

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice (the “United States”), and Volkswagen AG (“VW AG”) and Volkswagen Group of America, Inc. (“VW GoA”) (together referred to as “VW”), through their authorized representatives. Hereafter, collectively, the United States and VW are referred to as the “Parties.”

RECITALS

A. VW AG is a German corporation that has its headquarters in Wolfsburg, Germany, and designs, manufactures, and sells automobiles and commercial vehicles.

B. VW GoA is a wholly-owned subsidiary of VW AG that has its corporate headquarters in Herndon, Virginia.

C. VW Credit, Inc. (“VCI”) is a wholly-owned subsidiary of VW GoA that has its headquarters in Herndon, Virginia. VCI is a sales finance company that, among other things, supports VW GoA’s vehicle sales and lease efforts, including by purchasing from dealers certain automobile retail installment sales contracts (*i.e.*, loans) and leases, and by offering dealer floorplan loans. VCI’s financing arrangements are primarily collateralized by the vehicles underlying the loan and lease transactions.

D. VW sold the following vehicles containing 2.0 liter diesel engines in the United States: Model Year (MY) 2009-2015 VW Jetta; MY 2009-2014 VW Jetta Sportwagen; MY 2010-2015 VW Golf; MY 2015 VW Golf Sportwagen; MY 2010-2013 and 2015 Audi A3; MY 2013-2015 VW Beetle and VW Beetle Convertible; and MY 2012-2015 VW Passat. VW sold the following vehicles containing 3.0 liter diesel engines in the United States: MY 2009-2016 VW Touareg; MY 2009-2015 Audi Q7;

MY 2014-2016 Audi A6 Quattro; MY 2014-2016 Audi A7 Quattro; MY 2014-2016 Audi A8L; and MY 2014-2016 Audi Q5. These vehicles are referred to collectively herein as the “Subject Vehicles.”

E. On such date as may be determined by the Court, VW AG will enter into a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the “Plea Agreement”) to an information to be filed in *United States v. Volkswagen AG*, Criminal Action No. [to be assigned] (Eastern District of Michigan) (the “Criminal Action”) that will allege a violation of: (1) Title 18, United States Code, Section 371, namely, conspiracy, the objects of which were: (a) to defraud the United States; (b) to violate the wire fraud statute; and (c) to violate the Clean Air Act; (2) Title 18, United States Code, Section 1512(c), namely, obstruction of justice; and (3) Title 18, United States Code, Section 542, namely, introducing imported merchandise into the United States by means of false statements.

F. As part of the Plea Agreement, VW AG will admit to the facts contained in the Statement of Facts attached to the Plea Agreement and will plead guilty to the charges in the Third Superseding Information.

G. The United States contends that it has certain civil claims, as specified in Paragraph 5 below, against VW for engaging in: (i) the conduct set forth in the Plea Agreement and its accompanying Statement of Facts as to the Subject Vehicles; and (ii) the following conduct during the period from January 1, 2009, to September 18, 2015 (hereinafter, collectively referred to as the “Covered Conduct”):

VW knowingly made or caused to be made false material statements to United States regulators, including the Environmental Protection Agency and the United States

Customs and Border Protection, a component of the Department of Homeland Security, stating that the Subject Vehicles complied with applicable United States emissions standards for new motor vehicles, when they did not.

VW represented to its United States customers, United States dealers, and others in the United States that the Subject Vehicles met applicable United States emissions standards and designed a specific marketing campaign to market these vehicles to United States customers as “clean diesel” vehicles. Certain VW employees marketed, and caused to be marketed, the Subject Vehicles to the United States public as “clean diesel” and environmentally-friendly, when it was known that the Subject Vehicles were intentionally designed to detect, evade and defeat United States emissions standards.

VCI offered competitive financing terms by purchasing from dealers certain loans and leases entered into by customers that purchased or leased Volkswagen vehicles, including the Subject Vehicles. VCI also provided financing to VW GoA’s authorized dealerships in the United States, called floorplan financing, for Volkswagen vehicles, including the Subject Vehicles. For loans, leases, and floorplan financing, Volkswagen vehicles, including the Subject Vehicles, were the collateral underlying the payment obligations. The loans, leases, and floorplan financing of Volkswagen vehicles, including the Subject Vehicles, supported in part VW’s vehicle sales and lease efforts.

Certain of these loans, leases, and floorplan financings were pooled together to create asset-backed securities (“ABS”) issued by VCI. Federally insured financial institutions served as trustees for certain ABS and also purchased certain notes in these ABS. Between 2009 and 2015, VCI issued in the United States a total of 17 ABS that

contained loans, leases, and dealer floorplan financing for Volkswagen vehicles, including the Subject Vehicles.

H. This Agreement is one of several coordinated resolutions of various federal civil and criminal claims related to the Covered Conduct to be set forth in other agreements that may reference but are not part of this Agreement, including, in connection with *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, Case No. MDL 2672 CRB (N.D. Cal.) (the "MDL"), a Third Partial Consent Decree between certain VW entities and the Department of Justice on behalf of the Environmental Protection Agency to resolve claims pursuant to the Clean Air Act, 42 U.S.C. § 7522 (the "Third Partial Consent Decree"), and a civil settlement between certain VW entities and United States Customs and Border Protection. The Third Partial Consent Decree contains certain admissions by VW.

I. This Agreement is made in compromise of disputed claims. With the exception of such admissions that are made in connection with any guilty plea by VW AG in connection with the Criminal Action or with the Third Partial Consent Decree, by entering into this Agreement, VW does not admit and instead specifically denies liability, and nothing in this Agreement shall constitute an admission of fact or law by VW. Nor is the Agreement a concession by the United States that its claims are not well-founded.

J. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties have reached a full and final settlement pursuant to the Terms and Conditions below.

TERMS AND CONDITIONS

1. VW shall pay to the United States \$50 million plus accrued interest at a rate of 1% per annum from the date on which the Third Partial Consent Decree is lodged with the Court and continuing until and including the date of payment (the “Settlement Amount”). The Settlement Amount shall constitute a debt immediately due and owing to the United States. The debt shall be discharged by payment to the United States pursuant to instructions from the Civil Division, Department of Justice no later than thirty (30) days after: (i) this Agreement is fully executed by the Parties; (ii) the date on which the Third Partial Consent Decree described in Paragraph H is entered by the Court or a motion to enter the Third Partial Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket; or (iii) the Court accepts a Fed. R. Crim. P. 11(c)(1)(C) guilty plea as described in Paragraph E in connection with the Criminal Action and imposes the agreed-upon sentence, whichever occurs later.

2. If VW AG’s agreed-upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in Paragraph E is not accepted by the Court or the Court does not impose the agreed-upon sentence for whatever reason, this Agreement shall be null and void at the option of either the United States or VW. If either the United States or VW exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within five (5) business days of the Court’s decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, VW will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions, or proceedings arising from the Covered Conduct that are

brought by the United States within ninety (90) calendar days of rescission, except to the extent such defenses were available on the Effective Date of this Agreement.

3. If the Third Partial Consent Decree described in Paragraph H is not entered by the Court, this Agreement shall be null and void at the option of either the United States or VW. If either the United States or VW exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within five (5) business days of the Court's decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, VW will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims, actions, or proceedings arising from the Covered Conduct that are brought by the United States within ninety (90) calendar days of rescission, except to the extent such defenses were available on the Effective Date of this Agreement.

4. The entirety of the Settlement Amount is a civil monetary penalty recovered pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a.

5. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned on VW's full payment of the Settlement Amount, the United States fully and finally releases VW AG and VW GoA, together with their current and former parent corporations, predecessor and successor corporations, divisions, departments, units, direct and indirect subsidiaries, and affiliates (including VCI, Dr. Ing. h.c. F. Porsche AG, Porsche Cars North America, Inc., and Porsche Financial Services, Inc.) (collectively, the "VW Released Entities") from any civil claims the United States

has against the VW Released Entities for the Covered Conduct arising under FIRREA; the False Claims Act, 31 U.S.C. §§ 3729, et seq.; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, et seq.; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq.; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45.

6. Notwithstanding the release given in Paragraph 5 of this Agreement or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released by this Agreement:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability for the claims or conduct alleged in *United States of America, represented by the U.S. Department of Justice, Civil Division, Office of Foreign Litigation, 1100 L Street NW, Washington, D.C. 20530, USA versus VOLKSWAGEN*

AKTIENGESELLSCHAFT, represented by the Board of Directors, composed of Dr. Karlheinz Blessing, Dr. Ing. Herbert Diess, Francisco Javier Garcia Sanz, Prof. Dr. Jochem Heizmann, Dr. Christine Barbara Hohmann-Dennhardt, Matthias Siegfried Müller, Andreas Hermann Renschler, Rupert Johann Stadler, Frank Witter, Berliner Ring 2, 38440 Wolfsburg; File references: 5 O 2269/16 (784) Regional Court (Landgericht) Braunschweig, German, 3 Kap 1/16 Higher Regional Court (Oberlandesgericht) Braunschweig, Germany, and no setoff related to amounts paid under this Agreement shall be applied to any recovery in connection with that action;

- f. Any liability based upon obligations created by this Agreement;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- i. Any liability of individuals.

7. VW waives and shall not assert any defenses VW may have to any criminal prosecution or administrative action brought in or by the United States relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement

bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. The VW Released Entities fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the VW Released Entities have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. VW agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of VW, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and the Plea Agreement;
- (2) the United States' audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) VW's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement and the Plea Agreement; and
- (5) the payment VW makes to the United States pursuant to this Agreement;

are unallowable costs for government contracting purposes (hereinafter, referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by VW, and VW shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, VW shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by the VW Released Entities from the United States. VW agrees that the United States, at a minimum, shall be entitled to recoup from VW or any of its subsidiaries or affiliates any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine VW’s or any of its subsidiaries’ or affiliates’ books and records and to disagree with any calculations submitted by VW or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by the VW Released Entities, or the effect of any such Unallowable Costs on the amount of such payments.

10. This Agreement is intended to be for the benefit of the Parties and the VW Released Entities only.

11. Each Party shall bear its own legal and other costs incurred in connection with the claims resolved by this Agreement, including the preparation and performance of this Agreement.

12. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. Such disputes shall be accompanied by a legal request that the dispute be made part of the MDL (if it remains pending). For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended, except by written consent of the Parties.

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

17. This Agreement is binding on VW's successors, transferees, heirs, and assigns.

18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

Benjamin C. Mizer
Principal Deputy Assistant Attorney General

DATED: 1/11/17

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VOLKSWAGEN AG

DATED: Jan. 11, 2017 BY:

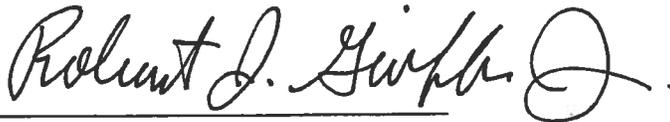


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DATED: Jan. 11, 2017 BY:



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