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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

This Documents Relates to:

Porsche Gasoline Litigation (ECF No. 7803)

MDL 2672 CRB (JSC)

**CONSUMER CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

The Honorable Charles R. Breyer

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1. THE PROPOSED SETTLEMENT

This Consumer Class Action Settlement Agreement (the “Class Action Agreement”) compensates certain owners and lessees of Porsche-branded gasoline vehicles for which recent testing indicated that the miles-per-gallon (“MPG”) as represented on the “Monroney” fuel economy label may not be accurate and will be revised (the “Fuel Economy Class Vehicles”) and which may exceed certain emission limitations when driven in the user-selectable Sport+ Mode¹ (the “Sport+ Class Vehicles”). Current and former owners and lessees of the Fuel Economy Class Vehicles will be offered a cash payment intended to fully compensate them for the potentially increased fuel consumption of their vehicles estimated based on the indications from testing. Current owners of Sport+ Class Vehicles will be offered a repair that will reduce their vehicles’ emissions in Sport+ Mode to ensure compliance with the relevant regulatory limits, as well as a cash payment upon completion of the repair. Finally, Porsche will also offer compensation to owners and lessees of certain Porsche-branded gasoline vehicles for which there is no conclusion that there is or is not a relevant exceedance as explained in greater detail below.

* * *

In August 2020, a German newspaper reported that German authorities had audited Porsche AG to investigate allegations that certain Porsche gasoline vehicles generated more carbon dioxide during on-road driving than during test cycles. Shortly thereafter, consumers filed six class action lawsuits against Porsche AG, Porsche Cars North America, Inc. (together, “Porsche”) and Volkswagen AG (“Volkswagen”) alleging that Porsche modified certain vehicles used for testing in a way that could impact the results of fuel economy testing, and that certain vehicles did not comply with emissions regulations in Sport+ Mode. The actions were consolidated with *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 CRB (JSC) in the United States District Court for the Northern District of California before the Honorable Charles R. Breyer.

At the Court's direction (Dkt. 7756), Plaintiffs' Lead Counsel filed a Consolidated

¹ Certain vehicles equipped with “PDK Sport” mode rather than “Sport+” mode are also included in the Sport+ Class Vehicles. We refer to both modes as Sport+ mode throughout this Agreement.

1 Consumer Class Action Complaint, alleging claims against Porsche and Volkswagen for fraud by
2 concealment, violation of the Magnuson-Moss Warranty Act, breach of express and implied
3 warranties under state laws, and violations of state consumer protection and unfair practices
4 statutes of all 50 states and the District of Columbia. On May 14, 2021, Porsche and Volkswagen
5 filed a motion to dismiss for failure to state a claim, and briefing on the motion to dismiss
6 concluded on October 25, 2021. A hearing on that pending motion was scheduled for December
7 10, 2021, but on October 29, 2021, the Parties asked the Court to postpone the hearing as they
8 engaged in discussions about a potential resolution of this matter.

9 Throughout this period, Plaintiffs conducted testing on Porsche gasoline vehicles with the
10 assistance of professional experts to determine whether fuel economy differed from the
11 certification results, and to determine if driving in Sport+ Mode exceeded emissions limitations.
12 Defendants also conducted extensive testing and analysis of the CO₂ and fuel economy of certain
13 Porsche gasoline vehicles and conducted testing of toxic emissions for certain gasoline vehicles
14 when driven in Sport+ Mode. Through this testing it was determined that there were potential
15 excess NOx emissions associated with driving in Sport+ Mode, which were very minimal in total
16 across all impacted vehicles. Porsche has also developed and tested repairs to ensure Sport+
17 Class Vehicles are fully compliant with relevant emissions standards. These repairs have been or
18 will be submitted to the Environmental Protection Agency and California Air Resources Board
19 for review and/or approval. Porsche expects that it will be able to ensure that all Sport+ Class
20 Vehicles are within the applicable emission limits.

