANG knew that VW was cheating by
implementing the defeat device and that he and his co-conspirators
were deceiving EPA in this meeting.

As part of the certification process for each new model year,
including model years 2009 through 2016, LIANG knew his co-
conspirators continued to falsely and fraudulently certify to EPA and
CARB that VW diesel vehicles met U.S. emissions standards and

1 complied with the Clean Air Act. During this time, LIANG and his
2 co-conspirators knew that VW marketed VW diesel vehicles to the
3 U.S. public as “clean diesel” and environmentally-friendly, and
4 promoted the increased fuel economy. LIANG and his co-
5 conspirators knew that these representations made to U.S. customers
6 were false, and that VW’s diesel vehicles were not clean.

7 As VW’s “clean diesel” vehicles in the United States began to age,
8 they experienced higher rates of warranty claims for parts and
9 components related to emissions control systems. Some of LIANG’s
10 coconspirators believed that the increased claims were a result of the
11 vehicle operating in testing mode too long, rather than switching to
12 “road mode.” Because of these increased claims, LIANG worked
13 with his co-conspirators to enhance the defeat device to allow the
14 vehicle to more easily recognize when the vehicle was no longer in
15 testing mode. LIANG knew that his co-conspirators falsely and
16 fraudulently told U.S. customers and others that a software update in
17 about 2014 was intended to improve the vehicles when, in fact,
18 LIANG and his co-conspirators knew that part of the update was
19 intended to improve the defeat device’s precision in order to reduce
20 the stress on the emissions control systems.

21 In the spring of 2014, a non-government organization published the
22 results of a study which identified substantial discrepancies in the
23 NOx emissions from certain VW vehicles when tested on the road
24 compared to when these vehicles were undergoing EPA standard
25 drive cycle tests on a dynamometer. Following the study, CARB, in
26 coordination with the EPA, attempted to work with VW to determine
27 the cause for the higher NOx emissions in VW diesel vehicles on the
28 road as opposed to the dynamometer. LIANG and his co-conspirators
discussed how they could answer the regulatory agencies’ questions
without revealing the defeat device. LIANG knew that, after these
discussions, his co-conspirators intentionally made fraudulent
explanations to the EPA and CARB when providing testing results,
data, presentations, and statements to the EPA and CARB by failing to
disclose the fact that the primary reason for the discrepancy was the
defeat device.

LIANG knew that his co-conspirators also falsely and fraudulently
told U.S. customers, EPA, and CARB that a voluntary recall in or
around early 2015 was intended to “fix” the issues that were causing
the discrepancy, when, in fact, LIANG and his co-conspirators knew
that although the update lowered the NOx emissions in certain VW
diesel vehicles on the road, the update did not remove the defeat
device software that was the true reason for the discrepancy.

LIANG and his co-conspirators caused defeat device software to be
installed in all of the approximately 500,000 VW diesel 2.0 liter
light-duty passenger vehicles sold in the United States from 2009
through 2015.

404. On January 11, 2017, Volkswagen AG plead guilty to federal conspiracy, fraud and
false statements in connection with its role in the criminal enterprise. The 30-page Statement of

1 Facts admits and describes Volkswagen and IAV's role on the emissions fraud and is attached as
2 Exhibit A, and incorporated herein.

3 405. The foregoing facts provide an additional plausible basis supporting the allegations
4 of a conspiracy and the existence of a RICO enterprise.

5 **3. Emissions Fraud Enterprise Allegations.**

6 406. The persons and entities described in the preceding section are members of and
7 constitute an "association-in-fact" enterprise.

8 407. The Emissions Fraud Enterprise began as early as 2005, when an internal feasibility
9 study at VWAG identified Bosch's EDC17 as a solution to their engineering dilemma by reducing
10 diesel vehicle emissions of nitrogen oxides ("NOx") through a change in engine electronics.
11 Starting in mid-2005, Volkswagen and Bosch GmbH entered into a series of agreements to develop
12 what ultimately became the defeat device for the Affected Vehicles. The Emissions Fraud
13 Enterprise continued without interruption for approximately the next ten years, as the Volkswagen
14 Defendants continued to install Bosch EDC17s in the Affected Vehicles that employed defeat
15 devices and Bosch GmbH continued to work with Volkswagen to modify the EDC17 programming
16 for new models while Bosch LLC continued to promote diesel technology and coordinate the
17 ongoing deception of state and federal regulators. The Emissions Fraud Enterprise was first
18 publicly disclosed in approximately September of 2015 when Volkswagen finally admitted the
19 fraudulent scheme to U.S. regulators who exposed the RICO Defendants to the public. The
20 Emissions Fraud Enterprise ceased shortly after the September 18, 2015, and November 2, 2015
21 NOVs, when the Volkswagen Defendants issued stop sale orders to all Franchise Dealer Class
22 members to cease selling or leasing the Affected Vehicles.

23 408. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate
24 and distinct from each RICO Defendant; (b) was separate and distinct from the pattern of
25 racketeering in which the RICO Defendants engaged; and (c) was an ongoing organization
26 consisting of legal entities, including the Volkswagen Defendants, the Bosch Defendants, IAV and
27 other entities and individuals associated for the common purpose of designing, manufacturing,
28 distributing, testing, and selling the Affected Vehicles through fraudulent COCs and EOs, false

1 emissions tests, deceptive and misleading marketing and materials, and deriving profits and
2 revenues from those activities. Each member of the Emissions Fraud Enterprise shared in the
3 bounty generated by the enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue
4 generated by the scheme to defraud consumers and franchise dealers alike nationwide.²⁰⁶

5 409. The Emissions Fraud Enterprise functioned by selling vehicles and component parts
6 to the consuming public. Many of these products are legitimate, including vehicles that do not
7 contain defeat devices. However, the RICO Defendants and their co-conspirators, through their
8 illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme
9 to increase revenue for Defendants and the other entities and individuals associated-in-fact with the
10 Enterprise's activities through the illegal scheme to sell the Affected Vehicles.

11 410. The Emissions Fraud Enterprise engaged in, and its activities affected interstate and
12 foreign commerce, because it involved commercial activities across state boundaries, such as the
13 marketing, promotion, advertisement and sale or lease of the Affected Vehicles throughout the
14 country, and the receipt of monies from the sale of the same.

15 411. Within the Emissions Fraud Enterprise, there was a common communication
16 network by which co-conspirators shared information on a regular basis. The Emissions Fraud
17 Enterprise used this common communication network for the purpose of manufacturing,
18 marketing, testing, and selling the Affected Vehicles to the general public nationwide.

19 412. Each participant in the Emissions Fraud Enterprise had a systematic linkage to each
20 other through corporate ties, contractual relationships, financial ties, and continuing coordination of
21 activities. Through the Emissions Fraud Enterprise, the RICO Defendants functioned as a
22 continuing unit with the purpose of furthering the illegal scheme and their common purposes of
23 increasing their revenues and market share, and minimizing losses.

24 413. The RICO Defendants participated in the operation and management of the
25 Emissions Fraud Enterprise by directing its affairs, as described herein. While the RICO

26 ²⁰⁶ The Volkswagen Defendants sold more Affected Vehicles by utilizing an emissions control
27 system that was cheaper than SCRs, all the while charging consumers a premium for purportedly
28 "clean," "environmentally friendly" and "fuel efficient" vehicles. Bosch, in turn, sold more EDC
Units because the Volkswagen Defendants manufactured and sold more Affected Vehicles.

1 Defendants participated in, and are members of, the enterprise, they have a separate existence from
2 the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers,
3 directors, employees, individual personhood, reporting requirements, and financial statements.

4 414. The Volkswagen RICO Defendants exerted substantial control and participated in
5 the affairs of the Emissions Fraud Enterprise by:

- 6 a. making the decision to transition the design of their diesel vehicles away
7 from an effective SCR emissions control system and adopt instead the
8 ineffective LNT emissions system, controlled by the Bosch-supplied EDC
9 Unit 17;
- 10 b. designing the Affected Vehicles with defeat devices;
- 11 c. continuing to employ defeat device programming in later SCR-based
12 vehicles in order to offer more powerful and fuel efficient vehicles to
13 increase sales and profit margins;
- 14 d. failing to correct or disable the defeat devices when warned;
- 15 e. manufacturing, distributing, and selling the Affected Vehicles that emitted
16 greater pollution than allowable under the applicable regulations;
- 17 f. misrepresenting and omitting (or causing such misrepresentations and
18 omissions to be made) vehicle specifications on COC and EO applications;
- 19 g. introducing the Affected Vehicles into the stream of U.S. commerce without
20 a valid EPA COC and/or CARB EO;
- 21 h. concealing the existence of the defeat devices and the unlawfully high
22 emissions from regulators and the public;
- 23 i. persisting in the manufacturing, distribution, and sale of the Affected
24 Vehicles even after questions were raised about the emissions testing and
25 discrepancies concerning the same;
- 26 j. misleading government regulators as to the nature of the defeat devices and
27 the defects in the Affected Vehicles;

- 1 k. misleading the driving public as to the nature of the defeat devices and the
- 2 defects in the Affected Vehicles;
- 3 l. designing and distributing marketing materials that misrepresented and
- 4 concealed the defect in the vehicles;
- 5 m. otherwise misrepresenting or concealing the defective nature of the Affected
- 6 Vehicles from the public and regulators;
- 7 n. illegally selling and/or distributing the Affected Vehicles; collecting
- 8 revenues and profits from the sale of such products; and ensuring that the
- 9 other RICO Defendants and unnamed co-conspirators complied with the
- 10 fraudulent scheme.

11 415. Bosch GmbH and Bosch LLC also participated in, operated and/or directed the
 12 Emissions Fraud Enterprise. Bosch GmbH participated in the fraudulent scheme by
 13 manufacturing, installing, testing, modifying, and supplying the EDC17 which operated as a
 14 “defeat device” in the Affected Vehicles. Bosch GmbH exercised tight control over the coding and
 15 other aspects of the defeat device software and was closely collaborated with Volkswagen to
 16 develop, customize, and calibrate the defeat devices. Additionally, Bosch GmbH and Bosch LLC
 17 continuously cooperated with the Volkswagen Defendants to ensure that the EDC17 was fully
 18 integrated into the Affected Vehicles. Bosch LLC and Bosch GmbH also participated in the affairs
 19 of the Enterprise by concealing the defeat devices on U.S. documentation and in communications
 20 with U.S. regulators. Finally, Bosch LLC actively lobbied lawmakers in the U.S. on Volkswagen’s
 21 behalf. Bosch GmbH collected tens of millions of dollars in revenues and profits from the hidden
 22 defeat devices installed in the Affected Vehicles.

23 416. IAV participated in the Emissions Fraud Enterprise as outlined in the Indictment:

24 40. On or about November 10, 2006, a Company A employee
 25 submitted a request, on behalf of Volkswagen, for a software design
 26 change to what was known as the “acoustic function” that would
 become the defeat device.

27 417. IAV is “Company A”.

1 418. Without the RICO Defendants' willing participation, including Bosch GmbH's
2 active involvement in developing and supplying the critical defeat devices for the Affected
3 Vehicles and Bosch LLC's active promotion of diesel technology and concealment of the
4 defrauding of regulators, the Emissions Fraud Enterprise's scheme and common course of conduct
5 would not have been successful.

6 419. The RICO Defendants directed and controlled the ongoing organization necessary to
7 implement the scheme at meetings and through communications of which Plaintiffs cannot fully
8 know at present, because such information lies in the Defendants' and others' hands.

9 420. The members of the Emissions Fraud Enterprise all served a common purpose;
10 namely, to outsell their law-abiding competitors and increase their revenues through the sale of as
11 many Affected Vehicles (including the emissions components made and sold by Bosch) as
12 possible. Each member of the Emissions Fraud Enterprise shared the bounty generated by the
13 enterprise, *i.e.*, by sharing the benefit derived from increased sales revenue generated by the
14 scheme to defraud. The Volkswagen Defendants sold more Affected Vehicles by utilizing an
15 emissions control system that was cheaper to install and allowed for generous performance and
16 efficiency tuning, all the while charging consumers a premium for purportedly "clean,"
17 "environmentally friendly" and "fuel efficient" Affected Vehicles. Bosch GmbH, in turn, sold
18 more EDC Units because the Volkswagen Defendants manufactured and sold more Affected
19 Vehicles. The RICO Defendants achieved their common purpose by repeatedly misrepresenting
20 and concealing the nature of the Affected Vehicles and the ability of the emissions control systems
21 (including the Bosch-supplied parts) to effectively reduce toxic emissions during normal operating
22 conditions.

23 **4. The Predicate Acts.**

24 421. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants
25 conducted or participated in the conduct of the affairs of the Emissions Fraud Enterprise through a
26 pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of
27 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

422. Specifically, the RICO Defendants participated in the scheme to defraud by using mail, telephone and the Internet to transmit writings travelling in interstate or foreign commerce.

423. The RICO Defendants' use of the mails and wires include, but are not limited to, the transmission, delivery, or shipment of the following by the RICO Defendants or third parties that were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- a. application for certificates submitted to the EPA and CARB and Approved Applications received in the mail on April 9, 2008, June 23, 2008, June 6, 2008 and July 2, 2000;
- b. applications submitted to the EPA and CARB for each model year as follows:
 - Model Year ("MY") 2009-2015 VW Jetta;
 - MY 2009-2014 VW Jetta Sportwagen;
 - MY 2010-2015 VW Golf;
 - MY 2015 VW Golf Sportwagen;
 - MY 2010-2015 Audi A3;
 - MY 2013-2015 VW Beetle and VW Beetle Convertible; and
 - MY 2012-2015 VW Passat
- c. the Affected Vehicles themselves;
- d. component parts for the defeat devices;
- e. essential hardware for the Affected Vehicles;
- f. falsified emission tests;
- g. fraudulently-obtained EPA COCs and CARB EOs;
- h. vehicle registrations and plates as a result of the fraudulently-obtained EPA COCs and CARB EOs;
- i. documents and communications that facilitated the falsified emission tests;
- j. false or misleading communications intended to lull the public and regulators from discovering the defeat devices and/or other auxiliary devices;

- k. sales and marketing materials, including advertising, websites, product packaging, brochures, and labeling, which misrepresented and concealed the true nature of the Affected Vehicles;
- l. documents intended to facilitate the manufacture and sale of the Affected Vehicles, including bills of lading, invoices, shipping records, reports and correspondence;
- m. documents to process and receive payment for the Affected Vehicles by unsuspecting franchise dealers, including invoices and receipts;
- n. payments to Bosch GmbH;
- o. deposits of proceeds; and
- p. other documents and things, including electronic communications.

424. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or interstate carrier, shipments of the Affected Vehicles and related documents by mail or a private carrier affecting interstate commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Bosch LLC	VW America	December 2009	Documents and communications related to Volkswagen "Clean Diesel" Partnership, 2009 Review and 2010 Opportunities, Bosch Diesel Systems North America Marketing. ²⁰⁷
Bosch LLC	CARB	September 2009	Documents and communications related to Diesel Tech Day in El Monte, CA. ²⁰⁸
VW America Manufacturing Plant	South Bay VW	October 2011	Shipment of Volkswagen Jetta TDI Affected Vehicles.
Washington State Department of Licensing	Dan Clements	October 2011	Mailed registration card for 2012 Volkswagen Toareg TDI based on false emission test due to concealed defeat device.
CARB	VW America	July 2014	Mailed EO for 2015 Affected Vehicles based on fraudulent application.

²⁰⁷ See VW-MDL2672-06900942.

²⁰⁸ See VW-MDL2672-07672454.

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
California Department of Motor Vehicles	Phillip Clark	December 2014	Mailed registration card for 2014 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.
California Department of Motor Vehicles	Caroline Hoag	December 2014	Mailed renewed registration for 2011 Jetta SportWagen TDI based on false emission test due to concealed defeat device.
Washington State Department of Licensing	Dan Clements	February 2015	Mailed registration certificate for 2012 Volkswagen Touareg TDI based on false emission test due to concealed defeat device.

425. The RICO Defendants (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Pignataro Volkswagen, Washington	American Express, North Carolina	April 2012	Credit card transaction in the amount of \$5,000 for down payment on 2012 VW Touareg by Dan Clements.
CARB, California	VW America, Virginia	May 2014	Email communications concerning WVU study.
VW America, Michigan	EPA, Michigan; CARB, California	May 2012	Misleading application(s) for COC and EO for 2013 VW Passat TDI.
Bosch America, Farmington Hills, Michigan	Volkswagen, Virginia	January 2013	Email communications regarding Bosch's promotion of VW Passat TDI through trip from Atlanta to Washington, D.C. ²⁰⁹
VW America, Virginia	CARB, California	October 2014	Misleading communications about discrepancies identified in WVU study.
Audi of Lynnbrook, New York	American Express, North Carolina	December 2014	Credit card transaction in the amount of \$2,586.45 for down payment on lease of 2015 Audi A3 by Kevin and Elizabeth Bedard.
VW America, Virginia	EPA, District of Columbia	December 2014	Misleading communications about software patch for the Affected Vehicles without revealing fact of the defeat

²⁰⁹ VW-MDL2672-08348204.

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
			device.
Bosch LLC, Michigan	CARB, California	January 2015	Email communication re: meeting with CARB. ²¹⁰
VW America, Michigan	Audi AG, Germany	February 2015	Email communication concerning meeting with Bosch and CARB re: fault codes. ²¹¹

426. The RICO Defendants utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described therein.

427. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, Volkswagen Group of America, under the direction and control of Volkswagen AG and its executives, made misrepresentations about the Affected Vehicles on their websites, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

428. The RICO Defendants also communicated by U.S. mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

429. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers and lure consumers into purchasing the Affected Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign that the Affected Vehicles were "clean" diesel cars.

430. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of, and in some instances, occasions on

²¹⁰ VW-MDL2672-02461438.

²¹¹ VW-MDL2672-00902633.

1 which the predicate acts of mail and/or wire fraud occurred. They include thousands of
2 communications to perpetuate and maintain the scheme, including the things and documents
3 described in the preceding paragraphs.

4 431. The RICO Defendants have not undertaken the practices described herein in
5 isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the
6 RICO Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various other
7 persons, firms and corporations, including third-party entities and individuals not named as
8 defendants in this Complaint, have participated as co-conspirators with the RICO Defendants in
9 these offenses and have performed acts in furtherance of the conspiracy to increase or maintain
10 revenues, increase market share, and/or minimize losses for the Defendants and their unnamed co-
11 conspirators throughout the illegal scheme and common course of conduct.

12 432. The RICO Defendants aided and abetted others in the violations of the above laws,
13 thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

14 433. To achieve their common goals, the RICO Defendants hid from the general public
15 the unlawfulness and emission dangers of the Affected Vehicles and obfuscated the true nature of
16 the defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored
17 warnings from third parties, whistleblowers, and governmental entities about the discrepancies in
18 emissions testing and the defeat devices present in the Affected Vehicles.

19 434. The RICO Defendants and each member of the conspiracy, with knowledge and
20 intent, have agreed to the overall objectives of the conspiracy and participated in the common
21 course of conduct to commit acts of fraud and indecency in designing, manufacturing, distributing,
22 marketing, testing, and/or selling the Affected Vehicles (and the defeat devices contained therein).

23 435. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-
24 conspirators had to agree to implement and use the similar devices and fraudulent tactics –
25 specifically complete secrecy about the defeat devices in the Affected Vehicles.

26 436. The RICO Defendants knew and intended that government regulators, as well as
27 Plaintiffs and Franchise Dealer Class members, would rely on the material misrepresentations and
28 omissions made by them and VGoA about the Affected Vehicles. The RICO Defendants knew and

1 intended that franchise dealers, including Plaintiffs and the Franchise Dealer Class would incur
2 costs and damages as a result. As fully alleged herein, Plaintiffs, along with hundreds of franchise
3 dealers, relied upon Defendants' representations and omissions that were made or caused by them.
4 Plaintiffs' reliance is made obvious by the fact that: (1) they purchased hundreds of thousands of
5 vehicles that never should have been introduced into the U.S. stream of commerce and whose
6 worth has now plummeted since the scheme was revealed; and (2) they invested millions of dollars
7 in the continuing operation of their franchise dealerships. In addition, the EPA, CARB, and other
8 regulators relied on the misrepresentations and material omissions made or caused to be made by
9 the RICO Defendants; otherwise Volkswagen could not have obtained valid COCs and EOs to sell
10 the Affected Vehicles.

11 437. The RICO Defendants' conduct in furtherance of this scheme was intentional.
12 Plaintiffs and the Franchise Dealer Class were harmed as a result of the RICO Defendants'
13 intentional conduct. Plaintiffs, the Franchise Dealer Class, regulators and consumers, among
14 others, relied on the RICO Defendants' material misrepresentations and omissions.

15 438. As described herein, the RICO Defendants engaged in a pattern of related and
16 continuous predicate acts for many years. The predicate acts constituted a variety of unlawful
17 activities, each conducted with the common purpose of defrauding Plaintiffs and other Franchise
18 Dealer Class members and obtaining significant monies and revenues from them and through them
19 while providing Affected Vehicles worth significantly less than the invoice price paid. The
20 predicate acts also had the same or similar results, participants, victims, and methods of
21 commission. The predicate acts were related and not isolated events.

22 439. The predicate acts all had the purpose of generating significant revenue and profits
23 for the RICO Defendants at the expense of Plaintiffs and the Franchise Dealer Class, and
24 consumers. The predicate acts were committed or caused to be committed by the RICO
25 Defendants through their participation in the Emissions Fraud Enterprise and in furtherance of its
26 fraudulent scheme, and were interrelated in that they involved obtaining Plaintiffs' and Class
27 members' funds, artificially inflating the brand and dealership goodwill values, and avoiding the
28 expenses associated with remediating the Affected Vehicles.

1 440. During the design, manufacture, testing, marketing and sale of the Affected
2 Vehicles, the RICO Defendants shared technical, marketing and financial information that plainly
3 revealed the emissions control systems in the Affected Vehicles as the ineffective, illegal and
4 fraudulent piece of technology they were and are. Nevertheless, the RICO Defendants shared and
5 disseminated information that deliberately represented Affected Vehicles as “clean,”
6 “environmentally friendly,” and “fuel efficient.”

7 441. By reason of and as a result of the conduct of the RICO Defendants, and in
8 particular, its pattern of racketeering activity, Plaintiffs and the Franchise Dealer Class have been
9 injured in their business and/or property in multiple ways, including but not limited to:

10 a. Overpayment for inventory of Affected Vehicles, in that Plaintiffs and the
11 Franchise Dealer Class believed they were paying for vehicles that met certain emission and fuel
12 efficiency standards and obtained vehicles that were not legal to sell in the U.S.;

13 b. The value of the Affected Vehicles has diminished, thus reducing their sale
14 and resale value;

15 c. Paying inventory carrying costs including transportation and storage costs
16 for vehicles that they cannot sell and will not be able to sell for as much as intended when the
17 vehicles were purchased;

18 d. Payment for alternative inventory;

19 e. Loss of servicing revenue on prior purchases;

20 f. Loss of servicing revenue on lost sales;

21 g. Loss of sales associated with replacement vehicles for existing customers;

22 h. Loss of value of their VW franchise; and

23 i. Loss of profits.

24 442. The RICO Defendants’ violations of 18 U.S.C. § 1962(c) and (d) have directly and
25 proximately caused injuries and damages to Plaintiffs and the Franchise Dealer Class, and
26 Plaintiffs and the Franchise Dealer Class are entitled to bring this action for three times their actual
27 damages, as well as injunctive/equitable relief, costs, and reasonable attorneys’ fees pursuant to 18
28 U.S.C. § 1964(c). Each of the RICO defendants knew, understood and intended for members of

the Dealer Franchise Class to purchase the Affected Vehicles, and knew, understood and foresaw that revelation of the truth would injure members of the Franchise Dealer Class.

B. Claims Brought on Behalf of Napleton Plaintiffs

**COUNT III
VIOLATIONS OF THE AUTOMOBILE DEALERS' DAY IN COURT ACT
15 U.S.C. § 1221, ET SEQ.
BY NAPLETON PLAINTIFFS AGAINST VGOA**

443. Napleton Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

444. The Federal Automobile Dealer's Day in Court Act, 15 U.S.C. § 1221, *et seq.*, provides a cause of action for dealers against manufacturers that fail "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer." 15 U.S.C. § 1222. VGoA is wholly owned by VWAG. VGoA is an agent under the complete control of VWAG and acts in concert with VWAG for the purpose of selling cars to Plaintiffs.

445. Pursuant to 15 U.S.C. § 1221(e), the term "good faith" is defined as "the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith."

446. Coercion and intimidation in violation of the statute are not limited to exercise of positive force or direct threats, but may result from any pressure which puts one in actual fear of loss of property or injury to business; unfair and inequitable conduct may be of such a nature as to constitute coercion and intimidation.

447. VGoA has failed to act in good faith in providing adequate assurance that it will adjust its DSI market performance metric for its Volkswagen dealers to take into account proportionate reductions in Napleton Plaintiffs' areas of responsibility (PAI) resulting from its opening newly established locations.

448. VGoA has manipulated the market and its PAI to distort its DSI sales metric specifically to the detriment of Plaintiffs, Napleton VW Orlando and Napleton VW Sanford and threaten to do so against Napleton VW Urbana.

449. VGoA has attempted to coerce Napleton Plaintiffs to finance their inventories with VCI thereby depriving Napleton Plaintiffs of cost subsidies and favorable allocations afforded to those Volkswagen dealers who knuckle under to VGoA pressure.

450. The actions of VGoA and VCI clearly violate the express prohibition set forth in 15 U.S.C. § 1222.

451. As a result of the illegal conduct of VWAG, VGoA and VCI, Napleton Plaintiffs have suffered damages including, but not limited to, lost profits, increased financing and related expenses, increased inventory carrying costs, loss of sales, and the loss of value of the business as a going concern.

COUNT IV
VIOLATIONS OF SECTION 320.64(4), FLORIDA STATUTES
(AGAINST VGOA)

452. Plaintiffs Napleton VW Orlando and Napleton VW Sanford (“Florida Plaintiffs”) incorporate by reference all preceding allegations as though fully set forth herein. This is not a class claim.

453. Section 320.64(4), Florida Statutes, provides in pertinent part as follows:

A licensee is prohibited from committing the following acts:

(4) The applicant or licensee has indulged in any illegal act relating to his or her business.

454. VGoA's conspiracy with VCI to coerce Florida Plaintiffs to finance their inventory with VCI is an illegal act within the meaning of Florida Statutes, section 320.64(4).

455. In the course of Volkswagen’s business, VGoA willfully failed to disclose and actively concealed that the Clean Diesel Engine System was non-EPA compliant, and the use of the “defeat device” in Affected Vehicles as described above. Accordingly, Volkswagen and VGoA engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in FLA. STAT. § 501.204(1), including representing that

1 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have;
2 representing that Affected Vehicles are of a particular standard and quality when they are not;
3 advertising Affected Vehicles with the intent not to sell them as advertised; and otherwise engaging
4 in conduct likely to deceive.

5 456. VGoA's false advertising with respect to the Affected Vehicles is an illegal act
6 within the meaning of Florida Statutes, section 320.64(4).

7 457. VGoA's use of the Defeat Device in Affected Vehicles to purposely circumvent
8 Federal and State environmental regulations constitute illegal acts within the meaning of Florida
9 Statutes, section 320.64(4).

10 458. VGoA's violations of section 320.64(4) give rise to a cause of action by Florida
11 Plaintiffs under section 320.697, Florida Statutes, for treble damages, costs and reasonable
12 attorney's fees.

13 459. Volkswagen and VGoA have known of the use of the "defeat device" and the true
14 nature of its Clean Diesel engine system for at least six years, but concealed all of that information
15 until recently.

16 460. Volkswagen was also aware that it valued profits over environmental cleanliness,
17 efficiency, and lawfulness, and that it was manufacturing, selling and distributing vehicles
18 throughout the United States that did not comply with EPA regulations. Volkswagen concealed
19 this information as well.

20 461. By failing to disclose and by actively concealing the "defeat device" and the true
21 cleanliness and performance of the Clean Diesel engine system, by marketing its vehicles as safe,
22 reliable, environmentally clean, efficient, and of high quality, and by presenting itself as a
23 reputable manufacturer that valued safety, environmental cleanliness and efficiency, and stood
24 behind its vehicles after they were sold, Volkswagen engaged in deceptive business practices.

