Individual Release of Claims

## INDIVIDUAL RELEASE OF CLAIMS

*In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*,

MDL No. 15-2672 (N.D. Cal.)

This Document Relates to

*Napleton et al.* v. *Volkswagen Group of America, Inc. et al.*,

No. 16-02086

## MUST BE COMPLETED BY DEALER SETTLEMENT CLASS MEMBER TO RECEIVE INDIVIDUAL DEALER SETTLEMENT PAYMENT PRIOR TO EFFECTIVE DATE OF FRANCHISE DEALER CLASS AGREEMENT

1. “Released Parties” means any person who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for the claims asserted in the Franchise Dealer Complaint in this action. The Released Parties include, without limitation, (1) Volkswagen AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc.), Volkswagen Group of America Chattanooga Operations, LLC, VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC (“VCI”), and any former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the “VW Released Entities”); (2) any and all contractors, subcontractors, and suppliers of the VW Released Entities; (3) any and all persons and entities indemnified by any VW Released Entity with respect to the TDI Matter; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Affected Vehicle, even if such persons are not specifically named in this paragraph; and (5) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, attorneys, assigns, principals, officers, directors, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers. Notwithstanding the foregoing, this Release does not release any claims against Robert Bosch GmbH and Robert Bosch, LLC or any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, or successors.
2. In exchange for benefits that (i) I am eligible to receive under the class action settlement agreement in this case (the “Franchise Dealer Class Agreement”)[[1]](#footnote-3) and (ii) Volkswagen Group of America, Inc. (“VWGoA”) and Volkswagen AG (collectively, “Volkswagen”) have agreed to provide to me (the “Individual Dealer Settlement Payments”), the sufficiency of which I hereby acknowledge, I, on behalf of myself and my agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through or under me, hereby fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit the Released Parties, of and from the following claims: (1) all claims related in any way to the TDI Matter; (2) all claims related in any way to VWGoA’s previously announced goals or objectives for U.S. sales volume growth, including any claims related in any way to incentives and other support payments or programs from VWGoA to any Volkswagen-branded franchise dealer related to such goals and any volume shortfall; (3) all claims for monetary damages arising before the Effective Date of the Franchise Dealer Class Agreement that relate in any way to allocation complaints or irregularities (but allocations may be asserted by any dealer as a defense to a franchise termination by VWGoA); (4) all claims for monetary damages arising before the Effective Date of the Franchise Dealer Class Agreement that relate in any way to the method upon which VWGoA measures the sales and service performance of its Volkswagen-branded franchise dealers or sets the sales and service objectives for its Volkswagen-branded franchise dealers (but the method upon which VWGoA measures the sales and service performance may be asserted by any Volkswagen-branded franchise dealer as a defense to a franchise termination by VWGoA); and (5) all discrimination or coercion claims arising before the Effective Date of the Franchise Dealer Class Agreement related in any way to the sale, incentivization or use of VCI wholesale and retail financing products (collectively, the “Released Claims”). Except as specifically enumerated above, all other claims are expressly preserved and are not released. For avoidance of doubt, to the extent that a Releasing Party owns a VW-branded dealership and also owns a Porsche-branded dealership and/or an Audi-branded dealership, that Releasing Party is releasing all Released Claims specifically and only with respect to its ownership of the VW-branded dealership, and does not release any claims with respect to its ownership of a Porsche-branded dealership and/or an Audi-branded dealership against any party.
3. This Individual Release will become effective and irrevocably binding upon me when I receive my Initial Payment under Section 4.1.3 of the Franchise Dealer Class Agreement and will remain binding whether or not the Franchise Dealer Class Agreement is finally approved, provided that VWGoA makes all of my Individual Dealer Settlement Payments. .
4. I acknowledge and agree that I have agreed to sign this Individual Release as the result of an arm’s length voluntary transaction for valuable consideration, separate and apart from continuation of any existing Volkswagen Dealer Agreement, and that I have not been coerced or required to enter into the Individual Release or to not opt-out of the Franchise Dealer Class Agreement by VWGoA or anyone else.
5. In the event that I bring a future challenge to this Individual Release or any future action or proceeding based on a Released Claim, this Individual Release may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Individual Release. I shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action, and/or other proceeding, against the Released Parties with respect to the Released Claims. To the extent that I have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, I shall cause such suit, action, or proceeding to be dismissed with prejudice. If I commence, file, initiate, or institute any new legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with prejudice and at my cost; (2) the respective Released Party shall be entitled to recover any and all reasonable related attorneys’ fees, costs and expenses from me arising as a result of my breach of my obligations under this Individual Release; and (3) Volkswagen shall have the discretion to void this Individual Release and the Franchise Dealer Class Agreement as it pertains to me, in which case I shall immediately repay VWGoA any consideration paid to me pursuant to this Individual Release and the Franchise Dealer Class Agreement with legal interest thereon arising as a result of my breach of my obligations under this Individual Release.