21 In connection with their discussions about a potential resolution of this matter, Plaintiffs
22 and Defendants shared documents and information, including test designs, protocols and results.
23 Plaintiffs and their experts also traveled to Porsche's development and testing facility in
24 Weissach, Germany to observe testing conducted by Defendants, review the Defendants' testing
25 data, and discuss the testing and other technical issues with Porsche engineers and experts in
26 these matters. Porsche also made available more than 500,000 technical documents, which
27 Plaintiffs reviewed in Germany. All of this information was shared as part of extensive
28 settlement efforts, culminating in this Class Action Agreement.

Based on that testing and analysis, the Parties have identified the Fuel Economy Class Vehicles identified on Exhibit 1 for which testing indicated that the rounded fuel economy was one or two miles per gallon less in the City, Highway and/or Combined values than what was shown on the Monroney fuel economy label of those vehicles at the time of their initial sale or lease, and identified the Sport+ Class Vehicles identified on Exhibit 2 for which testing indicated that they exceeded applicable emissions requirements when driven in Sport+ Mode.

The Parties acknowledge that some of the differences in fuel economy shown in testing could result from the age of the vehicles as well as test-to-test variation, and recognize that relevant regulations permit up to 10% deviations for CO₂ values related to fuel economy calculations in in-use vehicle testing. In other words, it is possible that some of the Fuel Economy Class Vehicles achieve the fuel economy listed on their original Monroney label, taking into account the Monroney label's disclaimer that "[a]ctual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle," and operate fully within applicable emissions limitations. Nonetheless, because it is not possible to segregate these factors, for purposes of this Settlement, Defendants will provide compensation for every Fuel Economy Class Vehicle for which the testing generated an MPG value that differed from the value for the City, Highway or Combined MPG that was included on the original Monroney label for that vehicle using standard methods required in fuel economy certification without regard to the age of the relevant vehicle, other factors that may impact CO₂ test results, or the impact of rounding in the calculation of MPG results.

The Class Vehicles were identified through rigorous and comprehensive testing that the Parties believe was likely to have covered all affected vehicles. There are, however, additional vehicles that are conceivably impacted for which no potential deviations were identified through testing (the "Other Class Vehicles"). In an abundance of caution, Defendants will offer compensation to the owners of these vehicles as well.

2. DEFINITIONS

As used in this Class Action Agreement, including the attached exhibits, the terms defined herein have the following meanings, unless this Class Action Agreement specifically provides

1 otherwise:

2 2.1. “Action” means the coordinated class actions however named, including but not
3 limited to the Complaint, that are currently coordinated pursuant to 28 U.S.C. § 1407 in the
4 United States District Court for the Northern District of California in *In re: Volkswagen “Clean
5 Diesel” Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB
6 (N.D. Cal.) (MDL 2672) (the “MDL”) and designated as related to the Porsche Gasoline
7 Litigation (ECF No. 7803) in the MDL.

8 2.2. “Authorized Dealer” means any authorized Porsche dealer located in the United
9 States, including Puerto Rico, as evidenced by a current and valid Dealer Sales and Service
10 Agreement. “Non-Authorized Dealer” means any automobile dealer that is not an Authorized
11 Dealer that is located in the United States, including Puerto Rico.

12 2.3. “Certified Exhaust Emissions Standards” means federal Tier 2 and Tier 3 and
13 California LEV and ULEV standards codified at Code of Federal Regulations title 40, sections
14 86.1811-04 and 86.1811-17, and California Code of Regulations, title 13, sections 1961(a) and
15 1961.2(a), and as set forth in the corresponding certification applications.

16 2.4. “Claim” means the claim of any Class Member or his or her or its representative as
17 provided in this Class Action Agreement.

18 2.5. “Claim Form” means a document used to submit a Claim under this Class Action
19 Agreement.

20 2.6. “Claims Period” means the time period during which Class Members may claim
21 benefits under the Class Action Agreement. The Claims Period deadlines are as follows:

22 2.6.1. “Sport+ ECR Deadline” means the last day by which a Sport+ Class
23 Vehicle must receive the ECR for its owner to be eligible for Sport+ Cash
24 Benefits and shall run 18 months from the entry of the Preliminary
25 Approval Order. The Sport+ ECR Deadline is also the last day by which
26 a Sport+ Class Member who owns a Sport+ Class Vehicle for which no
27 ECR was approved by the Final Approval Order may submit a claim for
28 Sport+ Cash Benefits.