25 462. In the course of Volkswagen's business, it willfully failed to disclose and actively
26 concealed the use of the "defeat device" and true cleanliness and efficiency of the Clean Diesel
27 engine system and serious defects discussed above. Volkswagen compounded the deception by
28 repeatedly asserting that the Affected Vehicles were safe, reliable, environmentally clean, efficient,

1 and of high quality, and by claiming to be a reputable manufacturer that valued safety,
2 environmental cleanliness and efficiency, and stood behind its vehicles once they are on the road.

3 463. Volkswagen's unfair or deceptive acts or practices were likely to and did in fact
4 deceive Florida Plaintiffs, about the true cleanliness and efficiency of the Clean Diesel engine
5 system, the quality of the Volkswagen and Audi brands, the devaluing of environmental cleanliness
6 and integrity at Volkswagen, and the true value of the Affected Vehicles; all causing the true value
7 of Florida Plaintiff's dealerships to be substantially lower than the prices paid for such franchise
8 dealerships.

9 464. Volkswagen owed Florida Plaintiffs a duty to disclose the true safety, cleanliness,
10 efficiency and reliability of the Affected Vehicles and the devaluing of environmental cleanliness
11 and integrity at Volkswagen, because Volkswagen:

- 12 a. Possessed exclusive knowledge that it valued profits over
13 environmental cleanliness, efficiency, and lawfulness, and
14 that it was manufacturing, selling and distributing vehicles
throughout the United States that did not comply with EPA
regulations;
- 15 b. Intentionally concealed the foregoing from Florida Plaintiffs;
16 and/or
- 17 c. Made incomplete representations about the safety,
18 cleanliness, efficiency and reliability of the Affected Vehicles
generally, and the "defeat device" and true nature of the
19 Clean Diesel engine system in particular, while purposefully
withholding material facts from Florida Plaintiffs that
contradicted these representations.

20 465. Because Volkswagen fraudulently concealed the "defeat device" and the true
21 cleanliness and performance of the Clean Diesel engine system, resulting in a raft of negative
22 publicity once the use of the "defeat device" and true characteristics of the Clean Diesel engine
23 system finally began to be disclosed, the value of the Affected Vehicles has greatly diminished and
24 the value of Volkswagen franchise dealerships has greatly diminished. In light of the stigma
25 attached to those vehicles by Volkswagen's conduct, they are now worth significantly less than
26 they otherwise would be and are significantly harder to sell at any price, and may not be sold, and
27 must be stored until such time as Volkswagen renders them legal in the United States.

1 466. Volkswagen’s fraudulent use of the “defeat device” and its concealment of the true
2 characteristics of the Clean Diesel engine system were material to Florida Plaintiffs. A dealership
3 that sells vehicle made by a reputable manufacturer of environmentally friendly vehicles is worth
4 more than an otherwise comparable dealership that sells vehicles made by a disreputable
5 manufacturer of environmentally dirty vehicles that conceals its polluting engines rather than
6 promptly remedying them.

7 467. Florida Plaintiffs suffered ascertainable loss caused by Volkswagen’s
8 misrepresentations and its concealment of and failure to disclose material information. Florida
9 Plaintiffs either would have paid less for their dealership or would not have purchased it at all.

10 468. As a direct and proximate result of Volkswagen’s violations, Florida Plaintiffs have
11 suffered injury-in-fact and/or actual damage.

12 469. Florida Plaintiffs were injured as a result of Volkswagen’s conduct in that Florida
13 Plaintiffs overpaid for their dealerships and did not receive the benefit of their bargain, and their
14 dealerships have suffered a diminution in value. These injuries are the direct and natural
15 consequence of Volkswagen’s misrepresentations and omissions.

16 470. Section 320.695, Florida Statutes, provides that Florida Plaintiffs may, in the name
17 of the Department, apply to a Circuit Court for an injunction, notwithstanding the existence of any
18 adequate remedy of law, restraining VGoA from violating or continuing to violate any provision of
19 sections 320.60-320.70, Florida Statutes, and that such injunction shall be issued without bond.
20 Accordingly, an injunction preventing VGoA from continuing to violate section 320.64(4), Florida
21 Statutes, is appropriate

22 **COUNT IV**
23 **BREACH OF CONTRACT**
24 **(BASED ON FLORIDA LAW)**

25 471. Plaintiffs Napleton VW Orlando and Napleton VW Sanford (“Florida Plaintiffs”)
26 incorporate by reference all preceding allegations as though fully set forth herein. This is not a
27 class claim.

28 472. Volkswagen’s misrepresentations and omissions alleged herein, including
Volkswagen’s failure to disclose the existence of the Clean Diesel engine system’s defect and/or

1 defective design as alleged herein, caused Florida Plaintiffs to purchase their dealership or renew
2 their dealer agreements with Volkswagen. Absent those misrepresentations and omissions, Florida
3 Plaintiffs would not have purchased their dealerships, would not have purchased additional
4 Volkswagen inventory, or would not have done so at the prices they paid, and/or would have
5 purchased alternative vehicles that did not contain the Clean Diesel engine system and which were
6 not marketed as including such a system. Accordingly, Florida Plaintiffs overpaid for their
7 dealerships, overpaid for inventory and did not receive the benefit of their bargain.

8 473. Every franchise dealer, including Plaintiffs entered into written dealership
9 agreements with Volkswagen. Volkswagen breached these agreements by marketing and selling to
10 Florida Plaintiffs defective Affected Vehicles and by misrepresenting or failing to disclose the
11 existence of the Clean Diesel engine system's defect and/or defective design, including information
12 known to Volkswagen rendering each Affected Vehicle non EPA-compliant, and thus less
13 valuable, than vehicles not equipped with a Clean Diesel engine system.

14 474. As a direct and proximate result of Volkswagen's breach of contract, Florida
15 Plaintiffs have been damaged in an amount to be proven at trial, which shall include, but is not
16 limited to, all compensatory damages, incidental and consequential damages, and other damages
17 allowed by law.

18 **COUNT V**
19 **FRAUDULENT CONCEALMENT**
20 **(BASED ON FLORIDA LAW)**

21 475. Plaintiffs Napleton VW Orlando and Napleton VW Sanford ("Florida Plaintiffs")
22 incorporate by reference all preceding allegations as though fully set forth herein. This is not a
23 class claim.

24 476. Volkswagen intentionally concealed that the Clean Diesel engine systems were not
25 EPA-compliant and used a "defeat device," or acted with reckless disregard for the truth, and
26 denied Florida Plaintiffs information that is highly relevant to their business decisions to purchase
27 and/or maintain a Volkswagen dealership.

28 477. Volkswagen further affirmatively misrepresented to Florida Plaintiffs in advertising
and other forms of communication, including standard and uniform material provided to each

1 dealership, that the Affected Vehicles it was selling were new, had no significant defects, complied
2 with EPA regulations and would perform and operate properly when driven in normal usage.

3 478. Volkswagen knew these representations were false when made.

4 479. The Affected Vehicles purchased for inventory and sold by Florida Plaintiffs were,
5 in fact, defective, non-EPA-compliant, unsafe, and unreliable because the Affected Vehicles
6 contained faulty and defective Clean Diesel engine systems, as alleged herein.

7 480. Volkswagen had a duty to disclose that these Affected Vehicles were defective,
8 unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the
9 Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the
10 defective Clean Diesel engine system, because Florida Plaintiffs relied on Volkswagen’s material
11 representations that the Affected Vehicles they were purchasing for inventory and selling were
12 safe, environmentally clean, efficient and free from defects.

13 481. The aforementioned concealment was material because if it had been disclosed,
14 Florida Plaintiffs would not have purchased their dealerships, would not have renewed their
15 agreements with Volkswagen, would not have purchased for inventory the Affected Vehicles, or
16 would not have bought their dealership or Affected Vehicles at the prices they paid.

17 482. The aforementioned representations were material because they were facts that
18 would typically be relied on by a person purchasing or operating a dealership. Volkswagen knew
19 or recklessly disregarded that its representations were false because it knew that it had to use the
20 “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen
21 intentionally made the false statements in order to sell Affected Vehicles through Florida Plaintiffs.

22 483. Florida Plaintiffs relied on Volkswagen’s reputation – along with Volkswagen’s
23 failure to disclose the faulty and defective nature of the Clean Diesel engine system and
24 Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other
25 similar false statements – in purchasing and operating their dealership and purchasing Affected
26 Vehicles for inventory.

27 484. As a result of their reliance, Florida Plaintiffs have been injured in an amount to be
28 proven at trial, including, but not limited to: their lost benefit of the bargain and overpayment at the

1 time of purchase of their dealership; and/or the diminished value of their dealership franchise and
2 the improved real property used for the dealership.

3 485. Volkswagen's conduct was knowing, intentional, with malice, demonstrated a
4 complete lack of care, and was in reckless disregard for the rights of Florida Plaintiffs. Florida
5 Plaintiffs are therefore entitled to an award of punitive damages.

6 **C. Claims Brought on Behalf of Illinois Plaintiff**

7 **COUNT VI**
8 **VIOLATION OF ILLINOIS MOTOR VEHICLE FRANCHISE ACT**
9 **815 ILCS 710/1, ET SEQ.**

10 486. Plaintiff Napleton VW Urbana ("Illinois Plaintiff") incorporates by reference all
11 preceding allegations as though fully set forth herein, except that this is not a class claim.

12 487. This claim is brought only on behalf of Illinois Plaintiff.

13 488. Defendants are each a "manufacturer", "distributor", "factory representative", and
14 "distributor representative" as those terms are defined in 815 ILCS 710/2.

15 489. Illinois Plaintiff is a "Motor Vehicle Dealer" as that term is defined in 815 ILCS
16 710/2.

17 490. The Illinois Motor Vehicle Franchise Act ("IMVFA") prohibits "unfair methods of
18 competition and unfair and deceptive acts or practices," including the following:

19 "(b) ...to engage in any action with respect to a franchise which is
20 arbitrary, in bad faith or unconscionable and which causes damage to
21 any of the parties or to the public." 815 ILCS 710/4(b).

22 "(d) ...(1) to adopt, change, establish or implement a plan or
23 system for the allocation and distribution of new motor vehicles to
24 new motor vehicle dealers which is arbitrary or capricious or to
25 modify an existing plan so as to cause the same to be arbitrary or
26 capricious." 815 ILCS 710/4(d)(1).

27 "(e) ...(2) to offer to sell or lease, or to sell or lease, any new
28 motor vehicle to any motor vehicle dealer at a lower actual price
therefor than the actual price offered to any other motor vehicle
dealer for the same model vehicle similarly equipped or to utilize any
device including, but not limited to, sales promotion plans or
programs which result in such lesser actual price or fail to make
available to any motor vehicle dealer any preferential pricing,
incentive, rebate, finance rate, or low interest loan program offered to
competing motor vehicle dealers in other contiguous states..." 815
ILCS 710/4(e)(2).

1 491. As set forth herein, Volkswagen and VGoA participated in arbitrary, bad faith and
2 unconscionable acts with respect to a franchise, which caused damage to Illinois Plaintiff and to the
3 public, in violation of the IMVFA.

4 492. As set forth herein, Volkswagen and VGoA adopted, changed, established and
5 implemented a plan or system for the allocation and distribution of new motor vehicles to new
6 motor vehicle dealers, including Illinois Plaintiff, which was and is arbitrary and capricious, in
7 violation of the IMVFA.

8 493. As set forth herein, Volkswagen and VGoA offered to sell or lease, or to sell or
9 lease, new motor vehicles to any motor vehicle dealer at a lower actual price therefor than the
10 actual price offered to other motor vehicle dealers for the same model vehicle similarly equipped
11 and utilized sales promotion plans or programs which resulted in such lesser actual price and failed
12 to make available to a motor vehicle dealer preferential pricing, incentive, rebate, finance rate, and
13 low interest loan programs offered to competing motor vehicle dealers in other contiguous states,
14 in violation of the IMVFA.

15 494. The IMVFA also provides that: “A manufacturer shall not require, directly or
16 indirectly, a motor vehicle dealer to contract with a motor vehicle financing affiliate in order to
17 receive its motor vehicles nor shall a manufacturer prevent, directly or indirectly, a motor vehicle
18 dealer from contracting with a motor vehicle financing affiliate in order to receive its motor
19 vehicles.” 815 ILCS 710/3.1.

20 495. Volkswagen and VGoA have violated 815 ILCS 710/3.1 by linking lowered vehicle
21 pricing and incentives to use of VCI for floor plan financing and discounting.

22 496. Volkswagen and VGoA’s actions have been willful and wanton, thus supporting
23 Illinois Plaintiff’s claims for treble damages under 815 ILCS 710/13.

24 497. Pursuant to 815 ILCS 710/13, Illinois Plaintiff is entitled to an injunction restraining
25 Volkswagen and VGoA from continuing to engage in acts in violation of the IMVFA.

**COUNT VII
FRAUD BY CONCEALMENT
(BASED ON ILLINOIS LAW)**

498. Illinois Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein, except that this is not a class claim.

499. Volkswagen intentionally concealed that the Clean Diesel engine systems were not EPA-compliant and used a “defeat device,” or acted with reckless disregard for the truth, and denied Illinois Plaintiffs information that is highly relevant to their business decisions to purchase and/or maintain a Volkswagen dealership.

500. Volkswagen further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided to each dealership, that the Affected Vehicles it was selling were new, had no significant defects, complied with EPA regulations and would perform and operate properly when driven in normal usage.

501. Volkswagen knew these representations were false when made.

502. The Affected Vehicles purchased for inventory and sold by Illinois Plaintiff were, in fact, defective, non-EPA-compliant, unsafe, and unreliable because the Affected Vehicles contained faulty and defective Clean Diesel engine systems, as alleged herein.

503. Volkswagen had a duty to disclose that these Affected Vehicles were defective, unsafe, non-EPA compliant and unreliable in that certain crucial emissions functions of the Affected Vehicles would be rendered inoperative due to the “defeat device” installed in the defective Clean Diesel engine system, because Illinois Plaintiff relied on Volkswagen’s material representations that the Affected Vehicles they were purchasing for inventory and selling were safe, environmentally clean, efficient and free from defects.

504. The aforementioned concealment was material because if it had been disclosed, Illinois Plaintiff would not have purchased its dealership, would not have renewed their agreements with Volkswagen, would not have purchased for inventory the Affected Vehicles, or would not have bought its dealership or Affected Vehicles at the prices they paid.

505. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or operating a dealership. Volkswagen knew

1 or recklessly disregarded that its representations were false because it knew that it had to use the
2 “defeat device” in order for Affected Vehicles to pass EPA emissions requirements. Volkswagen
3 intentionally made the false statements in order to sell Affected Vehicles through Illinois Plaintiff.

4 506. Illinois Plaintiff relied on Volkswagen’s reputation – along with Volkswagen’s
5 failure to disclose the faulty and defective nature of the Clean Diesel engine system and
6 Volkswagen’s affirmative assurance that its Affected Vehicles were safe and reliable, and other
7 similar false statements – in purchasing and operating their dealership and purchasing Affected
8 Vehicles for inventory.

9 507. As a result of its reliance, Illinois Plaintiff has been injured in an amount to be
10 proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the
11 time of purchase of its dealership and/or the diminished value of its dealership.

12 508. Volkswagen’s conduct was knowing, intentional, with malice, demonstrated a
13 complete lack of care, and was in reckless disregard for the rights of Illinois Plaintiff. Illinois
14 Plaintiff is therefore entitled to an award of punitive damages.

15 **COUNT VIII**
16 **BREACH OF CONTRACT**
(BASED ON ILLINOIS LAW)

17 509. Illinois Plaintiff incorporates by reference all preceding allegations as though fully
18 set forth herein, except that this is not a class claim.

19 510. Volkswagen’s misrepresentations and omissions alleged herein, including
20 Volkswagen’s failure to disclose the existence of the Clean Diesel engine system’s defect and/or
21 defective design as alleged herein, caused Illinois Plaintiff to purchase its dealership or renew its
22 dealer agreements with Volkswagen. Absent those misrepresentations and omissions, Illinois
23 Plaintiff would not have purchased its dealerships, would not have purchased additional
24 Volkswagen inventory, or would not have done so at the prices it paid, and/or would have
25 purchased alternative vehicles that did not contain the Clean Diesel engine system and which were
26 not marketed as including such a system. Accordingly, Illinois Plaintiff overpaid for its dealership,
27 overpaid for inventory and did not receive the benefit of its bargain.

1 DATED: July 24, 2017

HAGENS BERMAN SOBOL SHAPIRO LLP

2
3 By /s/ Steve W. Berman

Steve W. Berman

Steve W. Berman (*pro hac vice*)

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2016, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. The Clerk of the Court will transmit a Notice of Electronic Filing to all ECF registrants.

By /s/ Steve W. Berman
STEVE W. BERMAN

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

----- X	
United States of America,	: No. 16-CR-20394
	: :
Plaintiff,	: HONORABLE SEAN F. COX
	: :
v.	: :
	: Offenses: (1) Conspiracy
VOLKSWAGEN AG,	: (2) Obstruction of Justice
	: (3) Entry of Goods by
Defendant.	: False Statement
	: :
	: Violations: (1) 18 U.S.C. § 371
	: (2) 18 U.S.C. § 1512(c)
	: (3) 18 U.S.C. § 542
	: :
	: Statutory Maximum Period of
	: Probation:
	: Five years per count
	: :
	: Statutory Minimum Period of
	: Probation:
	: None/Not Applicable
	: :
	: Statutory Maximum Fine: 18 U.S.C.
	: § 3571(d) (the greater of twice the
	: gross gain or twice the gross loss)
	: :
	: Statutory Minimum Fine: None/Not
	: Applicable
----- X	

Rule 11 Plea Agreement

The United States of America, by and through the Department of Justice, Criminal Division, Fraud Section, the United States Attorney's Office for the Eastern District of Michigan, and the Department of Justice, Environment and Natural Resources Division, Environmental Crimes Section and with the approval of the Deputy Attorney General (collectively hereafter, "the Offices"), and the Defendant, Volkswagen AG (the "Defendant"), by and through its undersigned attorneys, and through its authorized representative, pursuant to authority granted by the Defendant's Management Board, with the consent of the Supervisory Board, hereby submit and enter into this plea agreement (the "Agreement"), pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure. The terms and conditions of this Agreement are as follows:

1. Guilty Plea

A. Waiver of Indictment and Venue

Pursuant to Fed. R. Crim. P. 7, the Defendant agrees to knowingly waive its right to grand jury indictment and its right to challenge venue in the United States District Court for the Eastern District of Michigan, and to plead guilty to Counts One through Three of the Third Superseding Information.

B. Counts of Conviction

The Third Superseding Information charges three counts: (1) Count One - conspiracy in violation of 18 U.S.C. § 371, (2) Count Two - obstruction of justice in

violation of 18 U.S.C. § 1512(c), and (3) Count Three – introducing imported merchandise into the United States by mean of false statements in violation of 18 U.S.C. § 542. The Defendant further agrees to persist in that plea through sentencing and, as set forth below, to cooperate fully with the Offices in their investigation into the conduct described in this Agreement and other conduct related to the introduction into the United States of diesel vehicles with defeat devices as defined under U.S. law.

C. Elements of Offenses

The elements of Count One (conspiracy) are as follows:

(1) The elements for conspiracy to defraud the United States by obstructing the lawful function of the federal government are as follows:

(a) That two or more persons conspired, or agreed, to defraud the United States or one of its agencies or departments, in this case, the Environmental Protection Agency (EPA), by dishonest means;

(b) That the defendant knowingly and voluntarily joined the conspiracy; and

(c) That a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

(2) The elements for conspiracy to violate the wire fraud statute and Clean Air Act are as follows:

(a) That two or more persons conspired, or agreed, to commit a crime, in this case, a violation of the wire fraud statute (18 U.S.C. § 1343) and the Clean Air Act (42 U.S.C. § 7413(c)(2)(A)) as described below;

(b) That the defendant knowingly and voluntarily joined the conspiracy; and

(c) That a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Object of the Conspiracy – Wire Fraud – 18 U.S.C. § 1343:

(a) The defendant knowingly participated in, devised, or intended to devise a scheme to defraud in order to obtain money or property;

(b) The scheme included a material misrepresentation or concealment of a material fact;

(c) The defendant had the intent to defraud; and

(d) The defendant used (or caused another to use) wire, radio or television communications in interstate or foreign commerce in furtherance of the scheme.

Object of the Conspiracy – Clean Air Act – 42 U.S.C. § 7413(c)(2)(A)

(a) The defendant knowingly made (or caused to be made) a false material statement, representation, or certification, or omission of material information;

(b) The statement, representation or certification that was made (or omitted), or caused to be made or omitted, was in a notice, application, record, report, plan or other document required to be filed or maintained under the Clean Air Act; and

(c) The statement, representation, certification, or omission of information, was material.

The elements of Count Two (obstruction of justice) are as follows:

- (1) That the defendant altered, destroyed, mutilated, or concealed a record, document or other object;
- (2) That the defendant acted knowingly;
- (3) That the defendant acted corruptly; and
- (4) That the defendant acted with the intent to impair the record, document or object's integrity or availability for use in an official proceeding.

The elements of Count Three (entry of goods by false statement) are as follows:

- (1) That merchandise was imported;
- (2) That the defendant entered or introduced merchandise into the commerce of the United States;
- (3) That the defendant did so by means of a false statement, which it knew was false; and
- (4) That the false statement was material to the entry of the merchandise.

D. Statutory Maximum Penalties

The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371 (Count One) is a fine of \$500,000 or twice the gross pecuniary gain or gross pecuniary loss resulting from the offense, whichever is greatest, Title 18, United States Code, Section 3571(c), (d); five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400, Title 18, United States Code, Section 3013(a)(2)(B). The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1512(c) (Count Two) is a fine of \$500,000; five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400, Title 18, United States Code, Section 3013(a)(2)(B). The statutory maximum sentence that the Court can impose for a violation of Title 18,

United States Code, Section 542 (Count Three) is a fine of \$500,000 or twice the gross pecuniary gain or gross pecuniary loss resulting from the offense, whichever is greatest, Title 18, United States Code, Section 3571(c), (d); five years' probation, Title 18, United States Code, Section 3561(c)(1); and a mandatory special assessment of \$400, Title 18, United States Code, Section 3013(a)(2)(B).

E. Factual Basis for Guilty Plea

The Defendant is pleading guilty because it is guilty of the charges contained in the Third Superseding Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in Exhibit 2 (the Statement of Facts) are true and correct, that it is responsible under the laws of the United States for the acts of its employees described in Exhibit 2, and that the facts set forth in Exhibit 2 accurately reflect the Defendant's criminal conduct and provide a factual basis for the guilty plea. The Defendant agrees that it will neither contest the admissibility of, nor contradict, the Statement of Facts contained in Exhibit 2 in any proceeding.

2. Sentencing Guidelines

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Guideline Range

There are no disputes with respect to the sentencing guidelines that require resolution by the court. While the Defendant does not adopt, agree or accept the United States Sentencing Guidelines (U.S.S.G.) analysis contained herein, for

purposes of avoiding the need for a contested sentencing proceeding and achieving a just and fair result, and because the Defendant agrees that the overall fine proposed herein achieves such a result, the Defendant does not contest the factual or legal basis of the Office's U.S.S.G. analysis contained in this Paragraph for the purposes of this proceeding and stipulates that the proposed fine constitutes a reasonable sentence under the factors listed in Title 18, United States Code, Section 3553(a). Pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines (U.S.S.G.). The Court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in Title 18, United States Code, Section 3553(a). The Defendant also understands that if the Court accepts this Agreement, the Court is bound by the sentencing provisions in Paragraph 3. The Offices submit that a faithful application of the U.S.S.G. to determine the applicable fine range yields the following analysis:

- a. The 2016 U.S.S.G. are applicable to this matter.
- b. Offense Level. Based upon U.S.S.G. § 2B1.1, the total offense level is 41, calculated as follows:

(a)(1)	Base Offense Level	7
(b)(1)(P)	Amount of Loss > \$550 million	+30
(b)(2)(A)(i)	More Than 10 Victims	+2
(b)(10)(B)	Substantial Part of Scheme Committed from Outside the United States	<u>+2</u>

TOTAL	41
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c. Base Fine. Based upon U.S.S.G. § 8C2.4(a), the base fine is \$8,543,169,187 (the pecuniary loss from the offense caused by the Defendant)

d. Culpability Score. Based upon U.S.S.G. § 8C2.5, the culpability score is 11, calculated as follows:

(a)	Base Culpability Score	5
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(b)(1)	the unit of the organization within which the offense was committed had 5,000 or more employees and an individual within high-level personnel of the unit participated in, condoned, or was willfully ignorant of the offense	+5
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(e)	obstruction of justice	+3
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(g)(3)	The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	- 2
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TOTAL	11
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Calculation of Fine Range:

Base Fine	\$8,543,169,187 ¹
Multipliers	2 (min)/4 (max)
Fine Range	\$17,086,338,374 (min)/ \$34,172,676,746 (max)

¹ The base fine amount consists of the loss amount as calculated under USSG § 2B1.1 and accompanying Application Notes, discounted to reflect a 50% reduction for the litigation risk that both parties would bear were there a contested sentencing proceeding. *See, e.g., United States v. Giovenco*, 773 F.3d 866 (7th Cir. 2014); *United States v. Prosperi*, 686 F.3d 32 (1st Cir. 2012).

3. Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the appropriate disposition of this case is as set forth in this Section and agree to recommend jointly that the Court at a hearing to be scheduled at an agreed upon time impose it.

A. Relevant Considerations

The Offices enter into this Agreement based on the individual facts and circumstances presented by this case and the Defendant. Among the factors considered were the following:

1. the Defendant did not voluntarily disclose to the Offices the conduct described in Exhibit 2 (the Statement of Facts);
2. the Defendant cooperated with the Offices' investigation by, among other things, (i) gathering substantial amounts of evidence and performing forensic data collections in multiple jurisdictions; (ii) producing documents, including translations, to the Offices in ways that did not implicate foreign data privacy laws; (iii) collecting, analyzing, organizing, and producing voluminous evidence and information; (iv) interviewing hundreds of witnesses in the United States and overseas; (v) providing non-privileged facts relating to individuals and companies involved in the criminal conduct; and (vi) facilitating and encouraging

cooperation and voluntary disclosure of information and documents by current and former company personnel;

3. the Defendant has already agreed to compensate members of the class in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-2672 (N.D. Cal.), which consists of victims of the underlying criminal conduct that is the subject of this Agreement, and to pay into a NOx remediation trust, in an aggregate amount of approximately \$11 billion (based on net present value);

4. despite obstruction of justice committed by certain of the Defendant's employees, principally in the form of document destruction, the Defendant, including through its outside counsel, self-disclosed this conduct to the Offices, remediated the conduct by recovering large portions of the deleted documents through a variety of forensic means, and conducted a thorough investigation of the conduct, the findings of which it reported to the Offices;

5. the Defendant engaged in remedial measures, including creation of a management board position to supervise the Defendant's legal and compliance functions, reorganization of the whistleblower system, improvements to its risk assessment systems, specific reforms to its engine-related practices, including a program to audit these reforms, termination the employment of six individuals who participated in, or failed to supervise employees who participated in, the misconduct

described in the Statement of Facts, suspending an additional eight individuals who participated in the misconduct described in the Statement of Facts for varying periods, and disciplining an additional three employees who participated in the misconduct described in the Statement of Facts; however, the Defendant's remediation remains incomplete;

6. the Defendant has committed to continue to enhance its compliance program and internal controls;

7. the Defendant has agreed, as part of its continuing cooperation obligations, and to ensure that the Defendant and its wholly-owned subsidiary Volkswagen Group of America ("VW GOA") implements an effective compliance program, to the appointment of an independent monitor (the "Monitor") for a period of up to three years, who will have authority with respect to the Defendant and VW GOA;

8. the nature and seriousness of the offenses;

9. the Defendant has no prior criminal history;

10. the Defendant has agreed to continue to cooperate with the Offices in any ongoing investigation of the conduct of the Defendant and its officers, directors, employees, agents, business partners, and consultants relating to the violations to which the Defendant is pleading guilty; and

11. the Defendant has agreed to pay an additional \$1,500,000,000 to the United States to resolve claims for civil penalties arising from the underlying conduct that is the subject of this Agreement;

12. accordingly, after considering (1) through (11) above, (a) the Defendant received an aggregate discount of approximately 20% off of the bottom of the otherwise applicable U.S. Sentencing Guidelines fine range, reflecting its cooperation in the investigation, and (b) after application of the foregoing discount, the Defendant in addition received a credit of \$11 billion, representing the net present value of the Defendant's settlements with consumers and payments to the NOx remediation trust in settlement of civil litigation.