6. This Individual Release incorporates by reference the release and associated provisions set forth in Section 9 of the Franchise Dealer Class Agreement as if set forth fully herein, and, as to those provisions, shall have the same scope and effect as the Franchise Dealer Class Agreement. This Individual Release supplements the release and associated provisions set forth in Section 9 of the Franchise Dealer Class Agreement. It does not supersede them.
7. I expressly understand and acknowledge that this Individual Release applies to claims of which I am not presently aware. I expressly understand and acknowledge Section 1542 of the California Civil Code, which provides: “**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor**.” I acknowledge that I am aware of the contents and effect of Section 1542 and have considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Individual Release is interpreted fully in accordance with its terms, I expressly waive and relinquish any and all rights and benefits that I may have under Section 1542 to the extent that such section may be applicable to this Individual Release and likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to this Individual Release.
8. For the avoidance of doubt, I expressly understand and acknowledge that I may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that I now know or believe to be true, related to the Released Claims, the Action and/or this Individual Release. Nevertheless, it my intention in executing this Individual Release to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in the Action or any other action or proceeding) with respect to the Released Claims in accordance with the terms of the Franchise Dealer Class Agreement.
9. This Individual Release shall remain effective regardless of any judicial, quasi-judicial, arbitral, administrative, regulatory, or other decision relating to the liability of any Released Party in connection with the Released Claims, provided that VWGoA makes all of my Individual Dealer Settlement Payments. For the avoidance of doubt, this Individual Release shall remain effective even if the Final Approval is not granted, or the Final Approval Order is reversed and/or vacated on appeal, or if the Franchise Dealer Class Agreement is abrogated, terminated or otherwise voided in whole or in part, provided that VWGoA makes all of my Individual Dealer Settlement Payments.
10. This Individual Release is not intended to and expressly does not release Robert Bosch GmbH or Robert Bosch, LLC and any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors (the “Bosch Entities”). If I elect to pursue a claim against any Bosch Entity related to the Released Claims (either individually or as a member of a class) and obtain a final, non-appealable adversary judgment against that Bosch Entity for damages as to which any Bosch Entity seeks indemnification from one or more of the Released Parties, I will waive enforcement of my judgment against that Bosch Entity by the amount of the damages that such Released Parties are held to be responsible for by way of indemnification of any Bosch Entity, but not more than the Restitution Payment amount that I receive from all Released Parties. However, I shall have no obligation to reduce my judgment against any Bosch Entity unless and until any Bosch Entity has obtained—in the face of a vigorously litigated defense—a final, non-appealable adversary judgment for indemnification against one or more of the Released Parties based on such party’s legal obligation to indemnify any Bosch Entity that existed prior to September 18, 2015. In the event that any Bosch Entity obtains such a judgment against a Released Party after I have recovered on a judgment against that Bosch Entity, I will return to the Bosch Entity the amount of the judgment against it by which I agree herein to have reduced that judgment, which amount will not exceed the Individual Dealer Settlement Payment that I receive from Volkswagen. In addition, I agree not to enter into any agreement to settle any claim I may have against any Bosch Entity unless such agreement expressly provides that the Released Parties shall be released from any claim for indemnification by a Bosch Entity against any Released Party that relates to my claim against the Bosch Entity.
11. This Individual Release, and any dispute arising out of or related to this Individual Release, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto, and the laws of the State of California notwithstanding its conflict of law provisions. This Individual Release will be binding upon my successors, transferees, and assigns.
12. Any disagreement concerning and/or action to enforce this Individual Release shall be commenced and maintained only in the United States District Court for the Northern District of California.
13. I represent and warrant that I have carefully read and understand this Individual Release and that I execute it freely, voluntarily, and without being pressured or influenced by, or relying on, any statement or representation made by any person or entity acting on behalf of any Released Party. I certify that I understand that I have the right to consult with an attorney of my choice before signing this Individual Release.
14. I represent and warrant that I have authority to execute this Individual Release and that I am the sole and exclusive owner of all claims that I am releasing pursuant to this Individual Release. I acknowledge that I have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Released Claims.

## \*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

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

Date:

*Printed Name Signature*

Title

Executed on behalf of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dealer Settlement Class Member

***\*\*When submitting this Individual Release, please include Exhibit 1 to the VW-Branded Dealer Settlement Notice\*\****

WITNESS:

State of )

) SS

County of )

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

My seal:

NOTARY PUBLIC

1. The terms “Action,” “Final Approval Order,” “Franchise Dealer Complaint,” “Individual Dealer Settlement Payments,” “Initial Payment,” “Released Party,” “TDI Matter,” and “Volkswagen Dealer Agreement” have the meanings given to them in Section 2 of the Franchise Dealer Class Agreement. [↑](#footnote-ref-3)