2.6.2. “Fuel Economy Claims Deadline” means the last day to submit a claim for Fuel Economy Cash Benefits and Other Class Vehicle Cash Benefits, and shall run 120 days from the entry of the Preliminary Approval Order.

2.7. “Claims Administrator” means the third-party agent agreed to by the Parties and appointed by the Court to oversee the Claims process described in Section 5.

2.8. “Class” means, for purposes of this Class Action Settlement only, a nationwide class of all persons (including individuals and entities) who own, owned, lease, or leased a Class Vehicle. The following entities and individuals are excluded from the Class:

- (a) Defendants’ officers, directors and employees and participants in the Porsche Associate Lease Program; Defendants’ affiliates and affiliates’ officers, directors and employees; Defendants’ distributors and distributors’ officers, directors and employees;
- (b) Judicial officers and their immediate family members and associated court staff assigned to this case;
- (c) All individuals who leased a Class Vehicle from a lessor other than Porsche Financial Services;
- (d) All individuals who are not Fuel Economy Class Members, Sport+ Class Members, or Other Class Vehicle Class Members; and
- (e) All those otherwise in the Class who or which timely and properly exclude themselves from the Class as provided in this Class Action Agreement.

2.9. “Class Action Agreement” or “Agreement” means this settlement agreement and the exhibits attached hereto, including any subsequent amendments or any exhibits to such amendments. The Class Action Agreement may alternatively be referred to as the “Class Action Settlement” or the “Settlement.”

2.10. “Class Counsel” means Lead Counsel and the PSC.

2.11. “Class Member” means a member of the Class.

2.12. “Class Notice Program” means the program for distributing information about the Class Action Settlement to Class Members.

1 2.13. “Class Representative” or “Settlement Class Representative” means a Plaintiff
2 named in the Complaint, who meets the Class definition set forth in Section 2.8 of this Class
3 Action Agreement, and who has agreed to represent the Class for purposes of obtaining approval
4 of, and effectuating, this Class Action Agreement, as listed in the Motion for Preliminary
5 Approval.

6 2.14. “Class Vehicle” means all Fuel Economy Class Vehicles, all Sport+ Class
7 Vehicles, and all Other Class Vehicles.

8 2.15. “Complaint” means the Amended Consolidated Class Action Complaint that will
9 be filed in the Action before the Motion for Preliminary Approval.

10 2.16. “Court” means the United States District Court for the Northern District of
11 California, San Francisco Division.

12 2.17. “Defendants” means Porsche and Volkswagen.

13 2.18. “Defendants’ Lead Counsel” means Robert J. Giuffra, Jr. and Sharon L. Nelles of
14 Sullivan & Cromwell LLP.

15 2.19. “Effective Date” means the date the Court enters the Final Approval Order.

16 2.20. “Emissions Compliant Repair” or “ECR” means a repair that brings a Sport+ Class
17 Vehicle into compliance with Certified Exhaust Emissions Standards, as set forth in the
18 corresponding certification application for the respective vehicle, without amendment of any
19 kind.

20 2.21. “Escrow Account” means the escrow account managed by the Escrow Agent,
21 which shall be the sole escrow account for compensation of Class Members under the Class
22 Action Agreement.

23 2.22. “Escrow Agent” means the agreed-upon entity to address and hold for distribution
24 the funds identified in this Class Action Agreement pursuant to the terms of the Escrow
25 Agreement. The Parties agree that Citibank Private Bank shall serve as Escrow Agent, subject to
26 approval by the Court.

1 2.23. “Escrow Agreement” means the agreement by and among Plaintiffs’ Lead Counsel
2 and Defendants’ Lead Counsel with respect to the escrow of the funds to be deposited into the
3 Escrow Account pursuant to this Class Action Agreement.