B. Fine

The Defendant shall pay to the United States a criminal fine of \$2,800,000,000, payable in full within ten days of the entry of judgment following the sentencing hearing in this matter. The Defendant shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the penalty amount that the Defendant pays pursuant to this Agreement. The Defendant further agrees that it shall not claim, assert, or apply for, either directly or indirectly, any tax deduction, tax credit, or any other offset with regard to any U.S. federal, state, or local tax or taxable income for any fine or forfeiture paid pursuant to this Agreement.

C. Probation

The parties agree that a term of organizational probation for a period of three years should be imposed on the Defendant pursuant to 18 U.S.C. §§ 3551(c)(1) and 3561(c)(1). The parties further agree, pursuant to U.S.S.G. § 8D1.4, that the term of probation shall include as conditions the obligations set forth in Paragraphs 5 and 6 below as well as the payment of the fine set forth in this Paragraph, but shall not include the obligations set forth in Paragraph 7 below.

D. Special Assessment

The Defendant shall pay to the Clerk of the Court for the United States District Court for the Eastern District of Michigan within ten days of the time of sentencing the mandatory special assessment of \$1,200 (\$400 per count).

E. Restitution

No order of restitution is appropriate in this case pursuant to 18 U.S.C. § 3663A(c)(3), as the number of identifiable victims is so large as to make restitution impracticable and/or determining complex issues of fact related to the cause or amount of victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. Moreover, as noted in Paragraph 2(A) above, the Defendant has already agreed to compensate members of the class in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability*

Litigation, No. 3:15-md-2672 (N.D. Cal.), which consists of individuals who purchased affected vehicles described in Exhibit 2.

4. Other Charges

In exchange for the guilty plea of the Defendant and the complete fulfillment of all of its obligations under this Agreement, the Offices agree that they will not file additional criminal charges against the Defendant or any of its direct or indirect affiliates or subsidiaries related to: (1) any conduct described in the Third Superseding Information or Exhibit 2; (2) any conduct related to the emissions, or compliance with U.S. emissions standards, of the Subject Vehicles or the Porsche Vehicles as described and defined in the Third Superseding Information and Exhibit 2; and (3) any conduct disclosed by, or on behalf of, the Defendant or otherwise known to the Offices or the EPA as of the date of this Agreement. The Offices, however, may use any information related to the conduct described in the Statement of Facts against the Defendant: (a) in a prosecution for perjury or obstruction of justice apart from the charge in the Third Superseding Information and identified in the Statement of Facts; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Paragraph does not provide any protection against prosecution for any other conduct, including but not limited

to crimes committed in the future by the Defendant or by any of its affiliates, subsidiaries, officers, directors, employees, agents or consultants, whether or not disclosed by the Defendant pursuant to the terms of this Agreement. In addition, this Agreement does not provide any protection against prosecution of any joint ventures of which the Defendant is a part, or any individuals, regardless of their affiliation with the Defendant. The Defendant agrees that nothing in this Agreement is intended to release the Defendant from any and all of the Defendant's excise and income tax liabilities and reporting obligations for any and all income not properly reported and/or legally or illegally obtained or derived.

5. The Defendant's Obligations

A. Except as otherwise provided in Paragraph 6 below in connection with the Defendant's cooperation obligations, the Defendant's obligations under the Agreement shall last and be effective for a period beginning on the date on which the Third Superseding Information is filed and ending three years from the later of the date on which the Third Superseding Information is filed or the date on which the Monitor is retained by the Defendant, as described in Paragraph 15 below (the "Term"). The Defendant agrees, however, that, in the event the Offices determine, in their sole discretion, that the Defendant has failed specifically to perform or to fulfill each of the Defendant's obligations under this Agreement, an extension or extensions of the Term may be imposed by the Offices, in their sole discretion, for

up to a total additional time period of one year, without prejudice to the Offices' right to proceed as provided in Paragraph 9 below. Any extension of the Term extends all terms of this Agreement, including the terms of the Monitorship in Exhibit 3, for an equivalent period. Conversely, in the event the Offices find, in their sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the Monitorship in Exhibit 3, and that the other provisions of this Agreement have been satisfied, the Term may be terminated early, except for the Defendant's cooperation obligations described in Paragraph 6 below.

B. The Defendant agrees to abide by all terms and obligations of this Agreement as described herein, including, but not limited to, the following:

1. to plead guilty as set forth in this Agreement;
2. to abide by all sentencing stipulations contained in this Agreement;
3. to appear, through its duly appointed representatives, as ordered for all court appearances, and obey any other ongoing court order in this matter, consistent with all applicable U.S. and foreign laws, procedures, and regulations;
4. to commit no further crimes;
5. to be truthful at all times with the Court and the Offices;
6. to pay the applicable fine and special assessments;

7. to cooperate with and report to the Offices as provided in Paragraph 6; and

8. to continue to implement a compliance and ethics program designed to prevent and detect fraudulent conduct throughout its operations.

C. The Defendant agrees that any fine or restitution imposed by the Court will be due and payable in full within ten days of the entry of judgment following the sentencing hearing, and the Defendant will not attempt to avoid or delay payment. The Defendant further agrees to pay the Clerk of the Court for the United States District Court for the Eastern District of Michigan the mandatory special assessment of \$400 per count within ten business days from the date of sentencing.

6. The Defendant's Cooperation and Reporting Obligations

A. The Defendant shall cooperate fully with the Offices in any and all matters relating to the conduct described in this Agreement and Exhibit 2, and other related conduct under investigation by the Offices during the Term, subject to applicable law and regulations, until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term. At the request of the Offices, the Defendant shall also cooperate fully with other domestic law enforcement and regulatory authorities and agencies in any investigation of the Defendant, its parent company or its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other

party, in any and all matters relating to the conduct described in this Agreement and Exhibit 2, and other conduct related to the Defendant's installation of defeat devices and false and fraudulent representations pertaining thereto. The Defendant agrees that its cooperation pursuant to this Paragraph shall include, but not be limited to, the following:

1. The Defendant shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product doctrine, or by applicable law and regulations, including applicable data protection laws, with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Defendant has any knowledge or about which the Offices may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Defendant to provide to the Offices, upon request, any document, record or other tangible evidence about which the Offices may inquire of the Defendant.

2. Upon request of the Offices, the Defendant shall designate knowledgeable employees, agents or attorneys to provide to the Offices the information and materials described in Paragraph 6(A)(1) above on behalf of the Defendant. It is further understood that the Defendant must at all times provide complete, truthful, and accurate information.

3. The Defendant shall use its best efforts to make available for interviews or testimony, as requested by the Offices, present or former officers, directors, employees, agents and consultants of the Defendant. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Defendant, may have material information regarding the matters under investigation.

4. With respect to any information, testimony, documents, records or other tangible evidence provided to the Offices pursuant to this Agreement, the Defendant consents to any and all disclosures, subject to applicable law and regulations, including applicable data protection laws, to other governmental authorities in the United States of such materials as the Offices, in their sole discretion, shall deem appropriate.

B. In addition to the obligations in Paragraph 6(A), during the Term, should the Defendant learn of any evidence or allegation of a violation of U.S. federal law by or on behalf of the Defendant and relating to emissions of its vehicles, false or misleading statements made to public authorities or regulators, fraud or misrepresentations in the sale or marketing of its products, or obstruction of any pending or contemplated U.S. federal, state or local investigation or proceeding, the

Defendant shall promptly report such evidence or allegation to the Offices. Thirty days prior to the end of the Term, the Defendant, by the Chief Executive Officer of the Defendant and the Chief Financial Officer of the Defendant, will certify to the Offices that the Defendant has met its disclosure obligations pursuant to this Paragraph. Each certification will be deemed a material statement and representation by the Defendant to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

7. Other Obligations

A. The Defendant agrees to retain an independent compliance monitor in accordance with Exhibit 3 of this Agreement.

B. While the obligation set forth in this Paragraph is not a condition to the term of probation, any failure to comply with the obligation set forth in this Paragraph shall constitute a breach of this Agreement and be subject to the terms set forth in Paragraph 9 below.

8. Waiver of Appellate and Other Rights Under United States Law

A. The Defendant understands that by entering into this Agreement, the Defendant surrenders certain rights as provided in this Agreement. The Defendant understands that the rights of criminal defendants in the United States include the following:

1. the right to plead not guilty and to persist in that plea;
2. the right to a jury trial;
3. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings;
4. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and
5. pursuant to Title 18, United States Code, Section 3742, the right to appeal the sentence imposed.

B. Nonetheless, the Defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever except those specifically excluded in this Paragraph, in exchange for the concessions made by the United States in this plea agreement. This Agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of

Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a. The Defendant waives all defenses based on the statute of limitations and venue with respect to any federal prosecution related to the conduct described in Exhibit 2 or the Third Superseding Information, including any prosecution that is not time-barred on the date that this Agreement is signed in the event that: (a) the conviction is later vacated for any reason; (b) the Defendant violates this Agreement; or (c) the plea is later withdrawn, provided such prosecution is brought within one year of any such vacation of conviction, violation of agreement, or withdrawal of plea plus the remaining time period of the statute of limitations as of the date that this Agreement is signed. The Offices are free to take any position on appeal or any other post-judgment matter. The parties agree that any challenge to the Defendant's sentence that is not foreclosed by this Paragraph will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) this waiver. Nothing in the foregoing waiver of appellate rights shall preclude the Defendant from raising a claim of ineffective assistance of counsel in an appropriate forum.

C. Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 limit the admissibility of statements made in the course of plea proceedings or plea discussions in both civil and criminal proceedings, if the guilty plea is later withdrawn. The Defendant expressly warrants that it has discussed these rules with

its counsel and understands them. Solely to the extent set forth below, the Defendant voluntarily waives and gives up the rights enumerated in Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Specifically, the Defendant understands and agrees that any statements that it makes in the course of its guilty plea or in connection with the Agreement, including the Statement of Facts set forth as Exhibit 2 to the Agreement, are admissible against it for any purpose in any U.S. federal criminal proceeding if, even though the Offices have fulfilled all of their obligations under this Agreement and the Court has imposed the agreed-upon sentence, the Defendant nevertheless withdraws its guilty plea.

9. Breach of Agreement

A. If the Defendant (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information; (c) fails to cooperate as set forth in Paragraph 6 of this Agreement; (d) fails to implement a compliance program as set forth in Paragraph 3(A)(7) of this Agreement; or (e) otherwise fails specifically to perform or to fulfill each of the Defendant's obligations under the Agreement, regardless of whether the Offices become aware of such a breach after the Term of the Agreement, the Defendant shall thereafter be subject to prosecution for any federal criminal violation of which the Offices have knowledge, including, but not limited to, the charges in the Third Superseding Information described in Paragraph 1, which may

be pursued by the Offices in the United States District Court for the Eastern District of Michigan or any other appropriate venue. Determination of whether the Defendant has breached the Agreement and whether to pursue prosecution of the Defendant shall be in the Offices' sole discretion. Any such prosecution may be premised on information provided by the Defendant. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Offices prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Defendant, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term of the Agreement plus one year. Thus, by signing this Agreement, the Defendant agrees that the statute of limitations with respect to any such prosecution that is not time- barred on the date of the signing of this Agreement shall be tolled for the Term of the Agreement plus one year. The Defendant gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of the signing of this Agreement. In addition, the Defendant agrees that the statute of limitations as to any violation of federal law that occurs during the term of the cooperation obligations provided for in Paragraph 6 of the Agreement will be tolled from the date upon which the

violation occurs until the earlier of the date upon which the Offices are made aware of the violation or the duration of the term plus three years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

B. In the event the Offices determine that the Defendant has breached this Agreement, the Offices agree to provide the Defendant with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Defendant shall have the opportunity to respond to the Offices in writing to explain the nature and circumstances of such breach, as well as the actions the Defendant has taken to address and remediate the situation, which explanation the Offices shall consider in determining whether to pursue prosecution of the Defendant.

C. In the event that the Offices determine that the Defendant has breached this Agreement: (a) all statements made by or on behalf of the Defendant to the Offices or to the Court, including the attached Statement of Facts, and any testimony given by the Defendant before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Offices against the Defendant; and (b) the Defendant shall not assert any claim under the United States Constitution,

Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Defendant prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Defendant, will be imputed to the Defendant for the purpose of determining whether the Defendant has violated any provision of this Agreement shall be in the sole discretion of the Offices.

D. The Defendant acknowledges that the Offices have made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Defendant breaches this Agreement and this matter proceeds to judgment. The Defendant further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

10. Parties to Plea Agreement

The Defendant understands and agrees that this Agreement is between the Offices and the Defendant. Nevertheless, the Offices will bring this Agreement and the nature and quality of the conduct, cooperation and remediation of the Defendant, its direct or indirect affiliates and subsidiaries to the attention of other prosecuting

authorities or other agencies, as well as debarment authorities, if requested by the Defendant.

The Defendant agrees that this Agreement will be executed by an authorized corporate representative. The Defendant further agrees that a resolution duly adopted by the Defendant's Management Board, with the consent of the Supervisory Board in the form attached to this Agreement as Exhibit 1, authorizes the Defendant to enter into this Agreement and take all necessary steps to effectuate this Agreement, and that the signatures on this Agreement by the Defendant and its counsel are authorized by the Defendant's Management Board, with the consent of the Supervisory Board, on behalf of the Defendant.

The Defendant agrees that it has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement.

11. Change of Corporate Form

Except as may otherwise be agreed by the parties in connection with a particular transaction, the Offices may require, in their sole discretion, that, in the event that, during the Term of the Agreement, the Defendant undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Defendant's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in Exhibit 2 (the Statement of Facts), as they exist as of the date of this Agreement, whether such sale

is structured as a sale, asset sale, merger, transfer, or other change in corporate form, the Defendant shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. If the Offices so require, the purchaser or successor in interest must also agree in writing that the Offices' ability to declare a breach under this Agreement is applicable in full force to that entity, and the Defendant will agree that the failure to include these provisions in the transaction will make any such transaction null and void. The Defendant shall provide notice to the Offices at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Offices will inform the Defendant within such 30-day period if the Offices require the Defendant to take the steps referred to above. If the Offices notify the Defendant prior to such transaction (or series of transactions) that they have determined that the transaction(s) has the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of the Offices, the Defendant agrees that such transaction(s) will not be consummated. In addition, if at any time during the Term of the Agreement the Offices determine in their sole discretion that the Defendant has engaged in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, they may deem it a breach of this Agreement pursuant to Paragraph 9 of this Agreement. Nothing herein shall restrict

the Defendant from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Offices.

12. Failure of Court to Accept Agreement

This Agreement is presented to the Court pursuant to Fed. R. Crim. P. 11(c)(1)(C). The Defendant understands that, if the Court rejects this Agreement, the Court must: (a) inform the parties that the Court rejects the Agreement; (b) advise the Defendant's counsel that the Court is not required to follow the Agreement and afford the Defendant the opportunity to withdraw its plea; and (c) advise the Defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the Defendant than the Agreement contemplated. The Defendant further understands that if the Court refuses to accept any provision of this Agreement, neither party shall be bound by the provisions of the Agreement.

13. Presentence Report

The Defendant and the Offices waive the preparation of a Pre-Sentence Investigation Report. The Defendant understands that the decision whether to proceed with the sentencing without a Pre-Sentence Investigation Report is exclusively that of the Court. In the event the Court directs the preparation of a Pre-

Sentence Investigation Report, the Offices will fully inform the preparer of the Pre-Sentence Investigation Report and the Court of the facts and law related to the Defendant's case. At the time of the plea hearing, the parties will suggest mutually agreeable and convenient dates for the sentencing.

14. Public Statements by the Defendant

A. The Defendant expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above, contradicting the fact that the Defendant has pled guilty to the charges set forth in the Third Superseding Information, or contradicting the facts described in Exhibit 2. Any such contradictory statement shall, subject to cure rights of the Defendant described below, constitute a breach of this Agreement, and the Defendant thereafter shall be subject to prosecution as set forth in Paragraph 9 of this Agreement. The decision whether any such contradictory statement will be imputed to the Defendant for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Offices. If the Offices determine that a public statement by any such person contradicts in whole or in part the fact that the Defendant pled guilty to the charges in the Third Superseding Information or a statement contained in Exhibit 2, the Offices shall so notify the Defendant, and

the Defendant may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Defendant shall be permitted to raise defenses, to take legal positions and to assert affirmative claims in other proceedings relating to the matters set forth in the Third Superseding Information and Exhibit 2 provided that such defenses and claims do not contradict, in whole or in part, the fact that the Defendant pled guilty to the charges in the Third Superseding Information or a statement in Exhibit 2. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Defendant in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Defendant.

B. The Defendant agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Defendant shall first consult the Offices to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Offices and the Defendant; and (b) whether the Offices have any objection to the release or statement.

15. Independent Compliance Monitor

A. Promptly after the Offices' selection pursuant to Paragraph 15(B) below, the Defendant agrees to retain the Monitor for the term specified in Paragraph 15(C). The Monitor's duties and authority, and the obligations of the Defendant with respect to the Monitor and the Offices, are set forth in Exhibit 3, which is incorporated by reference into this Agreement. The same Monitor shall serve as the Independent Auditor appointed pursuant to Paragraph 27(b) of the Third Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (N.D. Cal.). No later than the date of execution of this Agreement, and after consultation with the Offices, the Defendant will propose to the Offices a pool of three qualified candidates to serve as the Monitor. If the Offices determine, in their sole discretion, that any of the candidates are not, in fact, qualified to serve as the Monitor, or if the Offices, in their sole discretion, are not satisfied with the candidates proposed, the Offices reserve the right to seek additional nominations from the Defendant. The parties will endeavor to complete the monitor selection process within sixty (60) days of the execution of this Agreement. The Monitor candidates or their team members shall have, at a minimum, the following qualifications:

1. demonstrated expertise with respect to federal anti-fraud and environmental laws, including experience counseling on these issues;

2. experience designing and/or reviewing corporate ethics and compliance programs, including anti-fraud policies, procedures and internal controls;

3. knowledge of automotive or similar industries;

4. the ability to access and deploy resources as necessary to discharge the Monitor's duties as described in the Agreement;

5. sufficient independence from the Defendant to ensure effective and impartial performance of the Monitor's duties as described in the Agreement; and

6. the qualifications set out in Paragraph 27(a) of the Third Partial Consent Decree in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) (N.D. Cal.).

B. The Offices retain the right, in their sole discretion, to choose the Monitor from among the candidates proposed by the Defendant, though the Defendant may express its preference(s) among the candidates. In the event the Offices reject all proposed Monitors, the Defendant shall propose an additional three candidates within twenty (20) business days after receiving notice of the rejection. This process shall continue until a Monitor acceptable to both parties is chosen. The Offices and the Defendant will use their best efforts to complete the selection process within sixty (60) calendar days of the execution of this Agreement. If, during the

term of the monitorship, the Monitor becomes unable to perform his or her obligations as set out herein and in Exhibit 3, or if the Offices in their sole discretion determine that the Monitor cannot fulfill such obligations to the satisfaction of the Offices, the Offices shall notify the Defendant of the release of the Monitor, and the Defendant shall within thirty (30) calendar days of such notice recommend a pool of three qualified Monitor candidates from which the Offices will choose a replacement.

C. The Monitor's term shall be three years from the date on which the Monitor is retained by the Defendant, subject to extension or early termination as described in Paragraph 5. The Monitor's powers, duties, and responsibilities, as well as additional circumstances that may support an extension of the Monitor's term, are set forth in Exhibit 3. The Defendant agrees that it will not employ or be affiliated with the Monitor or the Monitor's firm for a period of not less than two years from the date on which the Monitor's term expires. Nor will the Defendant discuss with the Monitor or the Monitor's firm the possibility of further employment or affiliation during the Monitor's term.

16. Complete Agreement

This document states the full extent of the Agreement between the parties. There are no other promises or agreements, express or implied. Any modification of this Agreement shall be valid only if set forth in writing in a supplemental or revised plea agreement signed by all parties.

AGREED:

FOR VOLKSWAGEN AG:

Date: January 11, 2017

By: 

Manfred Doess
General Counsel of Volkswagen AG

Date: January 11, 2017

By: 

Reid Weingarten
Jason Weinstein
Christopher Niewoehner
Steptoe & Johnson LLP
Outside counsel for Volkswagen AG

Date: 11 January 2017

By: 

Aaron R. Marcu
Olivia A. Radin
Linda Martin
Freshfields Bruckhaus Deringer US
LLP
Outside counsel for Volkswagen AG

Date: January 11, 2017


By: 

Robert J. Giuffra, Jr.
Sharon L. Nelles
Brent J. McIntosh
Sullivan & Cromwell LLP
Outside counsel for Volkswagen AG

FOR THE DEPARTMENT OF JUSTICE:

ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division

Date: 1/11/17

By: 
Benjamin D. Singer
Chief, Securities and Financial Fraud
Unit
Gary A. Winters
Alison Anderson
David Fuhr
Trial Attorneys

JOHN CRUDEN
Assistant Attorney General
Environment and Natural Resources
Division

Date: 1/11/17

By: 
Jennifer L. Blackwell
Trial Attorney

BARBARA L. McQUADE
United States Attorney Eastern District
of Michigan

Date: 1/11/17


By: 
John K. Neal
Chief, White Collar Crime Unit

EXHIBIT 1

CERTIFICATE OF CORPORATE RESOLUTIONS

A copy of the executed Certificate of Corporate Resolutions is annexed hereto
as "Exhibit 1."

COMPANY OFFICER'S CERTIFICATE

I have read the plea agreement between Volkswagen AG (the "Defendant") and the United States of America, by and through the Department of Justice, Criminal Division, Fraud Section, the United States Attorney's Office for the Eastern District of Michigan, and the Department of Justice, Environment and Natural Resources Division, Environmental Crimes Section (the "Agreement") and carefully reviewed every part of it with outside counsel for the Defendant. I understand the terms of the Agreement and voluntarily agree, on behalf of the Defendant, to each of its terms. Before signing the Agreement, I consulted outside counsel for the Defendant. Counsel fully advised me of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of the Agreement with the Management Board and the Supervisory Board. I have advised and caused outside counsel for the Defendant to advise the Management Board and the Supervisory Board fully of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in the Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing the Agreement on behalf of the Defendant, in any

way to enter into the Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the General Counsel for the Defendant and that I have been duly authorized by the Defendant to execute the Agreement on behalf of the Defendant.

Date: January 11, 2017

VOLKSWAGEN AG

By: 

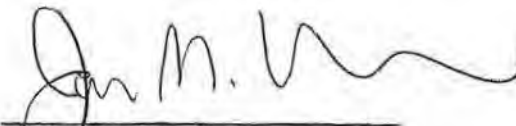
Manfred Doess
General Counsel

CERTIFICATE OF COUNSEL

I am counsel for Volkswagen AG (the “Defendant”) in the matter covered by the plea agreement between the Defendant and the United States of America, by and through the Department of Justice, Criminal Division, Fraud Section, the United States Attorney’s Office for the Eastern District of Michigan, and the Department of Justice, Environment and Natural Resources Division, Environmental Crimes Section (the “Agreement”). In connection with such representation, I have examined relevant documents and have discussed the terms of the Agreement with the Management Board and the Supervisory Board. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Defendant has been duly authorized to enter into the Agreement on behalf of the Defendant and that the Agreement has been duly and validly authorized, executed, and delivered on behalf of the Defendant and is a valid and binding obligation of the Defendant. Further, I have carefully reviewed the terms of the Agreement with the Management Board and the Supervisory Board and the officers of the Defendant. I have fully advised them of the rights of the Defendant, of possible defenses, of the Sentencing Guidelines’ provisions and of the consequences of entering into the Agreement. To my knowledge, the decision of the Defendant to enter into the Agreement, based on the authorization of the Management Board, with the consent of the Supervisory Board, is an informed and voluntary one.

Date: January 11, 2017

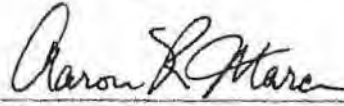
By:



Reid Weingarten
Jason Weinstein
Christopher Niewoehner
Steptoe & Johnson LLP
Counsel to Volkswagen AG

Date: 11 January 2017

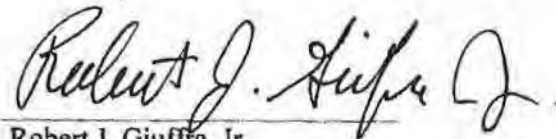
By:



Aaron R. Marcu
Olivia A. Radin
Linda Martin
Freshfields Bruckhaus Deringer
US LLP
Counsel to Volkswagen AG

Date: January 11, 2017

By:



Robert J. Giuffra, Jr.
Sharon L. Nelles
Brent J. McIntosh
Sullivan & Cromwell LLP
Counsel for Volkswagen AG

EXHIBIT 2

STATEMENT OF FACTS

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

Relevant Entities and Individuals

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. NO_x Emissions Standards

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

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

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

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

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

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

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

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

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

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

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

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

VW Diesel Vehicles Sold in the United States

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

VW AG's Criminal Conduct

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

The 2.0 Liter Defeat Device in the United States

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

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

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

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

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

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

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

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

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

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

The 3.0 Liter Defeat Device in the United States

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

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

Certification of VW Diesel Vehicles in the United States

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

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

Importation of VW Diesel Vehicles in the United States

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

Marketing of "Clean Diesel" Vehicles in the United States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Obstruction of Justice

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

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

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

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

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

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

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

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

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

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

EXHIBIT 3

INDEPENDENT COMPLIANCE MONITOR

The duties and authority of the Independent Compliance Monitor (the “Monitor”), and the obligations of Volkswagen AG, on behalf of itself and its subsidiaries and affiliates other than Porsche AG and Porsche Cars North America (for purposes of this Exhibit 3, the “Defendant” or “Company”), with respect to the Monitor and the United States Department of Justice, Criminal Division, Fraud Section, the United States Attorney’s Office for the Eastern District of Michigan, and the United States Department of Justice, Environment and Natural Resources Division, Environmental Crimes Section (collectively hereafter, “the Offices”), are as described below. For the avoidance of doubt, the Monitorship described herein does not extend to Porsche AG or Porsche Cars North America.

1. The Company will retain the Monitor for a period of three years (the “Term of the Monitorship”), unless the early termination provision of Paragraph 5(A) of the Plea Agreement (the “Agreement”) is triggered.

Monitor's Mandate

2. The Monitor’s responsibility is to assess, oversee, and monitor the Company’s compliance with the terms of the Agreement, so as to specifically address and reduce the risk of any recurrence of the Company’s misconduct, and to oversee the Company’s obligations under Section V (Injunctive Relief for VW Defendants) of the Third Partial Consent Decree in *In re: Volkswagen “Clean Diesel”*

Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC) (N.D. Cal.). During the Term of the Monitorship, the Monitor will evaluate, in the manner set forth below, the Company's implementation and enforcement of its compliance and ethics program for the purpose of preventing future criminal fraud and environmental violations by the Company and its affiliates, including, but not limited to, violations related to the conduct giving rise to the Third Superseding Information filed in this matter, and will take such reasonable steps as, in his or her view, may be necessary to fulfill the foregoing mandate (the "Mandate"). This Mandate shall include an assessment of the Board of Management's and senior management's commitment to, and effective implementation of, the Company's corporate compliance and ethics program.

Company's Obligations

3. The Company shall cooperate fully with the Monitor, and the Monitor shall have the authority to take such reasonable steps as, in his or her view, may be necessary to be fully informed about the Company's ethics and compliance program in accordance with the principles set forth herein and applicable law, including applicable environmental, data protection, and labor laws and regulations. To that end, the Company shall: facilitate the Monitor's access to the Company's documents and resources; not limit such access, except as provided in Paragraphs 5-6; and provide guidance on applicable local law (such as relevant data protection and

labor laws). The Company shall provide the Monitor with access to all information, documents, records, facilities, and employees, as reasonably requested by the Monitor, that fall within the scope of the Mandate of the Monitor under the Agreement. The Company shall use its best efforts to provide the Monitor with access to the Company's former employees and its third- party vendors, agents, and consultants.

4. Any disclosure by the Company to the Monitor concerning fraudulent conduct shall not relieve the Company of any otherwise applicable obligation to truthfully disclose such matters to the Offices, pursuant to the Agreement.

Withholding Access

5. The parties agree that no attorney-client relationship shall be formed between the Company and the Monitor. In the event that the Company seeks to withhold from the Monitor access to information, documents, records, facilities, or current or former employees of the Company that may be subject to a claim of attorney-client privilege or to the attorney work-product doctrine, or where the Company reasonably believes production would otherwise be inconsistent with applicable law, the Company shall work cooperatively with the Monitor to resolve the matter to the satisfaction of the Monitor consistent with applicable law.

6. If the matter cannot be resolved, at the request of the Monitor, the Company shall promptly provide written notice to the Monitor and the Offices. Such

notice shall include a general description of the nature of the information, documents, records, facilities or current or former employees that are being withheld, as well as the legal basis for withholding access. The Offices may then consider whether to make a further request for access to such information, documents, records, facilities, or employees.

Monitor's Coordination with the Company and Review Methodology

7. In carrying out the Mandate, to the extent appropriate under the circumstances, the Monitor should coordinate with Company personnel, including in-house counsel, compliance personnel, and internal auditors, on an ongoing basis. The Monitor may rely on the product of the Company's processes, such as the results of studies, reviews, sampling and testing methodologies, audits, and analyses conducted by or on behalf of the Company, as well as the Company's internal resources (e.g., legal, compliance, and internal audit), which can assist the Monitor in carrying out the Mandate through increased efficiency and Company-specific expertise, provided that the Monitor has confidence in the quality of those resources.

8. The Monitor's reviews should use a risk-based approach, and thus, the Monitor is not expected to conduct a comprehensive review of all business lines, all business activities, or all markets. In carrying out the Mandate, the Monitor should consider, for instance, risks presented by: (a) organizational structure; (b) training programs or lack thereof; (c) compensation structure; (d) internal auditing

processes; (e) internal investigation procedures; (f) reporting mechanisms; (g) corporate culture; and (h) employee incentives and disincentives.

9. In undertaking the reviews to carry out the Mandate, the Monitor shall formulate conclusions based on, among other things: (a) inspection of relevant documents, including the Company's current anti-fraud and environmental policies and procedures; (b) on-site observation of selected systems and procedures of the Company at sample sites; (c) meetings with, and interviews of, relevant current and, where appropriate, former directors, officers, employees, business partners, agents, and other persons at mutually convenient times and places; and (d) analyses, studies, and testing of the Company's compliance program.

Monitor's Written Work Plans

10. To carry out the Mandate, during the Term of the Monitorship, the Monitor shall conduct an initial review and prepare an initial report, followed by at least two follow-up reviews and reports as described in Paragraphs 16-19 below. With respect to the initial report, after consultation with the Company and the Offices, the Monitor shall prepare the first written work plan within sixty (60) calendar days of being retained, and the Company and the Offices shall provide comments within thirty (30) calendar days after receipt of the written work plan. With respect to each follow-up report, after consultation with the Company and the Offices, the Monitor shall prepare a written work plan at least thirty (30) calendar

days prior to commencing a review, and the Company and the Offices shall provide comments within twenty (20) calendar days after receipt of the written work plan. Any disputes between the Company and the Monitor with respect to any written work plan shall be decided by the Offices in their sole discretion.

11. All written work plans shall identify with reasonable specificity the activities the Monitor plans to undertake in execution of the Mandate, including a written request for documents. The Monitor's work plan for the initial review shall include such steps as are reasonably necessary to conduct an effective initial review in accordance with the Mandate, including by developing an understanding, to the extent the Monitor deems appropriate, of the facts and circumstances surrounding any violations that may have occurred before the date of the Agreement. In developing such understanding the Monitor is to rely to the extent possible on available information and documents provided by the Company. It is not intended that the Monitor will conduct his or her own inquiry into the historical events that gave rise to the Agreement.

Initial Review

12. The initial review shall commence no later than one hundred twenty (120) calendar days from the date of the engagement of the Monitor (unless otherwise agreed by the Company, the Monitor, and the Offices). The Monitor shall issue a written report within one hundred fifty (150) calendar days of commencing

the initial review, setting forth the Monitor's assessment and, if necessary, making recommendations reasonably designed to improve the effectiveness of the Company's program for ensuring compliance with anti-fraud and environmental laws. The Monitor should consult with the Company concerning his or her findings and recommendations on an ongoing basis and should consider the Company's comments and input to the extent the Monitor deems appropriate. The Monitor may also choose to share a draft of his or her reports with the Company prior to finalizing them. The Monitor's reports need not recite or describe comprehensively the Company's history or compliance policies, procedures and practices, but rather may focus on those areas with respect to which the Monitor wishes to make recommendations, if any, for improvement or which the Monitor otherwise concludes merit particular attention. The Monitor shall provide the report to the Management Board of the Company and contemporaneously transmit copies to the Deputy Chief – Securities and Financial Fraud Unit, Fraud Section, Criminal Division, U.S. Department of Justice, at 1400 New York Avenue N.W., Bond Building, Washington, D.C. 20005; Chief, White Collar Crime Unit, United States Attorney's Office, Eastern District of Michigan, 211 W. Fort Street, Suite 2001, Detroit, Michigan 48226; and Deputy Chief, Environmental Crimes Section, U.S. Department of Justice, 601 D Street N.W., Washington D.C. 20530. After consultation with the Company, the Monitor may extend the time period for issuance

of the initial report for a brief period of time with prior written approval of the Offices.

13. Within one hundred fifty (150) calendar days after receiving the Monitor's initial report, the Company shall adopt and implement all recommendations in the report, unless, within sixty (60) calendar days of receiving the report, the Company notifies in writing the Monitor and the Offices of any recommendations that the Company considers unduly burdensome, inconsistent with applicable law or regulation, impractical, excessively expensive, or otherwise inadvisable. With respect to any such recommendation, the Company need not adopt that recommendation within the one hundred fifty (150) calendar days of receiving the report but shall propose in writing to the Monitor and the Offices an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which the Company and the Monitor do not agree, such parties shall attempt in good faith to reach an agreement within forty-five (45) calendar days after the Company serves the written notice.

14. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal, the Company shall promptly consult with the Offices. The Offices may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations under the Agreement. Pending

such determination, the Company shall not be required to implement any contested recommendation(s).

15. With respect to any recommendation that the Monitor determines cannot reasonably be implemented within one hundred fifty (150) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Offices.

Follow-Up Reviews

16. A follow-up review shall commence no later than one hundred and eighty (180) calendar days after the issuance of the initial report (unless otherwise agreed by the Company, the Monitor and the Offices). The Monitor shall issue a written follow-up report within one hundred twenty (120) calendar days of commencing the follow-up review, setting forth the Monitor's assessment and, if necessary, making recommendations in the same fashion as set forth in Paragraph 12 with respect to the initial review. After consultation with the Company, the Monitor may extend the time period for issuance of the follow-up report for a brief period of time with prior written approval of the Offices.

17. Within one hundred twenty (120) calendar days after receiving the Monitor's follow-up report, the Company shall adopt and implement all recommendations in the report, unless, within thirty (30) calendar days after receiving the report, the Company notifies in writing the Monitor and the Offices

concerning any recommendations that the Company considers unduly burdensome, inconsistent with applicable law or regulation, impractical, excessively expensive, or otherwise inadvisable. With respect to any such recommendation, the Company need not adopt that recommendation within the one hundred twenty (120) calendar days of receiving the report but shall propose in writing to the Monitor and the Offices an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which the Company and the Monitor do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) calendar days after the Company serves the written notice.

18. In the event the Company and the Monitor are unable to agree on an acceptable alternative proposal, the Company shall promptly consult with the Offices. The Offices may consider the Monitor's recommendation and the Company's reasons for not adopting the recommendation in determining whether the Company has fully complied with its obligations under the Agreement. Pending such determination, the Company shall not be required to implement any contested recommendation(s). With respect to any recommendation that the Monitor determines cannot reasonably be implemented within one hundred twenty (120) calendar days after receiving the report, the Monitor may extend the time period for implementation with prior written approval of the Offices.

19. The Monitor shall undertake a second follow-up review not later than one hundred fifty (150) calendar days after the issuance of the first follow-up report. The Monitor shall issue a second follow-up report within one hundred and twenty (120) days of commencing the review, and recommendations shall follow the same procedures described in Paragraphs 16-18. No later than sixty (60) days before the end of the Term, the Monitor shall submit to the Offices a final written report (“Certification Report”), setting forth an overview of the Company’s remediation efforts to date, including the implementation status of the Monitor’s recommendations, and an assessment of the sustainability of the Company’s remediation efforts. No later than thirty (30) days before the end of the Term, the Monitor shall certify whether the Company’s compliance program, including its policies and procedures, is reasonably designed and implemented to prevent and detect violations of the anti-fraud and environmental laws.

Monitor’s Discovery of Potential or Actual Misconduct

20. (a) Except as set forth below in sub-paragraphs (b), (c) and (d), should the Monitor discover during the course of his or her engagement that:

- any defeat device has been designed, installed, or implemented in any vehicle of any kind manufactured by the Company, and is in use after the date of this Agreement, whether such design, installation or implementation has been accomplished by the Company alone or in

concert with any other person or entity contracting with or working with the Company; or

- the Company has made any materially false statement to any governmental entity, department, agency, or component within the United States, in connection with the certification, sale, offer for sale, importation or introduction of any vehicle or vehicle type

(collectively, “Potential Misconduct”), the Monitor shall immediately report the Potential Misconduct to the Company’s General Counsel, Chief Compliance Officer, and/or Audit Committee for further action, unless the Potential Misconduct was already so disclosed. The Monitor also may report Potential Misconduct to the Offices at any time, and shall report Potential Misconduct to the Offices when they request the information.

(b) In some instances, the Monitor should immediately report Potential Misconduct directly to the Offices and not to the Company. The presence of any of the following factors militates in favor of reporting Potential Misconduct directly to the Offices and not to the Company, namely, where the Potential Misconduct: (1) poses a risk to public health or safety or the environment; (2) involves senior management of the Company; (3) involves obstruction of justice; or (4) otherwise poses a substantial risk of harm.

(c) If the Monitor believes that any Potential Misconduct actually occurred or may constitute a criminal or regulatory violation of U.S. law (“Actual Misconduct”), the Monitor shall immediately report the Actual Misconduct to the Offices. When the Monitor discovers Actual Misconduct, the Monitor shall disclose the Actual Misconduct solely to the Offices, and, in such cases, disclosure of the Actual Misconduct to the General Counsel, Chief Compliance Officer, and/or the Audit Committee of the Company should occur as the Offices and the Monitor deem appropriate under the circumstances.

(d) The Monitor shall address in his or her reports the appropriateness of the Company’s response to disclosed Potential Misconduct or Actual Misconduct, whether previously disclosed to the Offices or not. Further, if the Company or any entity or person working directly or indirectly for or on behalf of the Company withholds information necessary for the performance of the Monitor’s responsibilities and the Monitor believes that such withholding is without just cause, the Monitor shall also immediately disclose that fact to the Offices and address the Company’s failure to disclose the necessary information in his or her reports.

(e) Neither the Company nor anyone acting on its behalf shall take any action to retaliate against the Monitor for any such disclosures or for any other reason.

Meetings During Pendency of Monitorship

21. The Monitor shall meet with the Offices within thirty (30) calendar days after providing each report to the Offices to discuss the report, to be followed by a meeting between the Offices, the Monitor, and the Company.

22. At least annually, and more frequently if appropriate, representatives from the Company and the Offices will meet together to discuss the Monitorship and any suggestions, comments, or improvements the Company may wish to discuss with or propose to the Offices, including with respect to the scope or costs of the Monitorship.

Contemplated Confidentiality of Monitor's Reports

23. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, or impede pending or potential government investigations and thus undermine the objectives of the Monitorship. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Offices determine in their sole discretion that disclosure would be in furtherance of the Offices' discharge of their duties and responsibilities or is otherwise required by law.

Exhibit B

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VOLKSWAGEN DEALER AGREEMENT

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints Napleton Orlando Imports, LLC, doing business under the fictitious name, Napleton's Volkswagen of Orlando, having its place of business at 1 E. Oak Hill Drive, Suite 100, Westmont, IL 60559, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED



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WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

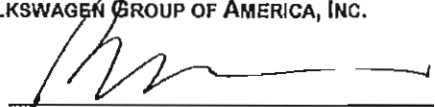
8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of Florida. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through G are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

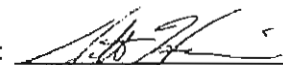
DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:

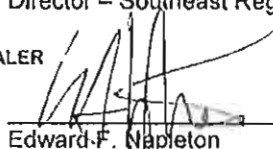

Robert H. Kim
Director – Southeast Region

BY:


Scott Harrison
General Manager – Network Operations

DEALER

BY:


Edward F. Napleton
President

VOLKSWAGEN



STATEMENT OF OWNERSHIP AND MANAGEMENT

EXHIBIT A
TO DEALER AGREEMENT DATED
2/26, 2014.

1. Dealer entity name:
Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando

2. Principal place of business:
1 E. Oak Hill Drive, Suite 100, Westmont, IL 60559

3. Dealer is a ☐ Proprietorship
☐ Partnership
☒ Limited Liability Company
☐ Corporation, incorporated on N/A under the laws
of the State of Illinois.
☐ Other:

4. The following persons are the beneficial and record owners of Dealer:

Name and Address of Each Record and Beneficial Owner of Dealer	Number and Class of Interests Number Class	Percentage of Ownership of Record in Dealer
Napleton Investment Partnership, LP 1 E. Oak Hill Dr. Westmont, IL 60559	100 Class A - Voting	1.0 %
Edward F. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	4653 Class B - Non-Voting	47.0 %
Katherine R. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	4653 Class B - Non-Voting	47.0 %
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	247 Class B - Non-Voting	2.5 %

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James R. Priegel
OS140 N. Mathewson Lane
Geneva, IL 60134

247 Class B - Non-Voting 2.5 %

5. The following persons are Dealer's Officers:

Name and Address	Title
Edward F. Napleton 1 E. Oak Hill Dr. Sanford, FL 32773	President/Treasurer
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	VP/ Secretary

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

Name	Title
James R. Priegel OS140 N. Mathewson Lane Geneva, IL 60134	Director of Automotive Operations

7. Article 16(9) of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and
- (ii) All persons (natural or otherwise) named in Paragraph 1 of the LLC Member's Addendum (Exhibit C to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 1 of the Corporate Shareholder Addendum (Exhibit C to this Agreement); and

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- (iii) All persons (natural or otherwise) named in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement).

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

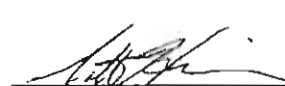
DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:



Robert H Kim
Director – Southeast Region

BY:


Scott Harrison
General Manager – Network Operations

DEALER

BY:


Edward F. Napleton
President



VOLKSWAGEN

DEALER PREMISES ADDENDUM

EXHIBIT B
TO DEALER AGREEMENT DATED
2/26, 2014.

1. Dealer entity name:
Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando.
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
 - a. Sales Facilities:
12700 E. Colonial Drive, Orlando, Florida 32826
 - b. Authorized Automobile Storage Facilities:
12700 E. Colonial Drive, Orlando, Florida 32826
 - c. Service Facilities:
12700 E. Colonial Drive, Orlando, Florida 32826
 - d. Genuine Parts Storage Facilities:
12700 E. Colonial Drive, Orlando, Florida 32826
 - e. Used Car Lot:
12700 E. Colonial Drive, Orlando, Florida 32826

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

DATED: 2/26, 2014.

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: _____

Robert H Kim
Director – Southeast Region

BY: _____

Scott Harrison
General Manager – Network Operations

DEALER

BY: _____

Edward R. Napleton
President


VOLKSWAGEN
LLC MEMBER'S ADDENDUM

EXHIBIT C
TO VOLKSWAGEN DEALER AGREEMENT
DATED 2/26, 2014.

1. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Agreement, Dealer represents as follows:

a. DEALER'S OWNERS

The following persons are the beneficial and record owners of all the outstanding membership interests of Dealer:

<u>Name and Address</u>	<u>Percentage/Type Ownership of Record in Dealer</u>
Napleton Investment Partnership, LP 1 E. Oak Hill Dr. Westmont, IL 60559	1.0 % Class A Interests 100 % of Voting Interests
Edward F. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests Non-Voting
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests Non-Voting
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	2.5 % Class B Interests Non-Voting
James R. Priegel Os140 N. Mathewson Lane Geneva, IL 60134	2.5 % Class B Interests Non-Voting

b. Owners of Napleton Investment Partnership, LP

The following persons are the beneficial and record owners of all the outstanding equity interests of Napleton Investment Partnership, LP:

<u>Name and Address of Each Record and Beneficial Owner of Dealer's Owner</u>	<u>Percentage of Ownership of Record in Dealer's Owner</u>
Napleton Management Company, LLC 1 E. Oak Hill Dr. Westmont, IL 60559	1.0 % (General Partner)

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Edward F. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	31.145 % (Limited Partner)
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	67.855 % (Limited Partner)

c. Members of Napleton Management Company, LLC

The following persons are the beneficial and record owners of all the outstanding membership interests of Napleton Management Company, LLC:

<u>Name and Address of Each Record and Beneficial Owner of Dealer's Owner</u>	<u>Percentage of Ownership of Record in Dealer's Owner</u>
Edward F. Napleton Revocable Self- Declaration Trust u/a/d 10/1/92 1 E. Oak Hill Dr. Westmont, IL 60559	46.0 % Member and Manager
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %
Kristen N. Hrones 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %
Collen M. Napleton 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %
Katherine E. Napleton 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %
Edward W. Napleton 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %
Brian F. Napleton 1 E. Oak Hill Dr. Westmont, IL 60559	9.0 %

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VWoA has entered into this Agreement in reliance upon these representations, and upon the qualifications and continued performance of personal services in the ownership and management of Dealer, by any Shareholder, who is also one of Dealer's Executives. Accordingly, Dealer agrees there will be no change in Dealer's Owners, or any owner of Napleton Investment Partnership, LP or Napleton Investment Management LLC, without VWoA's prior consent. Dealer agrees that VWoA has the right to terminate this Agreement with immediate effect in the event of any such change without prior written consent.

This Exhibit cancels any prior LLC Member or Corporate Shareholder Addendum.

DATED: 2/20, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Kim
Director – Southeast Region

BY: [Signature]
Scott Harrison
General Manager – Network Operations

DEALER

BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

OWNERSHIP BY TRUST ADDENDUM

EXHIBIT D TO DEALER AGREEMENT DATED 2/26, 2014.

1. Dealer entity name:

Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando.

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

a. OWNERSHIP BY TRUSTS

The following trusts (collectively referred herein as the "Trusts") are director or indirect beneficial owners of Dealer:

<u>NAME OF TRUST</u>	<u>Percentage/Type of Ownership of Record in Dealer</u>
Edward F. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests in Dealer
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests in Dealer
Edward F. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92 1 E. Oak Hill Dr. Westmont, IL 60559	46.0% Percentage Interest in Napleton Management Company, LLC, the General Partner of Napleton Investment Partnership, LP which has a 1% Class A Interest in Dealer

b. TRUSTEES OF TRUSTS

The following persons are the trustees of the Trusts (collectively referred herein as the "Trustees"):

<u>NAME OF TRUSTEE</u>	<u>TRUST</u>
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	Edward F. Napleton Descendants Trust
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	Katherine R. Napleton Descendants Trust

VOLKSWAGEN



Edward F. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

Edward F. Napleton Revocable Self-Declaration
Trust u/a/d 10/1/92

VWoA has entered into this Agreement in reliance upon the terms of each of the Trusts (the "Trust Agreements"), including (a) the designation of Bruce C. Etheridge as trustee of each of the Edward F. Napleton Descendants Trust and Katherine R. Napleton Descendants Trust, (b) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Paul Rosenberg as the members of the Business Advisory Committee of the Katherine R. Napleton Descendants Trust (the "Katherine BAC"), (c) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Katherine Napleton as the members of the Business Advisory Committee of the Edward F. Napleton Descendants Trust (the "Edward BAC"), and (d) the designation of Edward F. Napleton as trustee of the Edward F. Napleton Revocable Self-Declaration Trust. Notwithstanding any provision of the Trust Agreements to the contrary, in connection with any interest, direct or indirect, in Dealer held by the Trusts, Dealer and the Trustees expressly agree that they shall in all respects be bound by and comply fully with the terms, conditions and requirements of the Agreement and VWoA's policies. All references to the Dealer's Owners in the Agreement are expressly amended to include the Trusts and Trustees.


Notwithstanding any provision of the Trust Agreements and without limitation of any provision of the Agreement, Dealer expressly agrees that: (i) the Trust Agreements may not be amended, modified or terminated without the prior written consent of VWoA; (ii) the Trustees and members of the Katherine BAC and Edward BAC may not be changed nor may any additional, replacement or successor trustee(s) be named, whether or not appointed pursuant to the Trust Agreements without the prior written consent of VWoA; (iii) no portion of the Trust's ownership interest in Dealer may be transferred, disposed of or distributed, including distribution to any beneficiary under the Trusts, whether or not pursuant to the Trust Agreements terms, without VWoA's prior written consent; and (iv) Dealer and Trustees shall execute and deliver any and all further instruments and assurances and perform any act that VWoA may reasonably request for the purpose of giving full force and effect to the provisions of the Agreement and VWoA policies.

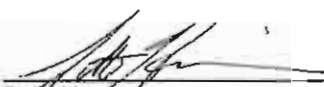
Any changes in ownership or trustees, whether or not pursuant to the Trust Agreement, without the prior written consent of VWoA, will void the Agreement.

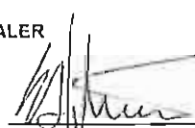
IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.

DATED: 2/24, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 
Robert H Kim
Director – Southeast Region

BY: 
Scott Harrison
General Manager – Network Operations

DEALER
BY: 
Edward F. Napleton
President



VOLKSWAGEN

FACILITIES EXCLUSIVITY ADDENDUM

EXHIBIT E
TO VOLKSWAGEN DEALER AGREEMENT
DATED 8/24, 2014.

This Facilities Exclusivity Addendum (Exhibit F) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated 7/24, 2014 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Orlando Imports, LLC ("Dealer").

1. As an inducement to VWoA to enter into this Addendum, at all times during the term of the Dealer Agreement, Dealer agrees that it shall operate and maintain the New Facility as an exclusive, brand-dedicated Volkswagen WhiteFrame Design-compliant Facility. At the New Facility and on the Dealer's Premises, Dealer shall (1) operate and maintain exclusive brand-dedicated Dealer's Operations, (2) employ Volkswagen brand-dedicated sales and service staff, (3) employ brand-dedicated management, and (4) provide VWoA with Volkswagen-exclusive financial reporting consistent with VWoA's financial reporting practices with its dealers from time to time. Dealer's Operations shall refer to all activities of Dealer relating to the promotion and sale of Volkswagen vehicles and accessories, including, without limitation, the wholesale purchase of Volkswagen vehicles, parts and accessories from VWoA, new vehicle sales, used vehicle sales, service for Volkswagen vehicles, parts and all other associated business activities and operations provided for in the Volkswagen Dealer Agreement.

2. Dealer understands and acknowledges that the provisions, terms, conditions and obligations of this Addendum constitute reasonable facility requirements, and are fully justified by all relevant and reasonable business considerations, including, without limitation, the size of the local market, competitive-brand dealer representation, and the facility needs necessary to adequately provide sales and service operations to Volkswagen customers. Based upon Dealer's business judgment and acumen, Dealer further acknowledges that the provisions, terms, conditions and obligations of this Addendum will not cause a substantial or unreasonable financial hardship.

3. Failure by Dealer to maintain compliance with the provisions, terms, conditions and obligations set forth in this Addendum shall constitute "good cause" for termination of the Dealer Agreement for purposes of Florida Code Ann. § 320.3205. Dealer understands and acknowledges that all provisions, terms, conditions and obligations of this Dealer Agreement, including, without limitation, the provisions, terms, conditions and obligations of this Addendum are reasonable, lawful and material obligations of this Dealer Agreement.



VOLKSWAGEN

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Klm
Director – Southeast Region

BY: [Signature]
Scott Harrison
General Manager – Network Operations

DEALER
BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

DEALER PERFORMANCE ADDENDUM

EXHIBIT F
TO VOLKSWAGEN DEALER AGREEMENT
DATED 2/26, 2014.

This Dealer Performance Addendum (Exhibit F) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated 2/26, 2014 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Orlando Imports, LLC, d/b/a Napleton's Volkswagen of Orlando, ("Dealer").

Dealer covenants, promises and agrees to provide for, comply with and maintain the following critical and material conditions:

A. **Sales Performance.** For the eighteen (18) months following the effective date of this Agreement, on a monthly basis, Dealer shall cause its Volkswagen dealership to achieve and maintain a minimum sales performance level of Region average sales effectiveness or a sales performance level expressed as a Dealer Sales Index ("DSI") level of zero (0), on a rolling twelve-month period basis (the "Required Sales Performance"). DSI shall be tracked by a report substantially similar to the attached Exhibit F-1 ("DSI Report"), which shall track Dealer's Volkswagen new vehicle sales performance on a rolling twelve-month basis. The DSI Reports for Dealer shall be made available to Dealer's management on a monthly basis.

B. **Customer Satisfaction Performance.** For the eighteen (18) months following the effective date of this Agreement, on a year-to-date basis, Dealer shall cause its Volkswagen dealership to achieve and maintain a minimum Customer Experience Index ("CEI") score of Region average performance or higher, in both Sales CEI and Service CEI ("Required Service Performance"). Sales CEI and Service CEI shall be measured according to the reporting metrics listed on a monthly CEI Report (or its then current equivalent report), which can be located on Volkswagen Hub, an example of which is attached as Exhibit F-2 ("CEI Report"), which shall track each Dealer Sales CEI and Service CEI performance. The CEI Reports for the Dealer shall be made available to Dealer's Management on a monthly basis.

C. Failure by Dealer to maintain compliance with the provisions, terms, conditions and obligations set forth in this Addendum shall constitute "good cause" for termination of the Dealer Agreement for purposes of Florida Code Ann. § 320.3205. Dealer understands and acknowledges that all provisions, terms, conditions and obligations of this Dealer Agreement, including, without limitation, the provisions, terms, conditions and obligations of this Addendum are reasonable, lawful and material obligations of this Dealer Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.