4 2.24. “Excess Funds” means any Settlement Value remaining after all Fuel Economy
5 Cash Benefits and Sport+ Cash Benefits, service awards, attorneys’ fees and expenses, and fees
6 and costs incurred by the Claims Administrator and Notice Administrator have been paid and/or
7 are allocated to be paid to the foregoing.

8 2.25. “Fairness Hearing” means the hearing held by the Court for the purpose of
9 determining whether to approve this Class Action Agreement as fair, reasonable, and adequate.

10 2.26. “Final Approval Order” means the Court’s order approving the Class Action
11 Settlement.

12 2.27. “Fuel Economy Cash Benefits” means certain monetary compensation, that
13 Porsche will pay to Fuel Economy Class Members who do not opt out of the Class and who
14 timely file a valid and complete Claim, on conditions set forth in Section 5 and Exhibit 3. The
15 Fuel Economy Cash Benefits will be a minimum of \$250 per Fuel Economy Class Vehicle.

16 2.28. “Fuel Economy Class Member” means a member of the Class who, as of the date
17 of the Motion for Preliminary Approval, owns, owned, leases, or leased a Fuel Economy Class
18 Vehicle during the first 96 months the vehicle was available for sale or lease.

19 2.29. “Fuel Economy Class Vehicle” means the gasoline-powered vehicles of the make,
20 model, derivative, transmission type, and model years listed in Exhibit 1 that were (1) sold or
21 leased in the United States, including Puerto Rico, on or before the date of the Motion for
22 Preliminary Approval; and (2) are or were registered with a state Department of Motor Vehicles
23 or equivalent agency or owned by a Non-Authorized Dealer in the United States, including Puerto
24 Rico, that (a) holds title to the vehicle or (b) holds the vehicle by bill of sale.

25 2.30. “Fuel Economy Matter” means (1) the installation, presence, design, manufacture,
26 assembly, testing, or development of hardware and/or software that potentially caused the Fuel
27 Economy Class Vehicles or Other Class Vehicles to operate in a different manner in the
28 certification and/or fuel economy testing process than in vehicles delivered to customers; (2) the

1 marketing or advertisement of the fuel economy in the Fuel Economy Class Vehicles or Other
2 Class Vehicles; and/or (3) the subject matter of the Action.

3 2.31. “Motion for Preliminary Approval” means the motion filed pursuant to Rule
4 23(e)(1) of the Federal Rules of Civil Procedure.

5 2.32. “Notice Administrator” means the third-party agent or administrator agreed to by
6 the Parties and appointed by the Court to implement and consult on the Class Notice Program.

7 2.33. “Opt-Out Deadline” means the last day a Class Member may opt out of the Class
8 Action Settlement, which, subject to Court approval, is 60 days after the Preliminary Approval
9 Order. However, Sport+ Class Members who acquire a Sport+ Class Vehicle more than 60 days
10 after the Preliminary Approval Order, but before the Sport+ ECR Deadline, shall have 30 days
11 from the date they purchased the Sport+ Class Vehicle to opt out.

12 2.34. “Other Class Vehicle” means the gasoline-powered vehicles of the make, model,
13 derivative, transmission type, and model years listed in Exhibit 4 that were originally sold or
14 leased in the United States, including Puerto Rico, on or before the date of the Motion for
15 Preliminary Approval and that are not Fuel Economy Class Vehicles.

16 2.35. “Other Class Vehicle Cash Benefits” means the compensation available to Other
17 Class Vehicle Class Members.

18 2.36. “Other Class Vehicle Class Member” means a member of the Class who owns,
19 owned, leases, or leased an Other Class Vehicle as of the date of the Motion for Preliminary
20 Approval.

21 2.37. “Parties” means the Class Representatives and Defendants, collectively, as each of
22 those terms is defined in this Class Action Agreement.

23 2.38. “Plaintiffs’ Lead Counsel” or “Lead Counsel” means Elizabeth Cabraser of Lieff,
24 Cabraser, Heimann & Bernstein, LLP, who was appointed by the Court on January 21, 2016, and
25 who serves as the Chair of the PSC.