VOLKSWAGEN

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: _____

Robert H Kim
Director – Southeast Region

BY: _____

Scott Harrison
General Manager – Network Operations

DEALER

BY: _____

Edward F. Napleton
President

VOLKSWAGEN

EXHIBIT F-1



Volkswagen 360 - Dec 2013

Aristocrat Volkswagen East, Inc. (405018)

Location	Region	Area	FY	VIC	Facility Type	Exclusivity
Orlando, FL	SER	2L	712	2,865	W	Y

Competitive Lines Carried Here

		Price	Current						
		Dealer	Area 2L Average	Region SER Average	National Average	Area 2L Rank	Region SER Rank	National Rank	
Sales									
New Vehicle Retail Sales	Dec-13	268	410	539	600	643	9 of 12	60 of 134	335 of 643
New Sales YOY	Dec-13		68%	5%	-7%	6%	2 of 12	9 of 134	36 of 643
Dealer Sales Index - R12	Oct-13		9.0	+10.7	+12.7	+13.6	8 of 12	83 of 134	418 of 643
CPO Sales	Dec-13	66	113	189	159	146	7 of 12	72 of 134	312 of 643
CPO Sales YOY	Dec-13		74%	2%	5%	5%	2 of 12	18 of 134	69 of 643
CPO to New Ratio	Dec-13	0.25:1	0.28:1	0.32:1	0.26:1	0.27:1	7 of 12	52 of 134	275 of 643

Service & Parts								
Parts Sales per VIC	Dec-13		217.9	321.0	322.2	321.0	10 of 12	118 of 134
Retail Parts Purchases % C/I	Dec-13	268%	10%	102%	100%	100%	12 of 12	130 of 134
Parts Purch. Parts/Warehouse	Dec-13	1258,858	1516,559	5589,966	\$1,067,717	\$594,054	9 of 12	59 of 134
Parts Purch. Parts/Warehouse YOY	Dec-13		113%	19%	13%	16%	2 of 12	11 of 134
Accessories (MDI/DIA) FYR	Dec-13	1510	2379	1364	1561	1249	8 of 12	62 of 134
Customer Pay per FO	Dec-13	1202	1180	1172	1150	1192	7 of 12	81 of 134
Customer Pay RO Count	Dec-13	779	3,042	3,013	3,628	3,339	6 of 12	70 of 134

Customer Experience								
CEI	Dec-13		96.4	95.2	95.4	95.4	3 of 12	22 of 134
Sales CEI	Dec-13		97.8	95.8	96.0	96.8	2 of 12	17 of 134
Service CEI	Dec-13		95.3	94.6	94.1	94.0	4 of 12	30 of 134

Loyalty & Retention								
FRT	Dec-13	91.7	85.6	78.8	78.8	78.6	6 of 12	33 of 134
Dealership Loyalty %	Sep-13	10.0%	10.0%	37.9%	33.1%	35.0%	2 of 12	5 of 134
Service Retention	Dec-13	12.0%	14.1%	46.2%	48.5%	45.6%	9 of 12	104 of 134
Days Wait Service	Dec-13	0.2	0.2	0.3	0.3	0.4	2 of 12	8 of 134
Defect Count to Total	Dec-13	100%	95%	90%	91%	92%	4 of 12	45 of 134

Financials								
Working Capital to Sales Ratio (C/I)	Dec-13	Y	Y					
Net Profit EBIT	Dec-13	1262,344	1,011,798	\$1,389,016	\$1,246,719	\$827,703	8 of 12	50 of 134
Return to Sales	Dec-13	2.47%	1.10%	2.55%	2.25%	1.73%	8 of 12	75 of 134

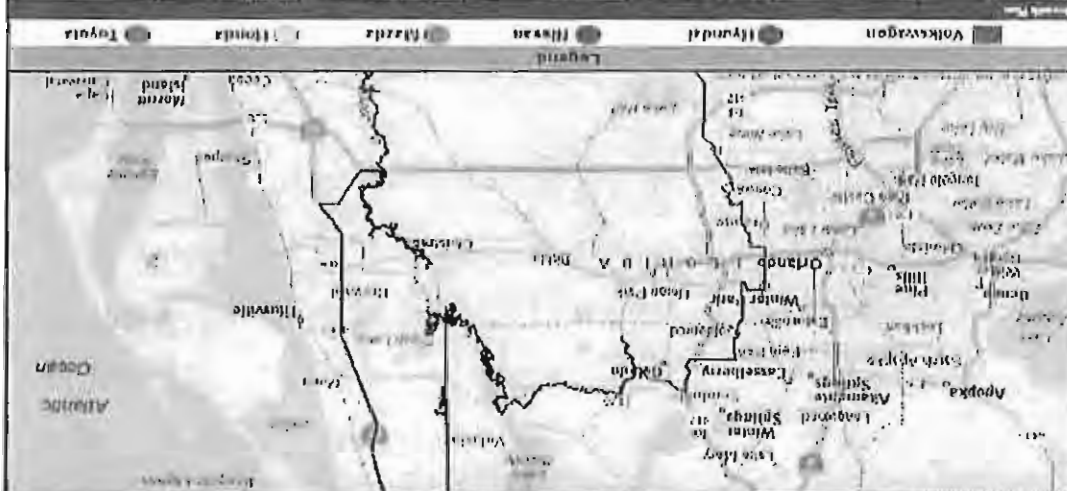
This report is for information purposes, and is provided only as a tool to allow Dealers to evaluate and improve their individual business performance. This report is not a evaluation of a Dealer's performance under the terms and provisions of the Volkswagen Dealer Agreement. As such, the scores presented in this report are not indicative of compliance or default under those terms and provisions of the Volkswagen Dealer Agreement.

All rankings based on the data available at time of processing.

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2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977	1976	1975	1974	1973	1972	1971	1970	1969	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945	1944	1943	1942	1941	1940	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922	1921	1920	1919	1918	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906	1905	1904	1903	1902	1901	1900	1899	1898	1897	1896	1895	1894	1893	1892	1891	1890	1889	1888	1887	1886	1885	1884	1883	1882	1881	1880	1879	1878	1877	1876	1875	1874	1873	1872	1871	1870	1869	1868	1867	1866	1865	1864	1863	1862	1861	1860	1859	1858	1857	1856	1855	1854	1853	1852	1851	1850	1849	1848	1847	1846	1845	1844	1843	1842	1841	1840	1839	1838	1837	1836	1835	1834	1833	1832	1831	1830	1829	1828	1827	1826	1825	1824	1823	1822	1821	1820	1819	1818	1817	1816	1815	1814	1813	1812	1811	1810	1809	1808	1807	1806	1805	1804	1803	1802	1801	1800	1799	1798	1797	1796	1795	1794	1793	1792	1791	1790	1789	1788	1787	1786	1785	1784	1783	1782	1781	1780	1779	1778	1777	1776	1775	1774	1773	1772	1771	1770	1769	1768	1767	1766	1765	1764	1763	1762	1761	1760	1759	1758	1757	1756	1755	1754	1753	1752	1751	1750	1749	1748	1747	1746	1745	1744	1743	1742	1741	1740	1739	1738	1737	1736	1735	1734	1733	1732	1731	1730	1729	1728	1727	1726	1725	1724	1723	1722	1721	1720	1719	1718	1717	1716	1715	1714	1713	1712	1711	1710	1709	1708	1707	1706	1705	1704	1703	1702	1701	1700	1699	1698	1697	1696	1695	1694	1693	1692	1691	1690	1689	1688	1687	1686	1685	1684	1683	1682	1681	1680	1679	1678	1677	1676	1675	1674	1673	1672	1671	1670	1669	1668	1667	1666	1665	1664	1663	1662	1661	1660	1659	1658	1657	1656	1655	1654	1653	1652	1651	1650	1649	1648	1647	1646	1645	1644	1643	1642	1641	1640	1639	1638	1637	1636	1635	1634	1633	1632	1631	1630	1629	1628	1627	1626	1625	1624	1623	1622	1621	1620	1619	1618	1617	1616	1615	1614	1613	1612	1611	1610	1609	1608	1607	1606	1605	1604	1603	1602	1601	1600	1599	1598	1597	1596	1595	1594	1593	1592	1591	1590	1589	1588	1587	1586	1585	1584	1583	1582	1581	1580	1579	1578	1577	1576	1575	1574	1573	1572	1571	1570	1569	1568	1567	1566	1565	1564	1563	1562	1561	1560	1559	1558	1557	1556	1555	1554	1553	1552	1551	1550	1549	1548	1547	1546	1545	1544	1543	1542	1541	1540	1539	1538	1537	1536	1535	1534	1533	1532	1531	1530	1529	1528	1527	1526	1525	1524	1523	1522	1521	1520	1519	1518	1517	1516	1515	1514	1513	1512	1511	1510	1509	1508	1507	1506	1505	1504	1503	1502	1501	1500	1499	1498	1497	1496	1495	1494	1493	1492	1491	1490	1489	1488	1487	1486	1485	1484	1483	1482	1481	1480	1479	1478	1477	1476	1475	1474	1473	1472	1471	1470	1469	1468	1467	1466	1465	1464	1463	1462	1461	1460	1459	1458	1457	1456	1455	1454	1453	1452	1451	1450	1449	1448	1447	1446	1445	1444	1443	1442	1441	1440	1439	1438	1437	1436	1435	1434	1433	1432	1431	1430	1429	1428	1427	1426	1425	1424	1423	1422	1421	1420	1419	1418	1417	1416	1415	1414	1413	1412	1411	1410	1409	1408	1407	1406	1405	1404	1403	1402	1401	1400	1399	1398	1397	1396	1395	1394	1393	1392	1391	1390	1389	1388	1387	1386	1385	1384	1383	1382	1381	1380	1379	1378	1377	1376	1375	1374	1373	1372	1371	1370	1369	1368	1367	1366	1365	1364	1363	1362	1361	1360	1359	1358	1357	1356	1355	1354	1353	1352	1351	1350	1349	1348	1347	1346	1345	1344	1343	1342	1341	1340	1339	1338	1337	1336	1335	1334	1333	1332	1331	1330	1329	1328	1327	1326	1325	1324	1323	1322	1321	1320	1319	1318	1317	1316	1315	1314	1313	1312	1311	1310	1309	1308	1307	1306	1305	1304	1303	1302	1301	1300	1299	1298	1297	1296	1295	1294	1293	1292	1291	1290	1289	1288	1287	1286	1285	1284	1283	1282	1281	1280	1279	1278	1277	1276	1275	1274	1273	1272	1271	1270	1269	1268	1267	1266	1265	1264	1263	1262	1261	1260	1259	1258	1257	1256	1255	1254	1253	1252	1251	1250	1249	1248	1247	1246	1245	1244	1243	1242	1241	1240	1239	1238	1237	1236	1235	1234	1233	1232	1231	1230	1229	1228	1227	1226	1225	1224	1223	1222	1221	1220	1219	1218	1217	1216	1215	1214	1213	1212	1211	1210	1209	1208	1207	1206	1205	1204	1203	1202	1201	1200	1199	1198	1197	1196	1195	1194	1193	1192	1191	1190	1189	1188	1187	1186	1185	1184	1183	1182	1181	1180	1179	1178	1177	1176	1175	1174	1173	1172	1171	1170	1169	1168	1167	1166	1165	1164	1163	1162	1161	1160	1159	1158	1157	1156	1155	1154	1153	1152	1151	1150	1149	1148	1147	1146	1145	1144	1143	1142	1141	1140	1139	1138	1137	1136	1135	1134	1133	1132	1131	1130	1129	1128	1127	1126	1125	1124	1123	1122	1121	1120	1119	1118	1117	1116	1115	1114	1113	1112	1111	1110	1109	1108	1107	1106	1105	1104	1103	1102	1101	1100	1099	1098	1097	1096	1095	1094	1093	1092	1091	1090	1089	1088	1087	1086	1085	1084	1083	1082	1081	1080	1079	1078	1077	1076	1075	1074	1073	1072	1071	1070	1069	1068	1067	1066	1065	1064	1063	1062	1061	1060	1059	1058	1057	1056	1055	1054	1053	1052	1051	1050	1049	1048	1047	1046	1045	1044	1043	1042	1041	1040	1039	1038	1037	1036	1035	1034	1033	1032	1031	1030	1029	1028	1027	1026	1025	1024	1023	1022	1021	1020	1019	1018	1017	1016	1015	1014	1013	1012	1011	1010	1009	1008	1007	1006	1005	1004	1003	1002	1001	1000	999	998	997	996	995	994	993	992	991	990	989	988	987	986	985	984	983	982	981	980	979	978	977	976	975	974	973	972	971	970	969	968	967	966	965	964	963	962	961	960	959	958	957	956	955	954	953	952	951	950	949	948	947	946	945	944	943	942	941	940	939	938	937	936	935	934	933	932	931	930	929	928	927	926	925	924	923	922	921	920	919	918	917	916	915	914	913	912	911	910	909	908	907	906	905	904	903	902	901	900	899	898	897	896	895	894	893	892	891	890	889	888	887	886	885	884	883	882	881	880	879	878	877	876	875	874	873	872	871	870	869	868	867	866	865	864	863	862	861	860	859	858	857	856	855	854	853	852	851	850	849	848	847	846	845	844	843	842	841	840	839	838	837	836	835	834	833	832	831	830	829	828	827	826	825	824	823	822	821	820	819	818	817	816	815	814	813	812	811	810	809	808	807	806	805	804	803	802	801	800	799	798	797	796	795	794	793	792	791	790	789	788	787	786	785	784	783	782	781	780	779	778	777	776	775	774	773	772	771	770	769	768	767	766	765	764	763	762	761	760	759	758	757	756	755	754	753	752	751	750	749	748	747	746	745	744	743	742	741	740	739	738	737	736	735	734	733	732	731	730	729	728	727	726	725	724	723	722	721	720	719	718	717	716	715	714	713	712	711	710	709	708	707	706	705	704	703	702	701	700	699	698	697	696	695	694	693	692	691	690	689	688	687	686	685	684	683	682	681	680	679	678	677	676	675	674	673	672	671	670	669	668	667	666	665	664	663	662	661	660	659	658	657	656	655	654	653	652	651	650	649	648	647	646	645	644	643	642	641	640	639	638	637	636	635	634	633	632	631	630	629	628	627	626	625	624	623	622	621	620	619	618	617	616	615	614	613	612	611	610	609	608	607	606	605	604	603	602	601	600
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2019	-	20.2%	21.2%
2018	-	16.5%	16.5%
2017	-	5.1%	6.6%
2016	-	10.2%	11.1%
2015	-	8.1%	8.1%
2014	-	6.8%	7.4%
2013	-	17.6%	20.0%
2012	-	6.5%	7.7%
2011	-	2.3%	2.3%
2010	-	2.2%	2.2%
2009	-	3.1%	3.1%
2008	-	3.1%	3.1%
2007	-	3.1%	3.1%
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2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984	1983	1982	1981	1980	1979	1978	1977	1976	1975	1974	1973	1972	1971	1970	1969	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958	1957	1956	1955	1954	1953	1952	1951	1950	1949	1948	1947	1946	1945	1944	1943	1942	1941	1940	1939	1938	1937	1936	1935	1934	1933	1932	1931	1930	1929	1928	1927	1926	1925	1924	1923	1922	1921	1920	1919	1918	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906	1905	1904	1903	1902	1901	1900	1899	1898	1897	1896	1895	1894	1893	1892	1891	1890	1889	1888	1887	1886	1885	1884	1883	1882	1881	1880	1879	1878	1877	1876	1875	1874	1873	1872	1871	1870	1869	1868	1867	1866	1865	1864	1863	1862	1861	1860	1859	1858	1857	1856	1855	1854	1853	1852	1851	1850	1849	1848	1847	1846	1845	1844	1843	1842	1841	1840	1839	1838	1837	1836	1835	1834	1833	1832	1831	1830	1829	1828	1827	1826	1825	1824	1823	1822	1821	1820	1819	1818	1817	1816	1815	1814	1813	1812	1811	1810	1809	1808	1807	1806	1805	1804	1803	1802	1801	1800	1799	1798	1797	1796	1795	1794	1793	1792	1791	1790	1789	1788	1787	1786	1785	1784	1783	1782	1781	1780	1779	1778	1777	1776	1775	1774	1773	1772	1771	1770	1769	1768	1767	1766	1765	1764	1763	1762	1761	1760	1759	1758	1757	1756	1755	1754	1753	1752	1751	1750	1749	1748	1747	1746	1745	1744	1743	1742	1741	1740	1739	1738	1737	1736	1735	1734	1733	1732	1731	1730	1729	1728	1727	1726	1725	1724	1723	1722	1721	1720	1719	1718	1717	1716	1715	1714	1713	1712	1711	1710	1709	1708	1707	1706	1705	1704	1703	1702	1701	1700	1699	1698	1697	1696	1695	1694	1693	1692	1691	1690	1689	1688	1687	1686	1685	1684	1683	1682	1681	1680	1679	1678	1677	1676	1675	1674	1673	1672	1671	1670	1669	1668	1667	1666	1665	1664	1663	1662	1661	1660	1659	1658	1657	1656	1655	1654	1653	1652	1651	1650	1649	1648	1647	1646	1645	1644	1643	1642	1641	1640	1639	1638	1637	1636	1635	1634	1633	1632	1631	1630	1629	1628	1627	1626	1625	1624	1623	1622	1621	1620	1619	1618	1617	1616	1615	1614	1613	1612	1611	1610	1609	1608	1607	1606	1605	1604	1603	1602	1601	1600	1599	1598	1597	1596	1595	1594	1593	1592	1591	1590	1589	1588	1587	1586	1585	1584	1583	1582	1581	1580	1579	1578	1577	1576	1575	1574	1573	1572	1571	1570	1569	1568	1567	1566	1565	1564	1563	1562	1561	1560	1559	1558	1557	1556	1555	1554	1553	1552	1551	1550	1549	1548	1547	1546	1545	1544	1543	1542	1541	1540	1539	1538	1537	1536	1535	1534	1533	1532	1531	1530	1529	1528	1527	1526	1525	1524	1523	1522	1521	1520	1519	1518	1517	1516	1515	1514	1513	1512	1511	1510	1509	1508	1507	1506	1505	1504	1503	1502	1501	1500	1499	1498	1497	1496	1495	1494	1493	1492	1491	1490	1489	1488	1487	1486	1485	1484	1483	1482	1481	1480	1479	1478	1477	1476	1475	1474	1473	1472	1471	1470	1469	1468	1467	1466	1465	1464	1463	1462	1461	1460	1459	1458	1457	1456	1455	1454	1453	1452	1451	1450	1449	1448	1447	1446	1445	1444	1443	1442	1441	1440	1439	1438	1437	1436	1435	1434	1433	1432	1431	1430	1429	1428	1427	1426	1425	1424	1423	1422	1421	1420	1419	1418	1417	1416	1415	1414	1413	1412	1411	1410	1409	1408	1407	1406	1405	1404	1403	1402	1401	1400	1399	1398	1397	1396	1395	1394	1393	1392	1391	1390	1389	1388	1387	1386	1385	1384	1383	1382	1381	1380	1379	1378	1377	1376	1375	1374	1373	1372	1371	1370	1369	1368	1367	1366	1365	1364	1363	1362	1361	1360	1359	1358	1357	1356	1355	1354	1353	1352	1351	1350	1349	1348	1347	1346	1345	1344	1343	1342	1341	1340	1339	1338	1337	1336	1335	1334	1333	1332	1331	1330	1329	1328	1327	1326	1325	1324	1323	1322	1321	1320	1319	1318	1317	1316	1315	1314	1313	1312	1311	1310	1309	1308	1307	1306	1305	1304	1303	1302	1301	1300	1299	1298	1297	1296	1295	1294	1293	1292	1291	1290	1289	1288	1287	1286	1285	1284	1283	1282	1281	1280	1279	1278	1277	1276	1275	1274	1273	1272	1271	1270	1269	1268	1267	1266	1265	1264	1263	1262	1261	1260	1259	1258	1257	1256	1255	1254	1253	1252	1251	1250	1249	1248	1247	1246	1245	1244	1243	1242	1241	1240	1239	1238	1237	1236	1235	1234	1233	1232	1231	1230	1229	1228	1227	1226	1225	1224	1223	1222	1221	1220	1219	1218	1217	1216	1215	1214	1213	1212	1211	1210	1209	1208	1207	1206	1205	1204	1203	1202	1201	1200	1199	1198	1197	1196	1195	1194	1193	1192	1191	1190	1189	1188	1187	1186	1185	1184	1183	1182	1181	1180	1179	1178	1177	1176	1175	1174	1173	1172	1171	1170	1169	1168	1167	1166	1165	1164	1163	1162	1161	1160	1159	1158	1157	1156	1155	1154	1153	1152	1151	1150	1149	1148	1147	1146	1145	1144	1143	1142	1141	1140	1139	1138	1137	1136	1135	1134	1133	1132	1131	1130	1129	1128	1127	1126	1125	1124	1123	1122	1121	1120	1119	1118	1117	1116	1115	1114	1113	1112	1111	1110	1109	1108	1107	1106	1105	1104	1103	1102	1101	1100	1099	1098	1097	1096	1095	1094	1093	1092	1091	1090	1089	1088	1087	1086	1085	1084	1083	1082	1081	1080	1079	1078	1077	1076	1075	1074	1073	1072	1071	1070	1069	1068	1067	1066	1065	1064	1063	1062	1061	1060	1059	1058	1057	1056	1055	1054	1053	1052	1051	1050	1049	1048	1047	1046	1045	1044	1043	1042	1041	1040	1039	1038	1037	1036	1035	1034	1033	1032	1031	1030	1029	1028	1027	1026	1025	1024	1023	1022	1021	1020	1019	1018	1017	1016	1015	1014	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Project Performance	Project Name	Project Manager	Project Status	Project Start Date	Project End Date	Project Budget	Project Actual Cost	Project Variance	Project ROI
100%	Project A	John Doe	Completed	1/1/2012	12/31/2012	\$100,000	\$95,000	\$5,000	5%
80%	Project B	Jane Smith	In Progress	2/1/2012	11/30/2012	\$200,000	\$160,000	\$40,000	20%
60%	Project C	Mike Johnson	On Hold	3/1/2012	10/31/2012	\$150,000	\$90,000	\$60,000	40%
40%	Project D	Sarah Brown	Not Started	4/1/2012	9/30/2012	\$120,000	\$48,000	\$72,000	60%
20%	Project E	David White	Cancelled	5/1/2012	8/31/2012	\$80,000	\$16,000	\$64,000	80%

Aristocrat Volkswagen East, Inc.



VOLKSWAGEN



EXHIBIT F-2

Q1a How long did it take for you to receive a personalized response to an internet or email inquiry made to THIS dealership?

Q1b Your satisfaction with the dealership's facility, including comfort, cleanliness, and amenities offered

Q1c Your satisfaction with the selection of different vehicles available for you to view and purchase.

Q2a Understanding of your needs and guidance to the right Volkswagen

Q2b The level of honesty and integrity displayed throughout the purchase process

Q2c The knowledge demonstrated and quality of information provided.

Q2d Your satisfaction with the quality of the test drive offered.

Q2e Were you contacted to ensure you were completely satisfied with your sales experience?

Q2f Consideration of your time and responsiveness to your requests.

Q3a Your satisfaction with the process of coming to an agreement on pricing

Q3b Please provide the approximate amount of time you had to wait between agreeing on a price and meeting with someone to discuss the paperwork

Q3b Your satisfaction with the explanation of the terms of the sale.

Q3c The level of honesty and integrity displayed by the person handling the paperwork

Q3d Consideration of your time by the person handling paperwork

Q4a Your satisfaction with the cleanliness of the vehicle inside and out

Q4b Was the vehicle free of dents, scratches and mechanical issues?

Q4c Your satisfaction with the explanation of features and controls of your vehicle.

Q4d Did the dealership either present or, if desired, show you how to set your preferences for electronic items such as the radio and if applicable Bluetooth and navigation?

Q4e Were you offered to schedule your first service appointment?

Q4f Consideration of your time during the vehicle delivery.

Q4g Is your vehicle equipped with Car-Net?

Q4h If yes, were the Car-Net features explained to you?

Q4j Did the dealership press the buttons to begin the trial environment?

Q5a How likely is it that you would recommend our dealership to a close friend or colleague?

Q6 Thanking about your experience when buying your new car, how satisfied are you overall with our dealership?



VOLKSWAGEN


MINIMUM FINANCIAL REQUIREMENTS ADDENDUM

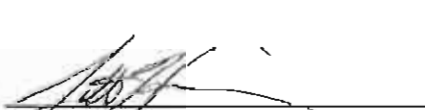
**EXHIBIT G
TO VOLKSWAGEN DEALER AGREEMENT
DATED 2/20, 2014.**


1. Dealer agrees that it is required to comply with various financial requirements under the terms of the Volkswagen Dealer Agreement, including Section 4 thereof.
2. Dealer acknowledges that, based upon Dealer's representations to VWoA (including, but not limited to, the projections and information contained in the Sales and Profit Forecast and *pro forma* Balance Sheet submitted by Dealer to VWoA), and notwithstanding the requirements of the Volkswagen Dealer Agreement, Standard Provisions, Operating Standards and policies (including Policy 19), \$7,200,000 of goodwill ("blue sky") was excluded from the Dealer's assets in connection with the calculation of Dealer's Required Investment and Capitalization.
3. Except as provided in paragraph 2 above, Dealer's financial statements (and all calculations of any financial requirements under the Dealer Agreement and the Operating Standards) shall be prepared in accordance with generally accepted accounting principles and no goodwill otherwise attributable to Dealer and/or the Dealership shall be excluded from such financial statements or the calculation of any other financial requirements.
4. Dealer acknowledges that throughout the term of this Agreement, (a) VWoA reserves the right to change the treatment of any goodwill excluded from Dealer's balance sheet in light of operating conditions and Dealer's financial condition and (b) if any goodwill that was excluded from the calculation of Dealer's Required Investment and Capitalization pursuant to paragraph 2 above, is subsequently included on Dealer's balance sheet, VWoA may require that such goodwill be included in the calculation of Dealer's Required Investment and Capitalization.

Dated: 2/20, 2014

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 
Robert H Kim
Director – Southeast Region

BY: 
Scott Harrison
General Manager – Network Operations

DEALER
BY: 
Edward F. Napleton
President

VOLKSWAGEN



HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

AGREEMENT (the "Agreement") by and among Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Orlando Imports, LLC d/b/a Napleton's Volkswagen of Orlando, ("Dealer").

WHEREAS, at the request of Dealer and Member(s), VWoA has agreed to enter into a Volkswagen Dealer Agreement (the "Dealer Agreement") with Dealer;

WHEREAS Dealer and Member(s) fully recognize the financial risks they are taking in establishing an automobile dealership and Dealer and Member(s) understand that there is no assurance that such dealership will be successful or profitable; and

WHEREAS with the knowledge that VWoA is expressly reserving all its rights under the provisions of the Dealer Agreement with respect to the operations of Dealer, Dealer and Member(s) have requested that VWoA issue the Dealer Agreement to Dealer.

NOW, THEREFORE, to induce VWoA to enter into a Dealer Agreement with Dealer and for other valuable consideration, Dealer and Member(s), jointly and severally, hereby agree as follows:

1. Dealer and Member(s), jointly and severally, shall save harmless and indemnify VWoA, its agents, employees, officers, directors, parents, subsidiaries, successors and assigns (hereinafter collectively referred to as "VWoA and its Employees"), from any and all losses, damages, claims, actions, costs, expenses or judgments, of any kind of nature, regardless of source or cause, arising out of or resulting from any losses incurred in the operations of Dealer, excepting only losses or damages caused directly by a violation of applicable law by VWoA, or breach by VWoA of its contractual responsibilities provided in the Standard Provisions of the Volkswagen Dealer Agreement.
2. Dealer and Member(s), jointly and severally, hereby covenant and agree not to sue VWoA and its Employees or any of them with respect to any matter, cause or thing of any nature or description arising out of or resulting from the operations of Dealer, if the allegations of said suit or action relate in any manner to losses sustained by Dealer or Member(s) because of the operations of Dealer, excepting only matters involving debts and credits between VWoA and Dealer (such as warranty claims) matters involving losses caused directly by a violation of applicable law by VWoA; and matters involving losses caused directly by a breach by VWoA of its contractual responsibilities as provided in the Standard Provisions of the Volkswagen Dealer Agreement.
3. In the event that at any time hereafter Dealer or Member(s) file any action or administration proceeding against VWoA and its Employees or any of them demanding relief for any alleged losses or damages hereafter sustained by Dealer or Member(s) arising out of or resulting from the operations of Dealer, and excepting only the matters set forth in Paragraphs 1, 2 and 5 of this Agreement, then and in that event this Agreement shall be complete defense to any such action or administrative proceeding; (a) Dealer and Member(s) jointly and severally, shall, upon request by VWoA, immediately pay VWoA the amount of any money judgment entered against VWoA and its Employees or any of them,



VOLKSWAGEN


together with all court costs imposed and reasonable attorneys' fees expended by VWoA in the defense of such action or administrative proceeding; and (b) neither Dealer nor Member(s) shall attack the legal validity or the sufficiency of this Agreement or any provision hereof in any manner or in any court, the parties hereto hereby agreeing and intending that this Agreement shall be valid and binding on each of them and their heirs, executors, administrators, successors and assigns in all respects.

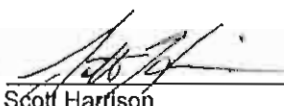
4. The failure of Member(s) to sign this Agreement or the release here from of Member(s) by VWoA shall not release those other parties who have executed this Agreement from their obligation and duties set forth herein.
5. This Agreement shall not be construed to release any claims which any party may have against VWoA or any other party with respect to any product liability matters.
6. This Agreement shall be construed under the laws of the State of Florida. In the event any provision hereof is held to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions, which shall remain in full force and effect.
7. This Agreement shall not be integrated into the Volkswagen Dealer Agreement, and shall survive the integration provision in Article 17(4) of the Volkswagen Dealer Agreement Standard Provisions.

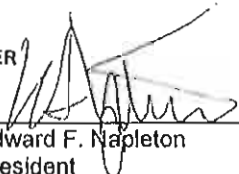
In witness whereof, the parties have executed this Agreement.

DATED: 2/20, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 
Robert H Kim
Director – Southeast Region

BY: 
Scott Harrison
General Manager – Network Operations

DEALER
BY: 
Edward F. Napleton
President

VOLKSWAGEN



MEMBER(S)

Napleton Investment Partnership LP

By: [Signature]
Napleton Management Company,
its general partner

By: [Signature]
Bruce C. Etheridge, Trustee
Edward F. Napleton Descendants Trust

By: [Signature]
Bruce C. Etheridge, Trustee
Katherine R. Napleton Descendants Trust

By: [Signature]
Bruce C. Etheridge

By: [Signature]
James R. Prieger

VOLKSWAGEN



GUARANTY

Network Development Department
Volkswagen of America, Inc.
an operating unit of Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

To Whom It May Concern:

In consideration of Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") granting credit to Napleton Orlando Imports, LLC, d/b/a Napleton's Volkswagen of Orlando, an Illinois limited liability company ("Dealer"), each of the undersigned (each, a "Guarantor") hereby guaranties to VWoA, on a joint and several basis, the payment of all indebtedness of Dealer to VWoA now in existence or hereafter arising out of the Volkswagen Dealer Agreement between Dealer and VWoA.

This is an absolute and continuing guaranty, intended to cover all indebtedness and any number of service and sales transactions between VWoA and Dealer, and all indebtedness arising as a result thereof, and shall continue in force notwithstanding any change or changes in the form of the Dealer Agreement, any increase in said indebtedness, any further extension or extensions of credit granted by VWoA or any acceptance, sale, exchange or release of any security that may be given to VWoA by Dealer or the Guarantor.

In the event Dealer shall fail to pay all or any part of indebtedness when due, whether by acceleration or otherwise, the Guarantor will pay to VWoA the amount due and unpaid by Dealer, in like manner as if such amount constituted the direct and primary obligation of the Guarantor. VWoA shall not be required, prior to any demand on or payment by the Guarantor, to make any demand upon or pursue or exhaust any of VWoA's rights or remedies with respect to any part of any security given to VWoA by Dealer or the Guarantor.

VWoA is authorized, without notice to the Guarantor, to make sales in any amount, to make any change or changes in the form of the Dealer Agreement and in the form of such indebtedness; to grant any extensions of time and changes in the terms of payment of such indebtedness; to give Dealer at any time and in any form, any renewals or extensions of credit; to accept security for such indebtedness, credit or extensions thereof; and to sell, lease or exchange any security that may be given. The Guarantor acknowledges that whether such indebtedness, credits or extensions thereof are now or hereafter evidenced by open account or other evidence of debt, this Guaranty shall include a guaranty of such open account or other evidence of debt and of the terms and provisions thereof, and the Guarantor hereby waives any notice, demand, presentment, and notice of dishonor of any such evidence of debt, and also hereby waives notice of the acceptance of this Guaranty.

For so long as this Guaranty is in effect, and in the event of a request from VWoA, Guarantor agrees to provide VWoA a copy of its most recent year-end financial statement.

The obligations of the parties signing this Guaranty shall be joint and several, and the discontinuance, discharge, or release for any reason of all or any part of the obligation of any one or more of the undersigned, or the waiver or condemnation by VWoA of any breach or default of Dealer, or the failure of any other person to sign this Guaranty shall not release or affect the liability of any signer hereof.

VOLKSWAGEN



IN WITNESS WHEREOF, we have hereunto set our hands and seals this 26 day of FEBRUARY, 2014.

DEALER:

A handwritten signature in dark ink, appearing to read 'E. Napleton', written over a horizontal line.

Edward F. Napleton
President/Treasurer

Guarantors:

Napleton Investment Partnership LP

By: A handwritten signature, likely of the general partner, written over a horizontal line.
Napleton Management Company,
Its general partner

By: A handwritten signature, likely of Bruce C. Etheridge, written over a horizontal line.
Bruce C. Etheridge, Trustee
Edward F. Napleton Descendants Trust

By: A handwritten signature, likely of Bruce C. Etheridge, written over a horizontal line.
Bruce C. Etheridge, Trustee
Katherine R. Napleton Descendants Trust

By: A handwritten signature, likely of Bruce C. Etheridge, written over a horizontal line.
Bruce C. Etheridge

By: A handwritten signature, likely of James R. Pregel, written over a horizontal line.
James R. Pregel



VOLKSWAGEN

AUTHORIZATION LETTER

February 14, 2014

Edward F. Napleton - President
Napleton Orlando Imports, LLC
d/b/a Napleton's Volkswagen of Orlando
1 E. Oak Hill Drive, Suite 100
Westmont, IL 605593

Dear Mr. Edward F. Napleton:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "Volkswagen" in the business name "Napleton's Volkswagen of Orlando" for your dealership.

This authorization is limited to the business name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "Volkswagen" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "Volkswagen" therefrom and (b) thereafter immediately discontinue the use of the word "Volkswagen" in your business or corporate name.

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.



VOLKSWAGEN

Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we have received the copy duly signed by you.

Regards,

A handwritten signature in cursive script, appearing to read 'R. Erik Peterson'.

R. Erik Peterson
Authorized Representative for Volkswagen AG

Signed in agreement with and in acceptance of the above terms:

A handwritten signature in cursive script, appearing to read 'Edward F. Napleton'.

By: _____
Edward F. Napleton - President
Napleton Orlando Imports, LLC
d/b/a Napleton's Volkswagen of Orlando

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of this 17th day of February, 2014, by and between Aristocrat Volkswagen East, Inc., a Florida corporation ("Assignor") and Napleton Orlando Imports, LLC, an Illinois limited liability company ("Assignee").

RECITALS:

WHEREAS, Assignor, Aristocrat Volkswagen, Inc., William Larry Bishop and Edward F. Napleton ("Napleton") have entered into that certain Agreement for Sale and Purchase of Assets (the "Purchase Agreement"), for the purchase and sale by Assignee of certain assets used in connection with the operation of two Volkswagen dealerships, including the Volkswagen dealership located at 12700 E. Colonial Drive, Orlando, Florida (the "Dealership"), as more particularly described in the Purchase Agreement; and

WHEREAS, Napleton has assigned to Assignee his rights and obligations under the Purchase Agreement with respect to the purchase and sale of the Dealership; and

WHEREAS, Assignor executed that certain Waiver of Right to Protest dated December 26, 2008 (the "Protest Waiver"), in favor of Volkswagen of America, Inc., an operating division of Volkswagen Group of America, Inc., a New Jersey corporation ("VWoA"), pursuant to which Assignor agreed, through December 31, 2015, to waive any protest rights that it may have in connection with the appointment by VWoA of an authorized dealer in the area identified therein and a copy of which is attached hereto as Exhibit A; and

WHEREAS, VWoA has agreed to consent to the closing of the transactions contemplated by the Purchase Agreement and it is a condition precedent to such agreement by VWoA that Assignor assign to Assignee and that Assignee assume from Assignor the Protest Waiver; and

WHEREAS, in connection with the consummation of the transactions contemplated under the Purchase Agreement and for good and valuable consideration, Assignor and Assignee have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated as if fully rewritten and restated in the body of this Agreement.
2. Assignment. Assignor hereby sells, transfers, conveys and assigns to Assignee all of Assignor's rights, interests and obligations in, to and under the Protest Waiver.
3. Assumption of Obligations. Assignee hereby acknowledges that it is purchasing the Dealership subject to the Protest Waiver, accepts the assignment of all of Assignor's rights, interest and obligations in, to and under the Protest Waiver, and assumes and shall be bound by and

responsible for and shall perform, discharge and fulfill all of the obligations, agreements and covenants imposed on Assignor under the Protest Waiver, from and after the date hereof, including without limitation, the covenant and obligation to further assign the Protest Waiver as required under Paragraph 3 of the Protest Waiver.

4. Consideration. Assignee acknowledges and agrees that the purchase price paid by it under the Purchase Agreement took into account Assignee's assumption of the Protest Waiver and Assignee has received full and fair consideration for the execution of this Agreement and the assumption of the Protest Waiver.

5. Acknowledgement. Each of Assignor and Assignee acknowledges that neither the Protest Waiver nor the assignment and assumption thereof violates any rule of law or statute, including, but not limited to, Fla. Stat. § 320.64, and that any act by VWoA to enforce the Protest Wavier does not violate any rule of law or statute, including, but not limited to, Fla. Stat. § 320.64.

6. Counterparts; Electronic Copy. This Agreement and the acceptance hereof by VWoA may be executed in one or more multiple counterparts, all of which, when taken together shall constitute one and the same instrument. A facsimile or other electronic copy of this Agreement shall be deemed an original for all relevant purposes.

7. Partial Invalidity. The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

8. Binding. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, legal representatives, successors and permitted assigns of the parties.

9. VWOA Rights. Assignor and Assignee acknowledge and agree that VWoA is intended to be a third party beneficiary of the agreements under this Agreement and shall have full right and authority to enforce the terms hereof. This Agreement may not be assigned or otherwise transferred without the prior written consent of VWoA.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ASSIGNOR:

Aristocrat Volkswagen East, Inc.

By: 

Name: _____

Title: _____

LARRY BISHOP
PRES.

ASSIGNEE:

Napleton Orlando Imports, LLC

By: 

Name: _____

Title: _____

E.F. NAPLETON
Owner

AGREED AND ACCEPTED

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 

Robert H Kim
Director – Southeast Region

BY: 

Scott Harrison
General Manager – Network Operations

Exhibit C

405249 - FL



VOLKSWAGEN DEALER AGREEMENT

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints Napleton Sanford Imports, LLC, doing business under the fictitious name, Napleton's Volkswagen of Sanford, having its place of business at 1 E. Oak Hill Drive, Suite 100, Westmont, IL 60559, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.



VOLKSWAGEN

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of Florida. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits A through H are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Kim
Director - Southeast Region

BY: [Signature]
Scott Harrison
General Manager - Network Operations

DEALER
BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

STATEMENT OF OWNERSHIP AND MANAGEMENT

**EXHIBIT A
TO DEALER AGREEMENT DATED
2/24, 2014.**

1. Dealer entity name:
Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford
2. Principal place of business:
1 E. Oak Hill Drive, Suite 100, Westmont, IL 60559
3. Dealer is a

<input type="checkbox"/>	Proprietorship
<input type="checkbox"/>	Partnership
<input checked="" type="checkbox"/>	Limited Liability Company
<input type="checkbox"/>	Corporation, Incorporated on N/A under the laws of the State of Illinois.
<input type="checkbox"/>	Other:

4. The following persons are the beneficial and record owners of Dealer:

Name and Address of Each Record and Beneficial Owner of Dealer	Percentage of Number and Class of Interests		Ownership of Record in Dealer
	Number	Class	
Napleton Investment Partnership, LP 1 E. Oak Hill Dr. Westmont, IL 60559	100	Class A - Voting	1.0 %
Edward F. Napleton Descendants Trust w/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	4653	Class B - Non-Voting	47.0 %
Katherine R. Napleton Descendants Trust w/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	4653	Class B - Non-Voting	47.0 %
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	247	Class B - Non-Voting	2.5 %
James R. Priegel	247	Class B - Non-Voting	2.5 %

VOLKSWAGEN



OS140 N. Mathewson Lane
Geneva, IL 60134

5. The following persons are Dealer's Officers:

Name and Address

Title

Edward F. Napleton
1 E. Oak Hill Dr.
Sanford, FL 32773

President/Treasurer

Bruce C. Etheridge
2468 Fawn Lake Circle
Naperville, IL 60564

VP/ Secretary

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

Name

Title

Robert Brown
5668 Revelwood Loop
Winter Park, FL 32792

Gen. Sales Manager

7. Article 16(9) of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and
- (ii) All persons (natural or otherwise) named in Paragraph 1 of the LLC Member's Addendum (Exhibit C to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 1 of the Corporate Shareholder Addendum (Exhibit C to this Agreement); and
- (iii) All persons (natural or otherwise) named in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust



VOLKSWAGEN

identified in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement).

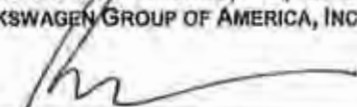
Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.


DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:



Robert H Kim
Director – Southeast Region

BY:


Scott Harrison
General Manager – Network Operations

DEALER

BY:


Edward F. Napleton
President



VOLKSWAGEN

DEALER PREMISES ADDENDUM

EXHIBIT B TO DEALER AGREEMENT DATED 2/26, 2014.

1. Dealer entity name:
Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford.
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
 - a. Sales Facilities:
4175 South Orlando Drive, Sanford, Florida 32773
 - b. Authorized Automobile Storage Facilities:
4175 South Orlando Drive, Sanford, Florida 32773
 - c. Service Facilities:
4175 South Orlando Drive, Sanford, Florida 32773
 - d. Genuine Parts Storage Facilities:
4175 South Orlando Drive, Sanford, Florida 32773
 - e. Used Car Lot:
4175 South Orlando Drive, Sanford, Florida 32773

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Kim
Director - Southeast Region

BY: [Signature]
Scott Harrison
General Manager - Network Operations

DEALER
BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

LLC MEMBER'S ADDENDUM

EXHIBIT C TO VOLKSWAGEN DEALER AGREEMENT DATED 2/26, 2014.

1. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Agreement, Dealer represents as follows:

a. DEALER'S OWNERS

The following persons are the beneficial and record owners of all the outstanding membership interests of Dealer:

<u>Name and Address</u>	<u>Percentage/Type Ownership of Record in Dealer</u>
Napleton Investment Partnership, LP 1 E. Oak Hill Dr. Westmont, IL 60559	1.0 % Class A Interests 100 % of Voting Interests
Edward F. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests Non-Voting
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests Non-Voting
Bruce C. Etheridge 2488 Fawn Lake Circle Naperville, IL 60564	2.5 % Class B Interests Non-Voting
James R. Priegel Os140 N. Mathewson Lane Geneva, IL 60134	2.5 % Class B Interests Non-Voting

ii. Owners of Napleton Investment Partnership, LP

The following persons are the beneficial and record owners of all the outstanding equity interests of Napleton Investment Partnership, LP:

<u>Name and Address of Each Record and Beneficial Owner of Dealer's Owner</u>	<u>Percentage of Ownership of Record in Dealer's Owner</u>
Napleton Management Company, LLC 1 E. Oak Hill Dr. Westmont, IL 60559	1.0 % (General Partner)

VOLKSWAGEN



Edward F. Napleton Descendants Trust
1 E. Oak Hill Dr.
Westmont, IL 60559

31.145 % (Limited Partner)

Katherine R. Napleton Descendants Trust
1 E. Oak Hill Dr.
Westmont, IL 60559

67.855 % (Limited Partner)

c. Members of Napleton Management Company, LLC

The following persons are the beneficial and record owners of all the outstanding membership interests of Napleton Management Company, LLC:

Name and Address of
Each Record and
Beneficial Owner
of Dealer's Owner

Percentage of Ownership of
Record in Dealer's Owner

Edward F. Napleton Revocable
Self-Declaration Trust u/a/d 10/1/92
1 E. Oak Hill Dr.
Westmont, IL 60559

46.0 %
Member and Manager

Katherine R. Napleton Descendants Trust
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

Kristen N. Hrones
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

Colleen M. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

Katherine E. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

Edward W. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

Brian F. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

9.0 %

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VWoA has entered into this Agreement in reliance upon these representations, and upon the qualifications and continued performance of personal services in the ownership and management of Dealer, by any Shareholder, who is also one of Dealer's Executives. Accordingly, Dealer agrees there will be no change in Dealer's Owners, or any owner of Napleton Investment Partnership, LP or Napleton Investment Management LLC, without VWoA's prior consent. Dealer agrees that VWoA has the right to terminate this Agreement with immediate effect in the event of any such change without prior written consent.

This Exhibit cancels any prior LLC Member or Corporate Shareholder Addendum.

DATED: 2/20, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Kim
Director – Southeast Region

BY: [Signature]
Scott Harrison
General Manager – Network Operations

DEALER
BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

OWNERSHIP BY TRUST ADDENDUM

EXHIBIT D
TO DEALER AGREEMENT DATED
2/26, 2014.

1. Dealer entity name:

Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford.

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

a. OWNERSHIP BY TRUSTS

The following trusts (collectively referred herein as the "Trusts") are director or indirect beneficial owners of Dealer:

<u>NAME OF TRUST</u>	<u>Percentage/Type of Ownership of Record in Dealer</u>
Edward F. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests in Dealer
Katherine R. Napleton Descendants Trust 1 E. Oak Hill Dr. Westmont, IL 60559	47.0 % Class B Interests in Dealer
Edward F. Napleton Revocable Self-Declaration Trust u/a/d 10/1/92 1 E. Oak Hill Dr. Westmont, IL 60559	46 % Percentage Interest in Napleton Management Company, LLC, the General Partner of Napleton Investment Partnership, LP which has a 1% Class A Interest in Dealer

d. TRUSTEES OF TRUSTS

The following persons are the trustees of the Trusts (collectively referred herein as the "Trustees"):

<u>NAME OF TRUSTEE</u>	<u>TRUST</u>
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	Edward F. Napleton Descendants Trust
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	Katherine R. Napleton Descendants Trust

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Edward F. Napleton
1 E. Oak Hill Dr.
Westmont, IL 60559

Edward F. Napleton Revocable Self-Declaration
Trust u/a/d 10/1/92

VWoA has entered into this Agreement in reliance upon the terms of each of the Trusts (the "Trust Agreements"), including (a) the designation of Bruce C. Etheridge as trustee of each of the Edward F. Napleton Descendants Trust and Katherine R. Napleton Descendants Trust, (b) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Paul Rosenberg as the members of the Business Advisory Committee of the Katherine R. Napleton Descendants Trust (the "Katherine BAC"), (c) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Katherine Napleton as the members of the Business Advisory Committee of the Edward F. Napleton Descendants Trust (the "Edward BAC"), and (d) the designation of Edward F. Napleton as trustee of the Edward F. Napleton Revocable Self-Declaration Trust. Notwithstanding any provision of the Trust Agreements to the contrary, in connection with any interest, direct or indirect, in Dealer held by the Trusts, Dealer and the Trustees expressly agree that they shall in all respects be bound by and comply fully with the terms, conditions and requirements of the Agreement and VWoA's policies. All references to the Dealer's Owners in the Agreement are expressly amended to include the Trusts and Trustees.

Notwithstanding any provision of the Trust Agreements and without limitation of any provision of the Agreement, Dealer expressly agrees that: (i) the Trust Agreements may not be amended, modified or terminated without the prior written consent of VWoA; (ii) the Trustees and members of the Katherine BAC and Edward BAC may not be changed nor may any additional, replacement or successor trustee(s) be named, whether or not appointed pursuant to the Trust Agreements without the prior written consent of VWoA; (iii) no portion of the Trust's ownership interest in Dealer may be transferred, disposed of or distributed, including distribution to any beneficiary under the Trusts, whether or not pursuant to the Trust Agreements terms, without VWoA's prior written consent; and (iv) Dealer and Trustees shall execute and deliver any and all further instruments and assurances and perform any act that VWoA may reasonably request for the purpose of giving full force and effect to the provisions of the Agreement and VWoA policies.

Any changes in ownership or trustees, whether or not pursuant to the Trust Agreement, without the prior written consent of VWoA, will void the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.

DATED: 2/20, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: [Signature]
Robert H Kim
Director - Southeast Region

BY: [Signature]
Scott Harrison
General Manager - Network Operations

DEALER
BY: [Signature]
Edward F. Napleton
President



VOLKSWAGEN

FACILITIES RENOVATION ADDENDUM

EXHIBIT E
TO VOLKSWAGEN DEALER AGREEMENT
DATED 2/20, 2014.

This Facilities Renovation Addendum (Exhibit E) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated 2/20, 2014 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Sanford Imports, LLC, d/b/a Napleton's Volkswagen of Sanford ("Dealer").

1. Both parties acknowledge that the Dealer's Premises, located at 4175 South Orlando Drive, Sanford, Florida 32773, does not contain a sales, service, and parts facility that meets all of the requirements of the WhiteFrame Design Facility Program (the "Facility Program"). In order to induce VWoA to enter into this Addendum, and the Dealer Agreement of which it is part with the Dealer, Dealer represents that Dealer will renovate Dealer's Premises, as an exclusive Volkswagen WhiteFrame Design Facility (the "Renovated Facility") which will be dedicated exclusively for the use of Dealer's Volkswagen operations.

2. Dealer shall renovate the sales, service, and parts facilities that may exist at the Dealer's Premises to meet all of the requirements of the WhiteFrame Design Facility Program (the "Facility Program"). The Renovated Facility shall be located at the Dealer's Premises and shall meet the square footage requirements required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility. The Renovated Facility also shall contain all applicable Volkswagen corporate identification and signage allowed by local codes and required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the facility.

3. Dealer, in connection with its construction of the Renovated Facility, shall adhere to the timetables set forth below:

- a. Prior to signing this Addendum, Dealer submitted to VWoA a completed Volkswagen Design Services Enrollment form for design services relating to the construction of a Renovated Facility at the Proposed New Location;
- b. On or before May 1, 2014, Dealer shall cause a survey for the New Facility, which survey shall determine the required design and construction specifications;
- c. On or before August 1, 2014, Dealer shall agree to a Design Criteria Document ("DCD") for the Renovated Facility that is prepared and submitted to it by VWoA;
- d. On or before December 1, 2014, Dealer shall complete and submit to VWoA for its review and approval 100 percent complete set of construction drawings for the Renovated Facility. In the event VWoA submits comments, Dealer shall revise such drawings in accordance with VWoA's recommendations, and shall submit revised drawings

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Incorporating VWoA's comments to VWoA not later than ten (10) business days after Dealer receives VWoA's comments;

- e. Within fifteen (15) business days after Dealer's receipt of VWoA's approval of its 100 percent complete set of construction drawings or revised construction drawings, Dealer shall submit such drawings, together with any and all other necessary documents, to the appropriate entities of the appropriate local authority in order to obtain all necessary building permits for the construction of the Renovated Facility. Dealer shall comply promptly with each requirement of each such entity;
- f. Within thirty (30) business days of Dealer's receipt of the building permits for the Renovated Facility, but no later than July 15, 2015, Dealer shall provide evidence of such permits to VWoA and Dealer shall begin renovation of the New Facility;
- g. On or before December 15, 2015 (the "Completion Date"), Dealer shall complete renovation of the Renovated Facility in accordance with the construction drawings or revised construction drawings approved by VWoA, and shall occupy the Renovated Facility and commence all dealership operations at the facility.

4. Commencing on August 15, 2014, Dealer, on the fifteenth (15th) day of each month, shall provide VWoA with a monthly report on the status of Dealer's compliance with the terms and conditions of this Addendum, including, when it can be estimated, the expected date on which construction of the New Facility will be completed.

5. If Dealer shall, without written approval from VWoA, fail to comply timely with any provisions of this Addendum, or if Dealer shall fail to comply timely with any of VWoA's requirements at the Dealer's Premises, then Dealer agrees that, regardless of the weight or magnitude of, or reason for, such failure, VWoA may, at its option, terminate the Dealer Agreement of which this Addendum is a part, and shall be under no obligation to offer to enter into any subsequent Dealer Agreement with Dealer. Dealer acknowledges that, in that event, VWoA would have good cause for terminating or failing to renew the Dealer Agreement and would be acting with good faith in doing so, pursuant to Florida Code Ann. § 320.3205. If Dealer shall fail for any reason whatsoever to satisfy any of the terms and conditions set forth in the Dealer Agreement, including this Addendum, neither Dealer, its beneficial owners, nor any other person, shall make any claim or demand in any court or before any administrative body against or upon VWoA for reimbursement of any funds expended by them or any of them, or for damages arising out of any termination of or refusal to renew the Dealer Agreement or out of the transactions contemplated by this Addendum.

6. If Dealer anticipates that it will fail to meet any deadline specified in this Addendum due to delays wholly or partially within Dealer's control, and despite Dealer's best efforts to meet the deadline, then Dealer may petition VWoA for an extension of the deadline. To do so, Dealer shall, no later than ten (10) business days prior to any deadline that it anticipates will be missed, notify VWoA in writing of the specific reasons for noncompliance and a proposed new date or dates for compliance. VWoA may review Dealer's reasons for failing to meet the deadline and, in its sole and unfettered discretion, may approve or disapprove any requested extension to the deadline. Such approval or extension must be provided in writing pursuant to Article 17(3) of this Dealer Agreement governing amendments. If VWoA does not respond to Dealer's petition within 15 days, the written and agreed upon deadline set forth in this Addendum will remain in effect unchanged.

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7. If a condition of *force majeure*, defined as a condition causing delay that is wholly outside the control of Dealer (or a Dealer-affiliated entity) that could not reasonably be foreseen, such as an Act of God, strike, work stoppage, riot, terrorist acts or curtailment of transportation facilities, occurs during the process described above, Dealer is required to give VVoA written notice within three business days, and to resume the process and/or construction in a diligent and continuous fashion as soon as the condition of *force majeure* resolves. Dealer is obligated to pursue all available commercially reasonable options and opportunities to resolve the condition of *force majeure* as quickly as possible. If the condition of *force majeure* continues for a total period of 90 calendar days for any single event or series of events, Dealer acknowledges and agrees that VVoA is under no obligation to continue to extend any deadlines beyond that period. As such, regardless of the status of Dealer's compliance with the terms of the applicable Dealer Agreement (or any other agreement), VVoA shall have good cause for terminating or refusing to renew the Dealer Agreement and would be acting in good faith in doing so, pursuant to Florida Code Ann. § 320.3205.

8. Dealer acknowledges that VVoA has made no representations, promises or warranties other than as expressly provided in writing within this Agreement, including, without limitation, regarding VVoA's future network plans, or that Dealer's Operations will be financially successful in either the short-term or long-term. Dealer further understands and acknowledges that its construction of the New Facility will not deprive VVoA of its rights under this Addendum or the Dealer Agreement or any subsequent Dealer Agreement to terminate or fail to renew any such agreement pursuant to the provisions thereof and applicable law.

9. The various provisions of this Addendum are intended to be severable. If any provision of this Addendum is determined to be invalid or unenforceable, in whole or in part, such provision or part thereof shall not affect or impair the validity of any other provision or part thereof, and such invalid provision or part thereof shall be modified to the minimum extent necessary to permit enforcement.

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

By: [Signature]

Robert H Kim
Director – Southeast Region

By: [Signature]

Scott Harrison
General Manager – Network Operations

DEALER

By: [Signature]

Edward F. Napleton
President

VOLKSWAGEN



FACILITIES EXCLUSIVITY ADDENDUM

EXHIBIT F TO VOLKSWAGEN DEALER AGREEMENT DATED 2/26, 2014.

This Facilities Exclusivity Addendum (Exhibit F) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated 2/26, 2014 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Sanford Imports, LLC ("Dealer").

1. As an inducement to VWoA to enter into this Addendum, at all times during the term of the Dealer Agreement, Dealer agrees that, it shall operate and maintain the New Facility as an exclusive, brand-dedicated Volkswagen WhiteFrame Design-compliant Facility. At the New Facility and on the Dealer's Premises, Dealer shall (1) operate and maintain exclusive brand-dedicated Dealer's Operations, (2) employ Volkswagen brand-dedicated sales and service staff, (3) employ brand-dedicated management, and (4) provide VWoA with Volkswagen-exclusive financial reporting consistent with VWoA's financial reporting practices with its dealers from time to time. Dealer's Operations shall refer to all activities of Dealer relating to the promotion and sale of Volkswagen vehicles and accessories, including, without limitation, the wholesale purchase of Volkswagen vehicles, parts and accessories from VWoA, new vehicle sales, used vehicle sales, service for Volkswagen vehicles, parts and all other associated business activities and operations provided for in the Volkswagen Dealer Agreement.