26 2.39. “Plaintiffs’ Steering Committee” or “PSC” means those counsel appointed to the
27 Plaintiffs’ Steering Committee by the Court in this this Multi-District Litigation on January 21,
28 2016. Lead Counsel is Chair of the PSC.

1 2.40. “Porsche AG” means Dr. Ing. h.c. F. Porsche AG.

2 2.41. “Porsche” means Porsche AG and Porsche Cars North America, Inc.

3 2.42. “Post-Appeal Date” means the latest date on which the Final Approval Order
4 approving this Class Action Agreement becomes final. For purposes of this Class Action
5 Agreement:

6 2.42.1. If no appeal has been taken from the Final Approval Order, “Post-Appeal
7 Date” means the date on which the time to appeal therefrom has expired;
8 or

9 2.42.2. If any appeal has been taken from the Final Approval Order, “Post-
10 Appeal Date” means the date on which all appeals therefrom, including
11 petitions for rehearing or reargument, petitions for rehearing *en banc* and
12 petitions for a writ of *certiorari* or any other form of review, have been
13 fully disposed of in a manner that affirms the Final Approval Order; or

14 2.42.3. If Lead Counsel and Defendants agree in writing, the “Post-Appeal Date”
15 can occur on any other earlier agreed date.

16 2.43. “Preliminary Approval Order” means the order that may, at the discretion of the
17 Court, be entered by the Court approving notice to the Class and concluding that the Court will
18 likely be able to approve the Class Action Settlement and certify the proposed Class as outlined in
19 Section 3 of this Class Action Agreement.

20 2.44. “Release” means the release and waiver described in Section 10 of this Class
21 Action Agreement and in the Final Approval Order. In addition, by accepting Settlement
22 Benefits, Class Members individually release their claims under this Settlement Agreement. This
23 Individual Release, described further in Section 10.6, will remain valid even if the Final Approval
24 Order is later reversed and/or vacated on appeal.

25 2.45. “Released Claims” has the definition set forth in Section 10.3 of this Class Action
26 Agreement.

27 2.46. “Released Party” or “Released Parties” has the definition set forth in Section 10.2
28 of this Class Action Agreement.

1 2.47. “Releasing Parties” has the definition set forth in Section 10.3 of this Class Action
2 Agreement.

3 2.48. “Settlement Benefits” means Fuel Economy Cash Benefits, Sport+ Cash Benefits,
4 and Other Class Vehicle Cash Benefits.

5 2.49. “Settlement Value” means \$80,000,000, which, as described in Section 4.5, is the
6 total amount Porsche AG will pay under this Agreement, subject to the potential additional
7 funding described in Section 4.2 below. Porsche AG shall be responsible for all required
8 payments owed by Defendants under this Class Action Agreement as described herein because
9 the Class Vehicles were designed and manufactured by Porsche AG. Volkswagen and Porsche
10 Cars North America, Inc. were not involved in the issues giving rise to this settlement.

11 2.50. “Sport+ Cash Benefit” means \$250 per Sport+ Class Vehicle, which Porsche will
12 pay to Sport+ Class Members on conditions set forth in Section 4.3.

13 2.51. “Sport+ Class Member” means owner(s) who acquire a Sport+ Class Vehicle
14 before the end of the Claims Period. An owner who acquires a Sport+ Class Vehicle after it has
15 received the ECR is not a Sport+ Class Member, is not eligible to receive Sports+ Cash Benefits.
16 Sport+ Class Members consists of owners because there are no Sport+ Class Vehicles with active
17 leases through Porsche Financial Services, Inc.

18 2.52. “Sport+ Class Vehicle” means the gasoline-powered vehicles of the make, model,
19 derivative, and model years listed in Exhibit 2 and equipped with Sport+ Mode or PDK Sport
20 Mode that were originally sold or leased new in the United States, including Puerto Rico, on or
21 before the date of the Motion for Preliminary Approval. Sport+ Class Vehicle excludes any
22 Porsche vehicle that was never sold or leased in the United States, including Puerto Rico.

23 2.53. “Sport+ Matter” means (1) the installation, presence, design, manufacture,
24 assembly, testing, or development of software that potentially resulted in a Sport+ Class Vehicle
25 exceeding emissions limits in Sport, PDK Sport or Sport+ Mode; (2) the marketing or
26 advertisement of any Sport+ Class Vehicle as green, environmentally friendly, and/or compliant
27 with state or federal emissions; (3) the actual or alleged noncompliance of any Sport+ Class
28 Vehicle with state or federal emissions standards; and/or (4) the subject matter of the Action.

2.54. “Unclaimed Funds” means any amounts remaining of the Settlement Value after all Settlement Benefits, service awards, attorneys’ fees and expenses, and fees and costs incurred by the Claims Administrator and Notice Administrator have been paid.

2.55. “Volkswagen” means Volkswagen AG.

2.56. Other capitalized terms used in this Class Action Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Class Action Agreement.

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

3. PRELIMINARY APPROVAL ORDER

3.1. The Parties shall file a Motion for Preliminary Approval. Simultaneously, the Class Representatives shall move for certification of the Class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(3), and 23(e). It is expressly agreed that any certification of the Class shall be for settlement purposes only, and Defendants do not waive any arguments that they may have that class certification for any other purpose would be improper.

3.2. The Parties agree to take all actions and steps reasonably necessary to obtain a Preliminary Approval Order from the Court and to fully implement and effectuate this Class Action Settlement.

4. CLASS MEMBER CONSUMER COMPENSATION AND REMEDIES

4.1. **Fuel Economy Cash Benefits.** Fuel Economy Class Member compensation is based on the difference between the cost of gasoline that would have been required for the Fuel Economy Class Vehicles under the original Monroney fuel economy labels and the cost of gasoline required for the Fuel Economy Class Vehicles under the adjusted fuel economy labels, for a period of 96 months of use, in addition to a goodwill payment to account for the inconvenience associated with additional fill ups. Exhibit 3 to this Class Action Agreement sets forth the MPG differential and cash compensation for each Fuel Economy Class Vehicle. Fuel Economy Cash Benefits cover the first 96 months after the Fuel Economy Class Vehicle was first sold or leased (the “96 Month Limitation”), meaning that a person who acquires a Fuel Economy Class Vehicle more than 96 months after that vehicle was first sold or leased is not a Fuel

1 Economy Class Member. Subject to the 96 Month Limitation, Fuel Economy Class Members
 2 who no longer possess their Fuel Economy Class Vehicles as of the date of the Motion for
 3 Preliminary Approval will be compensated on a pro rata basis for the months such Fuel Economy
 4 Class Members owned or leased a Fuel Economy Class Vehicle. Fuel Economy Class Members
 5 who are current lessees of a Fuel Economy Class Vehicle (*i.e.* Class Members who held active
 6 leases as of the date of the Motion for Preliminary Approval) will be entitled to compensation for
 7 the full duration of their lease, subject to the 96 Month Limitation. Subject to the 96 Month
 8 Limitation, Fuel Economy Class Members who owned their Fuel Economy Class Vehicles as of
 9 the date of the Motion for Preliminary Approval will be entitled to compensation for the months
 10 they have owned their Fuel Economy Class Vehicles, as well as any remaining months up to 96
 11 months after the Fuel Economy Class Vehicles were first sold or leased.

12 4.2. **Other Class Vehicle Cash Benefits.** Porsche will allocate the Excess Funds pro
 13 rata to the Other Class Vehicle Class Members, up to \$200 per such vehicle, depending on the
 14 configuration of the vehicle, for which a valid Claim is submitted. If the pro rata share allocated
 15 to each Other Class Vehicle for which a valid Claim is submitted is less than \$150, Porsche will
 16 add up to \$5,000,000 to the Settlement Value.