2. Dealer understands and acknowledges that the provisions, terms, conditions and obligations of this Addendum constitute reasonable facility requirements, and are fully justified by all relevant and reasonable business considerations, including, without limitation, the size of the local market, competitive-brand dealer representation, and the facility needs necessary to adequately provide sales and service operations to Volkswagen customers. Based upon Dealer's business judgment and acumen, Dealer further acknowledges that the provisions, terms, conditions and obligations of this Addendum will not cause a substantial or unreasonable financial hardship.

3. Failure by Dealer to maintain compliance with the provisions, terms, conditions and obligations set forth in this Addendum shall constitute "good cause" for termination of the Dealer Agreement for purposes of Florida, Code Ann. § 320.3205. Dealer understands and acknowledges that all provisions, terms, conditions and obligations of this Dealer Agreement, including, without limitation, the provisions, terms, conditions and obligations of this Addendum are reasonable, lawful and material obligations of this Dealer Agreement.

Signatures on the Next Page

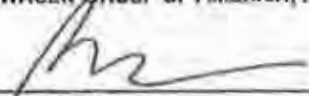


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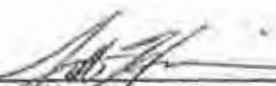
DATED: 2/26, 2014

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

By:

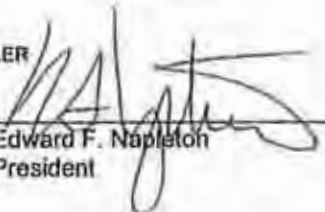

Robert H Kim
Director – Southeast Region

By:


Scott Harrison
General Manager – Network Operations

DEALER

By:


Edward F. Napleton
President



VOLKSWAGEN DEALER PERFORMANCE ADDENDUM

EXHIBIT G TO VOLKSWAGEN DEALER AGREEMENT DATED 2/26, 2014.

This Dealer Performance Addendum (Exhibit G) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated 2/26, 2014 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Sanford Imports, LLC, d/b/a Napleton's Volkswagen of Sanford, ("Dealer").

Dealer covenants, promises and agrees to provide for, comply with and maintain the following critical and material conditions:

A. Sales Performance. For the eighteen (18) months following the effective date of this Agreement, on a monthly basis, Dealer shall cause its Volkswagen dealership to achieve and maintain a minimum sales performance level of Region average sales effectiveness or a sales performance level expressed as a Dealer Sales Index ("DSI") level of zero (0), on a rolling twelve-month period basis (the "Required Sales Performance"). DSI shall be tracked by a report substantially similar to the attached Exhibit G-1 ("DSI Report"), which shall track Dealer's Volkswagen new vehicle sales performance on a rolling twelve-month basis. The DSI Reports for Dealer shall be made available to Dealer's management on a monthly basis.

B. Customer Satisfaction Performance. For the eighteen (18) months following the effective date of this Agreement, on a year-to-date basis, Dealer shall cause its Volkswagen dealership to achieve and maintain a minimum Customer Experience Index ("CEI") score of Region average performance or higher, in both Sales CEI and Service CEI ("Required Service Performance"). Sales CEI and Service CEI shall be measured according to the reporting metrics listed on a monthly CEI Report (or its then current equivalent report), which can be located on Volkswagen Hub, an example of which is attached as Exhibit G-2 ("CEI Report"), which shall track each Dealer Sales CEI and Service CEI performance. The CEI Reports for the Dealer shall be made available to Dealer's Management on a monthly basis.

C. Failure by Dealer to maintain compliance with the provisions, terms, conditions and obligations set forth in this Addendum shall constitute "good cause" for termination of the Dealer Agreement for purposes of Florida, Code Ann. § 320.3205. Dealer understands and acknowledges that all provisions, terms, conditions and obligations of this Dealer Agreement, including, without limitation, the provisions, terms, conditions and obligations of this Addendum are reasonable, lawful and material obligations of this Dealer Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.



VOLKSWAGEN

DATED: 2/26, 2014.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:

[Signature]
Robert H Kim
Director - Southeast Region

BY:

[Signature]
Scott Harrison
General Manager - Network Operations

DEALER

BY:

[Signature]
Edward F. Napleton
President

VOLKSWAGEN

EXHIBIT G-1



Volkswagen 360 - Dec 2013



Aristocrat Volkswagen, Inc. (405226)								
Location	Region	Area	PV	VPO	Facility Type	Exhibitory		
Sanford, FL	SE	21	1,331	3,776	A	Y		
Comparative Area Control Data								
		Prior	Current					
		Dealer	Area TL Average	Region SIB Average	National Average	Area TL Rank	Region SIB Rank	National Rank
Sales								
New Vehicle Retail Sales	Dec-13	1262	830	599	602	549	3 of 12	26 of 134
New Sales YOY	Dec-13	16%	22%	2%	7%	8%	11 of 12	119 of 134
Dealer Sales Index - R32	Oct-13	+102.0	+49.2	+10.2	+12.3	+12.6	3 of 12	22 of 134
CPO Sales	Dec-13	662	388	159	159	146	2 of 12	10 of 134
CPO Sales YOY	Dec-13	12%	13%	2%	1%	9%	8 of 12	93 of 134
CPO to New Ratio	Dec-13	-0.51	-0.46	-0.22	-0.26	-0.27	2 of 12	12 of 134
Service & Parts								
Parts Sales per VO	Dec-13	\$229	\$248	\$218	\$222	\$213	5 of 12	29 of 134
Parts Parts Purchases % Q3	Dec-13	87%	91%	102%	100%	102%	9 of 12	76 of 134
Parts Parts Parts/Warehouse	Dec-13	\$1,115,191	\$1,235,655	\$989,916	\$1,057,717	\$994,054	4 of 12	40 of 134
Parts Parts Parts/Warehouse YOY	Dec-13	13%	14%	19%	13%	16%	8 of 12	39 of 134
Accessories (MOB/DIA) Total	Dec-13	1262	1277	1354	1331	1349	11 of 12	124 of 134
Customer Pay per VO	Dec-13	\$172	\$178	\$172	\$175	\$177	10 of 12	97 of 134
Customer Pay to Cost	Dec-13	4.01	3.73	3.81	3.828	3.337	5 of 12	40 of 134
Customer Experience - QTD								
CEI	Dec-13		93.2	93.2	93.4	93.4	4 of 12	37 of 134
Sales CEI	Dec-13		96.8	95.8	95.8	96.8	6 of 12	14 of 134
Service CEI	Dec-13		93.2	94.6	94.4	94.0	7 of 12	38 of 134
Loyalty & Retention								
RR	Dec-13	95.6	96.9	96.9	96.5	96.6	3 of 12	47 of 134
Dealer's Loyalty %	Sep-13	41.6%	48.1%	37.9%	37.1%	35.0%	5 of 12	66 of 134
Service Retention	Dec-13	38.1%	43.0%	46.2%	45.5%	43.5%	6 of 12	91 of 134
Days With Service	Dec-13	9.2	9.4	9.3	9.3	9.4	10 of 12	88 of 134
Days Contacted by Total	Dec-13	97%	92%	90%	91%	92%	7 of 12	71 of 134
Financials								
Working Capital at Close (Q3)	Dec-13	Y	Y					
New Year Sales	Dec-13	\$1,209,526	\$1,209,514	\$1,209,016	\$1,245,717	\$1,277,743	3 of 12	39 of 134
Revenue Sales	Dec-13	3.40%	2.71%	2.55%	2.25%	1.73%	3 of 12	27 of 134

This report is for information purposes, and is intended only as a tool to allow Dealers to evaluate and improve their individual business performance. This report is not a guarantee of a Dealer's performance under the terms and provisions of the Volkswagen Dealer Agreement. As such, the scores presented in this report are not indicative of compliance or default under these terms and provisions of the Volkswagen Dealer Agreement.

All rankings based on the data available at time of processing.

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EXHIBIT G-2

Volkswagen Customer Satisfaction Survey (VCS) Results										
Model Year 2014										
Model	Q1a	Q1b	Q1c	Q2a	Q2b	Q2c	Q2d	Q2e	Q2f	Q2g
T	100	91	8	100	97	93	92	94	95	91

- Q1a How long did it take for you to receive a personalized response to an internet or email inquiry made to THIS dealership?
- Q1b Your satisfaction with the dealership's facility, including comfort, cleanliness and amenities offered.
- Q1c Your satisfaction with the selection of different vehicles available for you to view and purchase.
- Q2a Understanding of your needs and guidance to the right Volkswagen.
- Q2b The level of honesty and integrity displayed throughout the purchase process.
- Q2c The knowledge demonstrated and quality of information provided.
- Q2d Your satisfaction with the quality of the test drive offered.
- Q2e Were you contacted to ensure you were completely satisfied with your sales experience?
- Q2f Consideration of your time and responsiveness to your requests.
- Q2g Your satisfaction with the process of coming to an agreement on pricing.
- Q3a Please provide the approximate amount of time you had to wait between agreeing on a price and meeting with someone to discuss the paperwork.
- Q3b Your satisfaction with the explanation of the terms of the sale.
- Q3c The level of honesty and integrity displayed by the person handling the paperwork.
- Q3d Consideration of your time by the person handling paperwork.
- Q4a Your satisfaction with the cleanliness of the vehicle inside and out.
- Q4b Was the vehicle free of dents, scratches and mechanical issues?
- Q4c Your satisfaction with the explanation of features and controls of your vehicle.
- Q4d Did the dealership either preset or, if desired, show you how to set your preferences for electronic items such as the radio and if applicable Bluetooth and navigation?
- Q4e Were you offered to schedule your fast service appointment?
- Q4f Consideration of your time during the vehicle delivery.
- Q4g Is your vehicle equipped with Car-Net?
- Q4g- If yes, were the Car-Net features explained to you?
- Q4g- Did the dealership press the buttons to begin the trial excitement?
- Q5 How likely is it that you would recommend our dealership to a close friend or colleague?
- Q6 Thinking about your experience when buying your new car, how satisfied are you overall with our dealership?



VOLKSWAGEN
MINIMUM FINANCIAL REQUIREMENTS ADDENDUM

EXHIBIT H
TO VOLKSWAGEN DEALER AGREEMENT
DATED 2/26, 2014.

1. Dealer agrees that it is required to comply with various financial requirements under the terms of the Volkswagen Dealer Agreement, including Section 4 thereof.
2. Dealer acknowledges that, based upon Dealer's representations to VWoA (including, but not limited to, the projections and information contained in the Sales and Profit Forecast and *pro forma* Balance Sheet submitted by Dealer to VWoA), and notwithstanding the requirements of the Volkswagen Dealer Agreement, Standard Provisions, Operating Standards and policies (including Policy 19), \$8,900,000 of goodwill ("blue sky") was excluded from the Dealer's assets in connection with the calculation of Dealer's Required Investment and Capitalization.
3. Except as provided in paragraph 2 above, Dealer's financial statements (and all calculations of any financial requirements under the Dealer Agreement and the Operating Standards) shall be prepared in accordance with generally accepted accounting principles and no goodwill otherwise attributable to Dealer and/or the Dealership shall be excluded from such financial statements or the calculation of any other financial requirements.
4. Dealer acknowledges that throughout the term of this Agreement, (a) VWoA reserves the right to change the treatment of any goodwill excluded from Dealer's balance sheet in light of operating conditions and Dealer's financial condition and (b) if any goodwill that was excluded from the calculation of Dealer's Required Investment and Capitalization pursuant to paragraph 2 above, is subsequently included on Dealer's balance sheet, VWoA may require that such goodwill be included in the calculation of Dealer's Required Investment and Capitalization.

Dated: 2/26, 2014

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 

Robert H Kim
Director - Southeast Region

BY: 

Scott Harrison
General Manager - Network Operations

DEALER

BY: 

Edward F. Napleton
President

VOLKSWAGEN



HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

AGREEMENT (the "Agreement") by and among Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and Napleton Sanford Imports, LLC d/b/a Napleton's Volkswagen of Sanford, ("Dealer").

WHEREAS, at the request of Dealer and Member(s), VWoA has agreed to enter into a Volkswagen Dealer Agreement (the "Dealer Agreement") with Dealer;

WHEREAS Dealer and Member(s) fully recognize the financial risks they are taking in establishing an automobile dealership and Dealer and Member(s) understand that there is no assurance that such dealership will be successful or profitable; and

WHEREAS with the knowledge that VWoA is expressly reserving all its rights under the provisions of the Dealer Agreement with respect to the operations of Dealer, Dealer and Member(s) have requested that VWoA issue the Dealer Agreement to Dealer.

NOW, THEREFORE, to induce VWoA to enter into a Dealer Agreement with Dealer and for other valuable consideration, Dealer and Member(s), jointly and severally, hereby agree as follows:

1. Dealer and Member(s), jointly and severally, shall save harmless and indemnify VWoA, its agents, employees, officers, directors, parents, subsidiaries, successors and assigns (hereinafter collectively referred to as "VWoA and its Employees"), from any and all losses, damages, claims, actions, costs, expenses or judgments, of any kind of nature, regardless of source or cause, arising out of or resulting from any losses incurred in the operations of Dealer, excepting only losses or damages caused directly by a violation of applicable law by VWoA, or breach by VWoA of its contractual responsibilities provided in the Standard Provisions of the Volkswagen Dealer Agreement.
2. Dealer and Member(s), jointly and severally, hereby covenant and agree not to sue VWoA and its Employees or any of them with respect to any matter, cause or thing of any nature or description arising out of or resulting from the operations of Dealer, if the allegations of said suit or action relate in any manner to losses sustained by Dealer or Member(s) because of the operations of Dealer, excepting only matters involving debits and credits between VWoA and Dealer (such as warranty claims) matters involving losses caused directly by a violation of applicable law by VWoA; and matters involving losses caused directly by a breach by VWoA of its contractual responsibilities as provided in the Standard Provisions of the Volkswagen Dealer Agreement.
3. In the event that at any time hereafter Dealer or Member(s) file any action or administration proceeding against VWoA and its Employees or any of them demanding relief for any alleged losses or damages hereafter sustained by Dealer or Member(s) arising out of or resulting from the operations of Dealer, and excepting only the matters set forth in Paragraphs 1, 2 and 5 of this Agreement, then and in that event this Agreement shall be complete defense to any such action or administrative proceeding; (a) Dealer and Member(s) jointly and severally, shall, upon request by VWoA, immediately pay VWoA the amount of any money judgment entered against VWoA and its Employees or any of them,



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together with all court costs imposed and reasonable attorneys' fees expended by VWoA in the defense of such action or administrative proceeding; and (b) neither Dealer nor Member(s) shall attack the legal validity or the sufficiency of this Agreement or any provision hereof in any manner or in any court, the parties hereto hereby agreeing and intending that this Agreement shall be valid and binding on each of them and their heirs, executors, administrators, successors and assigns in all respects.


4. The failure of Member(s) to sign this Agreement or the release here from of Member(s) by VWoA shall not release those other parties who have executed this Agreement from their obligation and duties set forth herein.
5. This Agreement shall not be construed to release any claims which any party may have against VWoA or any other party with respect to any product liability matters.
6. This Agreement shall be construed under the laws of the State of Florida. In the event any provision hereof is held to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions, which shall remain in full force and effect.
7. This Agreement shall not be integrated into the Volkswagen Dealer Agreement, and shall survive the integration provision in Article 17(4) of the Volkswagen Dealer Agreement Standard Provisions.

In witness whereof, the parties have executed this Agreement.


DATED: 2/20, 20 14

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:

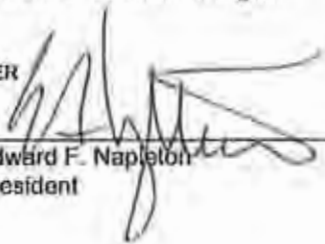

Robert H Kim
Director - Southeast Region

BY:


Scott Harrison
General Manager - Network Operations

DEALER

BY:


Edward F. Napleton
President


VOLKSWAGEN



MEMBER(S)

Napleton Investment Partnership LP

By:


Napleton Management Company LLC
Its General Partner


By:


Bruce C. Etheridge, Trustee
Edward F. Napleton Descendants Trust

By:


Bruce C. Etheridge, Trustee
Katherine R. Napleton Descendants Trust

By:


Bruce C. Etheridge

By:


James R. Priegel



VOLKSWAGEN

GUARANTY

Network Development Department
Volkswagen of America, Inc.
an operating unit of Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

To Whom It May Concern:

In consideration of Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") granting credit to Napleton Sanford Imports, LLC, d/b/a Napleton's Volkswagen of Sanford, an Illinois limited liability company ("Dealer"), each of the undersigned (each, a "Guarantor") hereby guaranties to VWoA, on a joint and several basis, the payment of all indebtedness of Dealer to VWoA now in existence or hereafter arising out of the Volkswagen Dealer Agreement between Dealer and VWoA.

This is an absolute and continuing guaranty, intended to cover all indebtedness and any number of service and sales transactions between VWoA and Dealer, and all indebtedness arising as a result thereof, and shall continue in force notwithstanding any change or changes in the form of the Dealer Agreement, any increase in said indebtedness, any further extension or extensions of credit granted by VWoA or any acceptance, sale, exchange or release of any security that may be given to VWoA by Dealer or the Guarantor.

In the event Dealer shall fail to pay all or any part of indebtedness when due, whether by acceleration or otherwise, the Guarantor will pay to VWoA the amount due and unpaid by Dealer, in like manner as if such amount constituted the direct and primary obligation of the Guarantor. VWoA shall not be required, prior to any demand on or payment by the Guarantor, to make any demand upon or pursue or exhaust any of VWoA's rights or remedies with respect to any part of any security given to VWoA by Dealer or the Guarantor.

VWoA is authorized, without notice to the Guarantor, to make sales in any amount, to make any change or changes in the form of the Dealer Agreement and in the form of such indebtedness; to grant any extensions of time and changes in the terms of payment of such indebtedness; to give Dealer at any time and in any form, any renewals or extensions of credit; to accept security for such indebtedness, credit or extensions thereof; and to sell, lease or exchange any security that may be given. The Guarantor acknowledges that whether such indebtedness, credits or extensions thereof are now or hereafter evidenced by open account or other evidence of debt, this Guaranty shall include a guaranty of such open account or other evidence of debt and of the terms and provisions thereof, and the Guarantor hereby waives any notice, demand, presentment, and notice of dishonor of any such evidence of debt, and also hereby waives notice of the acceptance of this Guaranty.

For so long as this Guaranty is in effect, and in the event of a request from VWoA, Guarantor agrees to provide VWoA a copy of its most recent year-end financial statement.


The obligations of the parties signing this Guaranty shall be joint and several, and the discontinuance, discharge, or release for any reason of all or any part of the obligation of any one or more of the undersigned, or the waiver or condemnation by VWoA of any breach or default of Dealer, or the failure of any other person to sign this Guaranty shall not release or affect the liability of any signer hereof.

VOLKSWAGEN



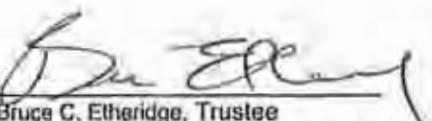
IN WITNESS WHEREOF, we have hereunto set our hands and seals this 26 day of FEBRUARY, 2014.

DEALER:

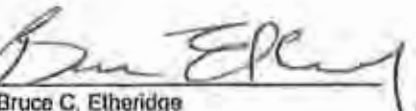

Edward F. Napleton
President/Treasurer

Guarantors:

Napleton Investment Partnership LP
By: 
Napleton Management Company,
its general partner

By: 
Bruce C. Etheridge, Trustee
Edward F. Napleton Descendants Trust

By: 
Bruce C. Etheridge, Trustee
Katherine R. Napleton Descendants Trust

By: 
Bruce C. Etheridge

By: 
James R. Priegel



VOLKSWAGEN

AUTHORIZATION LETTER

February 14, 2014

Edward F. Napleton - President
Napleton Sanford Imports, LLC
d/b/a Napleton's Volkswagen of Sanford
1 E. Oak Hill Drive, Suite 100
Westmont, IL 605593

Dear Mr. Edward F. Napleton:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "Volkswagen" in the business name "Napleton's Volkswagen of Sanford" for your dealership.

This authorization is limited to the business name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "Volkswagen" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "Volkswagen" therefrom and (b) thereafter immediately discontinue the use of the word "Volkswagen" in your business or corporate name.

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.



VOLKSWAGEN

Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we have received the copy duly signed by you.

Regards,

A handwritten signature in cursive script, appearing to read 'R. Erik Peterson'.

R. Erik Peterson
Authorized Representative for Volkswagen AG

Signed in agreement with and in acceptance of the above terms:

A handwritten signature in cursive script, appearing to read 'Edward F. Napleton'.

By: _____
Edward F. Napleton - President
Napleton Sanford Imports, LLC
d/b/a Napleton's Volkswagen of Sanford

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of this 26 day of February, 2014, by and between Aristocrat Volkswagen, Inc., a Florida corporation ("Assignor") and Napleton Sanford Imports, LLC, an Illinois limited liability company ("Assignee").

RECITALS:

WHEREAS, Assignor, Aristocrat Volkswagen East, Inc., William Larry Bishop and Edward F. Napleton ("Napleton") have entered into that certain Agreement for Sale and Purchase of Assets (the "Purchase Agreement"), for the purchase and sale by Assignee of certain assets used in connection with the operation of two Volkswagen dealerships, including the Volkswagen dealership located at 4175 Orlando Drive, Sanford, Florida (the "Dealership"), as more particularly described in the Purchase Agreement; and

WHEREAS, Napleton has assigned to Assignee his rights and obligations under the Purchase Agreement with respect to the purchase and sale of the Dealership; and

WHEREAS, Assignor executed that certain Waiver of Right to Protest dated December 26, 2008 (the "Protest Waiver"), in favor of Volkswagen of America, Inc., an operating division of Volkswagen Group of America, Inc., a New Jersey corporation ("VWoA"), pursuant to which Assignor agreed, through December 31, 2015, to waive any protest rights that it may have in connection with the appointment by VWoA of an authorized dealer in each of the areas identified therein and a copy of which is attached hereto as Exhibit A; and

WHEREAS, VWoA has agreed to consent to the closing of the transactions contemplated by the Purchase Agreement and it is a condition precedent to such agreement by VWoA that Assignor assign to Assignee and that Assignee assume from Assignor the Protest Waiver; and

WHEREAS, in connection with the consummation of the transactions contemplated under the Purchase Agreement and for good and valuable consideration, Assignor and Assignee have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated as if fully rewritten and restated in the body of this Agreement.
2. Assignment. Assignor hereby sells, transfers, conveys and assigns to Assignee all of Assignor's rights, interests and obligations in, to and under the Protest Waiver.
3. Assumption of Obligations. Assignee hereby acknowledges that it is purchasing the Dealership subject to the Protest Waiver, accepts the assignment of all of Assignor's rights, interest

4. and obligations in, to and under the Protest Waiver, and assumes and shall be bound by and responsible for and shall perform, discharge and fulfill all of the obligations, agreements and covenants imposed on Assignor under the Protest Waiver, from and after the date hereof, including without limitation, the covenant and obligation to further assign the Protest Waiver as required under Paragraph 3 of the Protest Waiver.

5. Consideration. Assignee acknowledges and agrees that the purchase price paid by it under the Purchase Agreement took into account Assignee's assumption of the Protest Waiver and Assignee has received full and fair consideration for the execution of this Agreement and the assumption of the Protest Waiver.

6. Acknowledgement. Each of Assignor and Assignee acknowledges that neither the Protest Waiver nor the assignment and assumption thereof violates any rule of law or statute, including, but not limited to, Fla. Stat. § 320.64, and that any act by VWoA to enforce the Protest Waiver does not violate any rule of law or statute, including, but not limited to, Fla. Stat. § 320.64.

7. Counterparts; Electronic Copy. This Agreement and the acceptance hereof by VWoA may be executed in one or more multiple counterparts, all of which, when taken together shall constitute one and the same instrument. A facsimile or other electronic copy of this Agreement shall be deemed an original for all relevant purposes.

8. Partial Invalidity. The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

9. Binding. This Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, legal representatives, successors and permitted assigns of the parties.

10. VWOA Rights. Assignor and Assignee acknowledge and agree that VWoA is intended to be a third party beneficiary of the agreements under this Agreement and shall have full right and authority to enforce the terms hereof. This Agreement may not be assigned or otherwise transferred without the prior written consent of VWoA.

11. [REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ASSIGNOR:

Aristocrat Volkswagen, Inc.

By: 

Name: Larry Bishop

Title: PRES.

ASSIGNEE:

Napleton Sanford Imports, LLC

By: 

Name: E. S. Napleton

Title: Owner

AGREED AND ACCEPTED

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

By: 

Robert H Kim

Director -- Southeast Region

By: 

Scott Harrison

General Manager -- Network Operations

Exhibit D



VOLKSWAGEN DEALER AGREEMENT

1. **APPOINTMENT.** Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), having a place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171 appoints **Napleton Automotive of Urbana, LLC** doing business under the fictitious name **Napleton's Volkswagen of Urbana** having its place of business at **1111 O'Brien Drive, Urbana, IL 61802**, as an authorized dealer in Volkswagen brand motor vehicles and genuine parts and accessories therefore. Accordingly, the parties agree as follows:

2. **STANDARD PROVISIONS.** The Dealer Agreement Standard Provisions (the "Standard Provisions"), the Dealer Operating Plan (the "Operating Plan") and the Volkswagen Dealer Operating Standards (the "Operating Standards") are part of this Agreement. Any term not defined in this Agreement has the meaning given such term in the Standard Provisions.

3. **OWNERSHIP AND MANAGEMENT.** To induce VWoA to enter into this Agreement, Dealer represents that the persons identified in the Statement of Ownership and Management, which is attached as Exhibit A, are Dealer's Owners and Executives. VWoA is entering into this Agreement in reliance upon these representations, and upon the continued provision by such persons of their personal services in fulfillment of Dealer's obligations under this Agreement. Accordingly, Dealer agrees there will be no change in Dealer's Owners without VWoA's prior written consent, and no change in Dealer's Executives without prior notice to VWoA.

4. **MINIMUM FINANCIAL REQUIREMENTS.** Dealer agrees to comply and maintain compliance with the minimum financial requirements established for Dealer annually in accordance with the Operating Plan and the Operating Standards. Throughout the term of this Agreement those minimum financial requirements are subject to revision by VWoA, after review with Dealer, in light of operating conditions and the development of Dealer's business and business potential.

5. **DEALER'S PREMISES.** VWoA has approved the location of Dealer's Premises as specified in the Dealer Premises Addendum, attached as Exhibit B. Dealer agrees that, without VWoA's prior written consent, it will not (a) make any major structural change in any of Dealer's Premises, (b) change the location of any of Dealer's Premises or (c) establish any additional premises for Dealer's Operations.

6. **EXCLUSION OF WARRANTIES.** EXCEPT FOR DISTRIBUTOR'S WARRANTIES, AND EXCEPT AS PROVIDED IN ARTICLE 9(1) OF THE STANDARD PROVISIONS, THERE ARE NO EXPRESS OR IMPLIED



VOLKSWAGEN

WARRANTIES OR OBLIGATIONS OF THE MANUFACTURER OR DISTRIBUTOR AS TO THE QUALITY OR CONDITION OF AUTHORIZED PRODUCTS, OR AS TO THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND, TO THE EXTENT PERMITTED BY LAW, DEALER WILL EXCLUDE ANY AND ALL SUCH WARRANTIES AND OBLIGATIONS IN ITS SALES OF AUTHORIZED PRODUCTS.

7. **TERM.** The term of this Agreement begins on the date of its delivery to Dealer or on January 1, 1997, whichever is later. This Agreement shall continue in effect until terminated by either party or superseded by a new Dealer Agreement with VWoA, whichever is earlier.

8. **GOVERNING LAW.** This Agreement will be construed in accordance with the laws of the State of Illinois. Should the performance of any obligation under this Agreement violate any valid law of such jurisdiction, then this Agreement shall be deemed modified to the minimum extent necessary to comply with such law.

9. **ADDITIONAL TERMS AND CONDITIONS.** The Addenda attached hereto as Exhibits **A** through **D** are part of this Agreement, and are incorporated into this Agreement by this reference. Each may be canceled or superseded at any time by mutual agreement of Dealer and VWoA, through the later execution by both parties of a replacement, which then shall be deemed part of this Agreement.