17 4.3. **Sport+ Class Member Benefits.** The benefits available to a Sport+ Class
 18 Member who does not opt out of the Class depend on whether Porsche makes available an
 19 Emissions Compliant Repair for the Sport+ Class Vehicle owned by a class member. If an
 20 Emissions Compliant Repair is available by the time of the Final Approval Order, then the
 21 owners of those vehicles will be offered an Emission Compliant Repair and, upon completion of
 22 the ECR, Sport+ Cash Benefits. If an Emissions Compliant Repair is not available for any Sport+
 23 Class Vehicle by the time of the Final Approval Order, the Sport+ Class Members who own those
 24 Sport+ Class Vehicles will nevertheless be entitled to submit a claim for Sport+ Cash Benefits.
 25 To the extent a repair to reduce emissions in Sport+ Mode becomes available for those vehicles
 26 following the Final Approval Order, Porsche will make that repair available to the current owners
 27 of all such Sport+ Class Vehicles free of charge.
 28

1 **4.4. Allocation of Unclaimed Funds.** The Settlement shall be non-reversionary,
2 meaning that no amount of the Settlement Value will revert to Defendants. If there are any funds
3 remaining in the Settlement Value after all valid, complete, and timely Claims are paid, and if it is
4 not feasible and/or economically reasonable to distribute the remaining funds to Class Members,
5 then subject to Court approval, the balance will be directed to environmental remediation efforts.
6 This cy pres distribution may include, for example, payments for the development and donation
7 of electric vehicle charging stations and infrastructure, environmental projects in consultation
8 with relevant regulators, and/or other, environmentally-focused recipients, which shall be
9 identified by Plaintiffs and Defendants, and agreed upon by the Parties. Defendants shall be
10 under no obligation to make any distribution pursuant to this paragraph before the Post-Appeal
11 Date.

12 **4.5. Responsibility for Required Payments.** Porsche AG shall be responsible for all
13 required payments owed by Defendants under this Class Action Agreement as described herein
14 because the Class Vehicles were designed and manufactured by Porsche AG. Volkswagen and
15 Porsche Cars North America, Inc. were not involved in the issues giving rise to this settlement.
16 Any legal successor or assign of Porsche AG shall assume Porsche AG's liability and remain
17 jointly and severally liable for the payment and other performance obligations herein. Porsche
18 AG shall include an agreement to so remain liable in the terms of any sale, acquisition, merger, or
19 other transaction changing the ownership or control of any of its successors or assigns. No
20 change in the ownership or control of any such entity shall affect the obligations herein of
21 Porsche AG without modification of the Class Action Agreement.

22 **4.6. Tax Implications.** Class Members should consult their personal tax advisor for
23 assistance regarding any tax ramifications of this Class Action Settlement. Neither the PSC nor
24 Defendants and their counsel are providing any opinion or advice as to the tax consequences or
25 liabilities of Class Members as a result of any payments or benefits under this Class Action
26 Settlement.

27 **4.7. Deceased, Divorced, Dissolved, or Bankrupt Claim Members.** Nothing in the
28 Class Action Agreement shall prevent Class benefits from being provided, upon appropriate

1 proof, to, or for the benefit of, an otherwise eligible Class Member, or that Class Member's estate
2 or legal representative, notwithstanding that Class Member's death, divorce, dissolution, or
3 bankruptcy (whether discharged or ongoing), in accordance with applicable law.

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

5 5.1. The Claims process depends on whether the Class Member possesses or possessed
6 a Fuel Economy Class Vehicle, a Sport+ Class Vehicle, or an Other Class Vehicle. The process
7 for submitting a Claim is designed to be as simple and convenient to Class Members as possible,
8 while ensuring that only valid claims are paid.

9 **5.2. Claims Process for Fuel Economy and Other Class Vehicle Class Members.**

10 The Claims process for Fuel Economy and Other Class Vehicle Class Members will involve four
11 steps.

12 **Step 1:** Within 24 hours following the Court's entry of the Preliminary Approval Order,
13 the Claims Administrator will launch the official Settlement Website, through which
14 Claims can be submitted electronically.