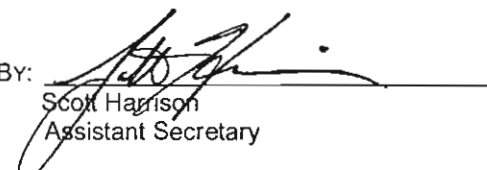
DATED: September 16, 2015.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:

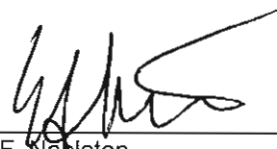

Merriman King
Director - Midwest Region

BY:


Scott Harrison
Assistant Secretary

DEALER

BY:


Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

STATEMENT OF OWNERSHIP AND MANAGEMENT

EXHIBIT A
TO DEALER AGREEMENT DATED
September 16, 2015.

1. Dealer entity name:
Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana
2. Principal place of business:
1111 O'Brien Drive, Urbana, IL 61802
3. Dealer is a ☐ Proprietorship
☐ Partnership
☒ Limited Liability Company, formed under the laws of
the State of **Florida** on July 16, 2014.
☐ Corporation
☐ Other:

4. The following persons are the beneficial and record owners of Dealer:

Name and Address of Each Record and Beneficial Owner of Dealer	Number and Class of Interests		Percentage of Ownership of Record in Dealer
	Number	Class	
Edward F. Napleton Revocable Trust u/a/d 10/1/92 1 E. Oak Hill Dr. Westmont, IL 60559	1	A - Voting	1.0 %
Edward F. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	48.25	B - Non-Voting	48.25 %
Katherine R. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	48.25	B - Non-Voting	48.25 %
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	2.5	B - Non-Voting	2.5 %



VOLKSWAGEN

5. The following persons are Dealer's Officers:

Name and Address

Title

Edward F. Napleton
6393 N. Ocean Blvd.
Ocean Ridge, FL 33435

Manager/President/VP

Bruce C. Etheridge
2468 Fawn Lake Circle
Naperville, IL 60564

Secretary/Treasurer

6. The following person is the Authorized Representative of Dealer. As such, this person is an agent of Dealer, and VWoA is entitled to rely on this person's authority to make all decisions on behalf of Dealer with respect to Dealer's Operations.

Name

Title

James Turner

Executive Manager

7. Article 16(9) of the Standard Provisions is hereby amended in its entirety to read as follows:

"(9) 'Dealer's Owners' means all the persons (natural or otherwise) who are beneficial or record owners of Dealer, or are beneficial or record owners of any entity or trust having beneficial or record ownership in Dealer, as well as any other person (natural or otherwise) who acquires or succeeds to any beneficial interest or record ownership in Dealer, or who acquires or succeeds to any beneficial or record ownership in any entity or trust having beneficial or record ownership in Dealer, in accordance with the provisions of this Agreement, including, without limitation, the following:

- (i) All persons (natural or otherwise) named in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 4 of the Statement of Ownership and Management (Exhibit A to this Agreement); and
- (ii) All persons (natural or otherwise) named in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement), and any persons (natural or otherwise) that have any beneficial or ownership interest in any entity or trust identified in Paragraph 2 of the Ownership by Trust Addendum (Exhibit D to this Agreement)."

Dealer hereby certifies that the foregoing information is true and complete as of the date below. VWoA has entered into this Agreement in reliance upon the qualifications, and the continued provision of personal services in the ownership and management of Dealer by, the persons identified above.

This Exhibit cancels any prior Statement of Ownership and Management.

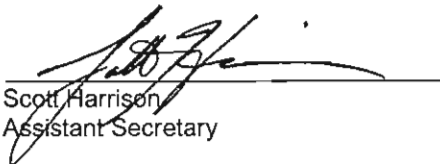


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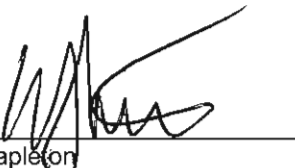
DATED: September 16, 2015.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: 
Merriman King
Director – Midwest Region

BY: 
Scott Harrison
Assistant Secretary

DEALER

BY: 
Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

DEALER PREMISES ADDENDUM

EXHIBIT B
TO DEALER AGREEMENT DATED
September 16, 2015.

1. Dealer entity name:
Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana.
2. VWoA has approved the location of the following premises, and no others, for Dealer's Operations:
 - a. Sales Facilities:
1111 O'Brien Drive, Urbana, IL 61802
 - b. Authorized Automobile Storage Facilities:
1111 O'Brien Drive, Urbana, IL 61802
 - c. Service Facilities:
1025 O'Brien Drive, Urbana, IL 61802
 - d. Genuine Parts Storage Facilities:
1111 O'Brien Drive, Urbana, IL 61802
 - e. Used Car Lot:
1111 O'Brien Drive, Urbana, IL 61802

Dealer hereby certifies that the foregoing information is true and complete as of the date below.

This Exhibit cancels any prior Dealer Premises Addendum.

DATED: September 16, 2015.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:

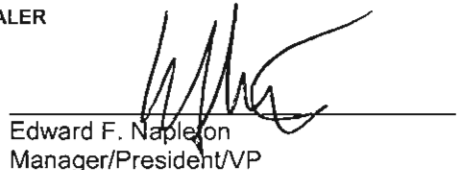

Merriman King
Director – Midwest Region

BY:


Scott Harrison
Assistant Secretary

DEALER

BY:


Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

FACILITIES RENOVATION ADDENDUM

EXHIBIT C TO VOLKSWAGEN DEALER AGREEMENT DATED September 16, 2015.

This Facilities Renovation Addendum (Exhibit C) (the "Addendum") is an integral part of the Volkswagen Dealer Agreement dated September 16, 2015 (the "Dealer Agreement") by and between Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), and **Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana** ("Dealer").

1. Both parties acknowledge that the Dealer's Premises does not contain a sales, service, and parts facility that meets all of the requirements of the Marketplace Facility Transition Program (the "Facility Program"). In order to induce VWoA to enter into this Addendum, and the Dealer Agreement of which it is part with the Dealer, Dealer represents that Dealer will renovate, at the Dealer's Premises, an exclusive Volkswagen Marketplace Facility Transition (the "New Facility") which will be dedicated exclusively for the use of Dealer's Volkswagen operations.

2. Dealer shall renovate the sales, service, and parts facilities that may exist at the Dealer's Premises to meet all of the requirements of the Marketplace Facility Transition Program (the "Facility Program"). The New Facility shall be located at the Dealer's Premises and shall meet the square footage requirements required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the New Facility. The New Facility also shall contain all applicable Volkswagen corporate identification and signage allowed by local codes and required by the Facility Program and the Volkswagen Dealer Operating Standards in effect at the time of the commencement of the design of the New Facility.

3. Dealer, in connection with its renovation of the New Facility, shall adhere to the timetables set forth below for completion of the respective actions described below:

- a. On or before **September 1, 2015**, Dealer shall submit to VWoA a completed Volkswagen Design Services Enrollment form for design services relating to the renovation of a New Facility at the Dealer's Premises;
- b. On or before **October 1, 2015**, Dealer shall cause a survey for the New Facility, which survey shall determine the required design and renovation specifications;
- c. On or before **January 1, 2016**, Dealer shall agree to a Design Criteria Document ("DCD") for the New Facility that is prepared and submitted to it by VWoA;
- d. On or before **May 1, 2016**, Dealer shall complete and submit to VWoA for its review and approval 100 percent complete set of construction drawings for the New Facility. In the event VWoA submits comments, Dealer shall revise such drawings in accordance with VWoA's recommendations, and shall submit revised drawings incorporating VWoA's comments to VWoA not later than ten (10) business days after Dealer receives VWoA's comments;



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- e. Within fifteen (15) business days after Dealer's receipt of VWoA's approval of its 100 percent complete set of construction drawings or revised construction drawings, Dealer shall submit such drawings, together with any and all other necessary documents, to the appropriate entities of the appropriate local authority in order to obtain all necessary building permits for the renovation of the New Facility. Dealer shall comply promptly with each requirement of each such entity;
- f. Within thirty (30) business days of Dealer's receipt of the building permits for the New Facility, but no later than **September 1, 2016**, Dealer shall provide evidence of such permits to VWoA and Dealer shall begin renovation of the New Facility;
- g. On or before **September 1, 2017** (the "Completion Date"), Dealer shall complete renovation of the New Facility in accordance with the construction drawings or revised construction drawings approved by VWoA, and shall occupy the New Facility and commence all dealership operations at the New Facility.

4. Dealer shall maintain exclusive representation for Volkswagen products in the New Facility at the Dealer's Premises for a period of time commencing on the date of the start of business operations at the Dealer's Premises and ending on the date ten (10) years after the date on which Dealer occupies the Dealer's Premises and commences all dealership operations at the New Facility.

5. Commencing in **January, 2016**, Dealer, on the fifteenth (15th) day of each month, shall provide VWoA with a monthly report on the status of Dealer's compliance with the terms and conditions of this Addendum, including, when it can be estimated, the expected date on which renovation of the New Facility will be completed.

6. No later than 30 calendar days prior to the scheduled opening of the New Facility, you must supply VWoA with an executed lease, a deed to the dealership property, or other documentation, demonstrating to VWoA's satisfaction that the Dealer may possess and use the New Facility as an Volkswagen dealership for no less than ten (10) years.

7. If Dealer shall, without written approval from VWoA, fail to comply timely with any provisions of this Addendum, or if Dealer shall fail to comply timely with any of VWoA's requirements at the Dealer's Premises, then Dealer agrees that, regardless of the weight or magnitude of, or reason for, such failure, VWoA may, at its option, terminate the Dealer Agreement of which this Addendum is a part, and shall be under no obligation to offer to enter into any subsequent Dealer Agreement with Dealer. Dealer acknowledges that, in that event, such failure would constitute a breach of a material and substantial term of the Dealer Agreement, and VWoA would have "good cause" for terminating or refusing to renew the Dealer Agreement, pursuant to 815 ILL. COMP. STAT. 710/4(d)(6). Dealer agrees that the foregoing terms are reasonable in accordance with 815 ILL. COMP. STAT. 710/7. If Dealer shall fail for any reason whatsoever to satisfy any of the terms and conditions set forth in the Dealer Agreement, including this Addendum, none of Dealer, its beneficial owners, or any other person, shall make any claim or demand in any court or before any administrative body against or upon VWoA for reimbursement of any funds expended by them or any of them, or for damages arising out of any termination of or refusal to renew the Dealer Agreement or out of the transactions contemplated by this Addendum.

8. If Dealer anticipates that it will fail to meet any deadline specified in this Addendum due to delays wholly or partially within Dealer's control, and despite Dealer's best efforts to meet the deadline,



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then Dealer may petition VWoA for an extension of the deadline. To do so, Dealer shall, no later than twenty (20) business days prior to any deadline that it anticipates will be missed, notify VWoA in writing of the specific reasons for noncompliance and a proposed new date or dates for compliance. VWoA may review Dealer's reasons for failing to meet the deadline, in its sole and unfettered discretion, may approve or disapprove any requested extension to the deadline. Such approval or extension must be provided in writing pursuant to Article 17(3) of this Dealer Agreement governing amendments. If VWoA does not respond to Dealer's petition within 15 days, the written and agreed upon deadline set forth in this Addendum will remain in effect unchanged.

9. If a condition of force majeure, defined as a condition causing delay that is wholly outside the control of Dealer (or a Dealer-affiliated entity) that could not reasonably be foreseen, such as an Act of God, strike, work stoppage, riot, terrorist acts or curtailment of transportation facilities, occurs during the process described above, Dealer is required to give VWoA written notice within three business days, and to resume the process and/or renovation in a diligent and continuous fashion as soon as the condition of force majeure resolves. Dealer is obligated to pursue all available commercially reasonable options and opportunities to resolve the condition of force majeure as quickly as possible. If the condition of force majeure continues for a total period of 90 calendar days for any single event or series of events, Dealer acknowledges and agrees that VWoA is under no obligation to continue to extend any deadlines beyond that period. As such, regardless of the status of Dealer's compliance with the terms of the applicable Dealer Agreement (or any other agreement), if the condition of force majeure continues for a total period of 90 calendar days for any single event or series of events, VWoA shall have "good cause" for terminating or refusing to renew the Dealer Agreement, pursuant to 815 ILL. COMP. STAT. 710/4(d)(6). Dealer agrees that the foregoing terms are reasonable in accordance with 815 ILL. COMP. STAT. 710/7. Dealer acknowledges that VWoA has made no representations, promises or warranties, or that Dealer's Operations will be financially successful in either the short-term or long-term. Dealer further understands and acknowledges that its renovation of the New Facility will not deprive VWoA of its rights under this Addendum or the Dealer Agreement or any subsequent Dealer Agreement to terminate or fail to renew any such agreement pursuant to the provisions thereof and applicable law.

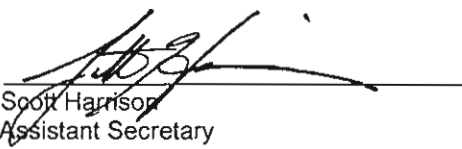
DATED: September 16, 2015.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY:



Merriman King
Director - Midwest Region

BY:


Scott Harrison
Assistant Secretary

DEALER

BY:


Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

OWNERSHIP BY TRUST ADDENDUM

EXHIBIT D TO DEALER AGREEMENT DATED ~~September 16, 2015.~~

1. Dealer entity name:

Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana.

2. In order to induce Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") to enter into this Volkswagen Dealer Agreement (including, without limitation, the Volkswagen Dealer Agreement Standard Provisions, the "Agreement"), Dealer represents as follows:

a. OWNERSHIP BY TRUSTS

The following trusts (collectively referred herein as the "Trusts") are direct or indirect beneficial owners of Dealer:

<u>NAME OF TRUST</u>	<u>Percentage/Type of Ownership of Record in Dealer</u>	
Edward F. Napleton Revocable Trust u/a/d 10/1/92 1 E. Oak Hill Dr. Westmont, IL 60559	1%	Class A Interest in Dealer
Edward F. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	48.25 %	Class B Interests in Dealer
Katherine R. Napleton Descendants Trust u/a/d 12/27/02 1 E. Oak Hill Dr. Westmont, IL 60559	48.25 %	Class B Interests in Dealer

b. TRUSTEES OF TRUSTS

The following persons are the trustees of the Trusts (collectively referred herein as the "Trustees"):

<u>NAME OF TRUSTEE</u>	<u>TRUST</u>
Edward F. Napleton 1 E. Oak Hill Dr. Westmont, IL 60559	Edward F. Napleton Revocable Trust
Bruce C. Etheridge 2468 Fawn Lake Circle Naperville, IL 60564	Edward F. Napleton Descendants Trust



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Bruce C. Etheridge
2468 Fawn Lake Circle
Naperville, IL 60564

Katherine R. Napleton Descendants Trust

VWoA has entered into this Agreement in reliance upon the terms of [each of the Trusts][VWOA: Replace with a description of each trust agreement here (E.g. Edward F. Napleton Revocable Trust, dated [*]) (the "Trust Agreements"), including (a) the designation of Edward F. Napleton as trustee of the Edward F. Napleton Revocable Trust, (b) the designation of Bruce C. Etheridge as trustee of each of the Edward F. Napleton Descendants Trust and Katherine R. Napleton Descendants Trust, (c) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Paul Rosenberg as the members of the Business Advisory Committee of the Katherine R. Napleton Descendants Trust (the "Katherine BAC"), and (d) the designation of William Napleton, Stephen Napleton, Bruce Etheridge and Katherine Napleton as the members of the Business Advisory Committee of the Edward F. Napleton Descendants Trust (the "Edward BAC"). Notwithstanding any provision of the Trust Agreements to the contrary, in connection with any interest, direct or indirect, in Dealer held by the Trusts, Dealer, Katherine BAC, Edward BAC and the Trustees expressly agree that they shall in all respects be bound by and comply fully with the terms, conditions and requirements of the Agreement and VWoA's policies. All references to the Dealer's Owners in the Agreement are expressly amended to include the Trusts, Katherine BAC, Edward BAC and Trustees.

Notwithstanding any provision of the Trust Agreements and without limitation of any provision of the Agreement, Dealer expressly agrees that: (i) the Trust Agreements may not be amended, modified or terminated without the prior written consent of VWoA; (ii) the Trustees and members of the Katherine BAC and Edward BAC may not be changed nor may any additional, replacement or successor trustee(s) be named, whether or not appointed pursuant to the Trust Agreements without the prior written consent of VWoA; (iii) no portion of the Trust's ownership interest in Dealer may be transferred, disposed of or distributed, including distribution to any beneficiary under the Trusts, whether or not pursuant to the Trust Agreements terms, without VWoA's prior written consent; (iv) no amendments, modifications or other changes may be made to or in connection with any Trust that would impact the ownership, management or operation of Dealer or the voting of any of the ownership interests in Dealer without the prior written consent of VWoA and (iv) Dealer and Trustees shall execute and deliver any and all further instruments and assurances and perform any act that VWoA may reasonably request for the purpose of giving full force and effect to the provisions of the Agreement and VWoA policies.

Any changes in ownership, the members of the Katherine BAC or Edward BAC or trustees, whether or not pursuant to the Trust Agreement, without the prior written consent of VWoA, will void the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers on the day and year written below.

[Signature Page Follows]



VOLKSWAGEN

DATED: September 16, 2015.

VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.

BY: _____

Merriman King
Director - Midwest Region

BY: _____

Scott Harrison
Assistant Secretary

DEALER

BY: _____

Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

AGREEMENT (the "Agreement") by and among Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA"), **Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana** ("Dealer") and Edward F. Napleton Revocable Trust, Edward F. Napleton Descendants Trust, Katherine R. Napleton Descendants Trust and Bruce C. Etheridge constituting all of the Dealer's owners (collectively, the "Members").

WHEREAS, at the request of Dealer and Members, VWoA has agreed to enter into a Volkswagen Dealer Agreement (the "Dealer Agreement") with Dealer;

WHEREAS Dealer and Members fully recognize the financial risks they are taking in establishing an automobile dealership and Dealer and Members understand that there is no assurance that such dealership will be successful or profitable; and

WHEREAS with the knowledge that VWoA is expressly reserving all its rights under the provisions of the Dealer Agreement with respect to the operations of Dealer, Dealer and Members have requested that VWoA issue the Dealer Agreement to Dealer.

NOW, THEREFORE, to induce VWoA to enter into a Dealer Agreement with Dealer and for other valuable consideration, Dealer and each Member, jointly and severally, hereby agree as follows:

1. Dealer and each Member, jointly and severally, shall save harmless and indemnify VWoA, its agents, employees, officers, directors, parents, subsidiaries, successors and assigns (hereinafter collectively referred to as "VWoA and its Employees"), from any and all losses, damages, claims, actions, costs, expenses or judgments, of any kind of nature, regardless of source or cause, arising out of or resulting from any losses incurred in the operations of Dealer, excepting only losses or damages caused directly by a violation of applicable law by VWoA, or breach by VWoA of its contractual responsibilities provided in the Standard Provisions of the Dealer Agreement.
2. Dealer and each Member, jointly and severally, hereby covenant and agree not to sue VWoA and its Employees or any of them with respect to any matter, cause or thing of any nature or description arising out of or resulting from the operations of Dealer, if the allegations of said suit or action relate in any manner to losses sustained by Dealer or a Member because of the operations of Dealer, excepting only matters involving debits and credits between VWoA and Dealer (such as warranty claims) matters involving losses caused directly by a violation of applicable law by VWoA; and matters involving losses caused directly by a breach by VWoA of its contractual responsibilities as provided in the Standard Provisions of the Dealer Agreement.
3. In the event that at any time hereafter Dealer or any Member files any action or administration proceeding against VWoA and its Employees or any of them demanding relief for any alleged losses or damages hereafter sustained by Dealer or a Member arising out of or resulting from the operations of Dealer, and excepting only the matters set forth in Paragraphs 1, 2 and 5 of this Agreement, then and in that event (a) this Agreement shall be complete defense to any such action or administrative proceeding; (b) Dealer and each Member jointly and severally, shall, upon request by VWoA, immediately pay VWoA the amount of any money judgment entered against VWoA and its Employees or any of them,



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together with all court costs imposed and reasonable attorneys' fees expended by VWoA in the defense of such action or administrative proceeding; and (c) neither Dealer nor any Member shall attack the legal validity or the sufficiency of this Agreement or any provision hereof in any manner or in any court, the parties hereto hereby agreeing and intending that this Agreement shall be valid and binding on each of them and their heirs, executors, administrators, successors and assigns in all respects.

4. The failure of a Member to sign this Agreement or the release here from of a Member by VWoA shall not release those other parties who have executed this Agreement from their obligation and duties set forth herein.
5. This Agreement shall not be construed to release any claims which any party may have against VWoA or any other party with respect to any product liability matters.
6. This Agreement shall be construed under the laws of the State of Illinois. In the event any provision hereof is held to be unenforceable or invalid by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions, which shall remain in full force and effect.
7. This Agreement shall not be integrated into the Dealer Agreement, and shall survive the integration provision in Article 17(4) of the Dealer Agreement Standard Provisions.

In witness whereof, the parties have executed this Agreement.

DATED: September 16, 2015.

**VOLKSWAGEN OF AMERICA, INC., AN OPERATING UNIT OF
VOLKSWAGEN GROUP OF AMERICA, INC.**

BY: _____

Merriman King
Director - Midwest Region

BY: _____

Scott Harrison
Assistant Secretary

DEALER

BY: _____

Edward F. Napleton
Manager/President/VP



VOLKSWAGEN

MEMBER(S)

Edward F. Napleton Revocable Trust

By: _____

Edward F. Napleton, Trustee

Edward F. Napleton Descendants Trust

By: _____

Bruce C. Etheridge, Trustee

Katherine R. Napleton Descendants Trust

By: _____

Bruce C. Etheridge, Trustee

By: _____

Bruce C. Etheridge



VOLKSWAGEN

GUARANTY

Network Development Department
Volkswagen of America, Inc.
an operating unit of Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

To Whom It May Concern:

In consideration of Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc. ("VWoA") granting credit to **Napleton Automotive of Urbana, LLC d/b/a Napleton's Volkswagen of Urbana, a Florida limited liability company** ("Dealer"), each of the undersigned (each, a "Guarantor") hereby guaranty to VWoA, on a joint and several basis, the payment of all indebtedness of Dealer to VWoA now in existence or hereafter arising out of the Volkswagen Dealer Agreement between Dealer and VWoA ("Dealer Agreement").

This is an absolute and continuing guaranty, intended to cover all indebtedness and any number of service and sales transactions between VWoA and Dealer, and all indebtedness arising as a result thereof, and shall continue in force notwithstanding any change or changes in the form of the Dealer Agreement, any increase in said indebtedness, any further extension or extensions of credit granted by VWoA or any acceptance, sale, exchange or release of any security that may be given to VWoA by Dealer or any Guarantor.

In the event Dealer shall fail to pay all or any part of indebtedness when due, whether by acceleration or otherwise, the Guarantors will pay to VWoA the amount due and unpaid by Dealer, in like manner as if such amount constituted the direct and primary obligation of the Guarantors. VWoA shall not be required, prior to any demand on or payment by any Guarantors, to make any demand upon or pursue or exhaust any of VWoA's rights or remedies with respect to any part of any security given to VWoA by Dealer or any Guarantor.

VWoA is authorized, without notice to any Guarantor, to make sales in any amount, to make any change or changes in the form of the Dealer Agreement and in the form of such indebtedness; to grant any extensions of time and changes in the terms of payment of such indebtedness; to give Dealer at any time and in any form, any renewals or extensions of credit; to accept security for such indebtedness, credit or extensions thereof; and to sell, lease or exchange any security that may be given. Each Guarantor acknowledges that whether such indebtedness, credits or extensions thereof are now or hereafter evidenced by open account or other evidence of debt, this Guaranty shall include a guaranty of such open account or other evidence of debt and of the terms and provisions thereof, and each Guarantor hereby waives any notice, demand, presentment, and notice of dishonor of any such evidence of debt, and also hereby waive notice of the acceptance of this Guaranty.

For so long as this Guaranty is in effect, and in the event of a request from VWoA, each Guarantor agrees to provide VWoA a copy of its most recent year-end financial statement.

The obligations of the parties signing this Guaranty shall be joint and several, and the discontinuance, discharge, or release for any reason of all or any part of the obligation of any one or more of the undersigned, or the waiver or condemnation by VWoA of any breach or default of Dealer, or the failure of any other person to sign this Guaranty shall not release or affect the liability of any signer hereof.



VOLKSWAGEN

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16th day of September, 2015.

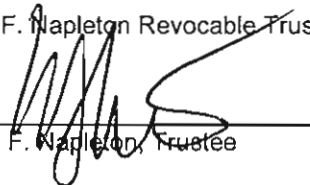
DEALER:

Napleton Automotive of Urbana, LLC

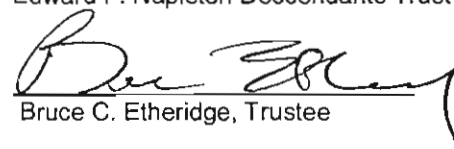


Edward F. Napleton
President/Treasurer

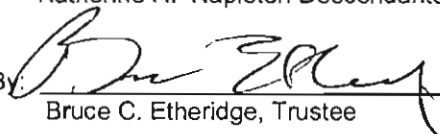
Guarantors:

Edward F. Napleton Revocable Trust
By: 

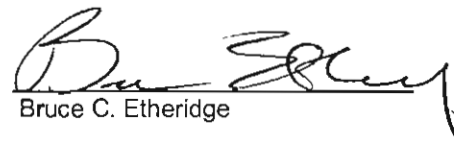
Edward F. Napleton, Trustee

Edward F. Napleton Descendants Trust
By: 

Bruce C. Etheridge, Trustee

Katherine R. Napleton Descendants Trust
By: 

Bruce C. Etheridge, Trustee

By: 

Bruce C. Etheridge



VOLKSWAGEN

AUTHORIZATION LETTER

July 29, 2015

Edward F. Napleton - Manager/President/VP
Napleton Automotive of Urbana, LLC
d/b/a Napleton's Volkswagen of Urbana
1 E. Oak Hill Drive, Suite 100
Westmont, IL 60559

Dear Mr. Edward F. Napleton:

We are pleased to advise you that Volkswagen AG has authorized your use of the word "**Volkswagen**" in the business name "**Napleton's Volkswagen of Urbana**" for your dealership.

This authorization is limited to the business name stated in the preceding paragraph and does not cover any other business or corporate name containing the word "**Volkswagen**" which you may wish to adopt in the future. Moreover, the present authorization is limited to your present firm or corporation. It does not extend to any subsidiary or affiliate of your firm or corporation, and it is not transferable.

The authorization granted in this letter shall automatically terminate in the event that you cease to be a franchised Volkswagen dealer and also in the event of a sale of your business, a merger of your corporation, the liquidation or bankruptcy of your firm or an assignment of assets of your firm to an assignee for the benefit of creditors.

Moreover, Volkswagen AG reserves the absolute and unqualified right to revoke the authorization at any time, in its sole and absolute discretion, with or without cause, by mailing or causing Volkswagen of America, Inc., an operating unit of Volkswagen Group of America, Inc., to mail written notice of such revocation to you.

Upon termination of this authorization by reason of any of the events described, as well as upon receipt of the written revocation referred to, you shall (a) take all necessary steps to forthwith effect a legal change of your business or corporate name eliminating the word "**Volkswagen**" therefrom and (b) thereafter immediately discontinue the use of the word "**Volkswagen**" in your business or corporate name.

You shall not be entitled to any compensation whatsoever in the event of termination or revocation of this authorization.

This authorization is subject to all applicable provisions of your present and future Volkswagen dealer agreements.



VOLKSWAGEN

Please sign the enclosed copy of this agreement for consent and return it to us. The authorization contained herein will be effective only after we have received the copy duly signed by you.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Dwyer'.

Michael Dwyer
Authorized Representative for Volkswagen of America, Inc.

Signed in agreement with and in acceptance of the above terms:

Napleton Automotive of Urbana, LLC
d/b/a Napleton's Volkswagen of Urbana

By: _____

A handwritten signature in black ink, appearing to read 'Edward F. Napleton'.
Edward F. Napleton - Manager/President/VP