15 **Step 2:** Fuel Economy and Other Class Vehicle Class Members will be required to
16 submit a Claim Form with supporting documentation as agreed by the Parties and set forth
17 in the Claim Form. The Claim Form must be postmarked or submitted electronically by
18 the Fuel Economy Claims Deadline.

19 **Step 3:** Upon receipt of a timely submitted Claim Form, the Claims Administrator will
20 review the Claim to determine whether the Claim request meets all qualifications for
21 payment (including any necessary supporting documentation) and, if so, the amount of
22 that payment. If the Claim is incomplete or otherwise insufficient, within twenty-one days
23 of receiving the Claim (or within twenty-one days of Final Approval, whichever is later),
24 the Claims Administrator shall contact the Class Member regarding these deficiencies and
25 provide the Class Member thirty days to provide the missing documentation.

26 **Step 4:** Valid and complete Fuel Economy Claims and completed Other Class Vehicle
27 Class Member Claims will be paid after the Fuel Economy Claims Deadline.
28

5.3. **Claims Process for Sport+ Class Members.** Sport+ Class Members will be paid automatically after completing the ECR, if the ECR is completed by the Sport+ ECR Deadline. Those Sport+ Class Members who have already completed the ECR will likewise automatically be paid. Sport+ Class Members who own a Sport+ Class Vehicle for which no ECR was available as of the Final Approval Order, may submit a Claim for Sport+ Cash Benefits by the Sport+ ECR Deadline.

5.4. **Claims Administrator.** The Claims Administrator shall be responsible for overseeing the implementation and administration of the Claims process, including validation of eligibility and approval of payments to Class Members. The reasonable and necessary fees and costs incurred by the Claims Administrator for administration of this Class Action Agreement will be paid out of the Settlement Value.

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

6. **CONFIRMATORY DISCOVERY**

6.1. The Parties have already engaged in extensive discovery and information exchanges regarding these claims, including the review of millions of pages of documents, as well as a thorough testing of vehicles conducted over many months.

7. **REQUESTS FOR EXCLUSION**

7.1. **Manner of Opting Out.** The Class Notice Program will provide instructions regarding the procedures that must be followed to opt out of the Class pursuant to Federal Rule of Civil Procedure 23(c)(2)(B)(v). The Parties agree that, to opt out validly from the Class, a Class Member must personally sign (electronic signatures, including DocuSign, are invalid and will not be considered personal signatures) and send a written request to opt out stating "I wish to exclude myself from the Class in Porsche Gasoline Litigation Class Action Settlement in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (MDL 2672)," (or substantially similar clear and unambiguous

language) to the Claims Administrator on or before the Opt-Out Deadline (postmarked or emailed no later than the Opt-Out Deadline, with the exception of Sport+ Opt-Out deadline described in Paragraph 2.33). The Class Member must either (i) mail the signed written request to an address provided by the Claims Administrator; or (ii) e-mail a complete and legible scanned copy or photograph of the signed written request to an e-mail address provided by the Claims Administrator. That written request must include the Class Member's name, address, telephone number, and VIN(s) of the Class Vehicle(s) forming the basis of the Class Member's inclusion in the Class, a statement as to whether the Class Member owns/owned or leases/leased the Class Vehicle(s), and the date(s) of the Class Member's ownership or lease of the Class Vehicle(s) (*i.e.*, start date and, if applicable, end date of possession). Opt-out requests that are signed by an attorney but not by the Class Member are invalid. The Parties retain discretion to determine whether any opt-out request substantially complies with the requirements above. The Claims Administrator will provide copies of all opt-out requests to Plaintiffs' Lead Counsel and Defendants' Lead Counsel within seven days of the receipt of each such request. The Claims Administrator and the Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

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

7.3. Opting Out and Objecting Are Mutually Exclusive Options. Any Class Member who elects to opt out pursuant to this Section may not also object to the Settlement. Any Class Member who elects to object pursuant to Section 8 herein may not also opt out pursuant to this Section.

8. OBJECTIONS TO THE SETTLEMENT

8.1. Manner of Objecting. The Class Notice Program will provide instructions regarding the procedures that must be followed to object to the Settlement pursuant to Federal Rule of Civil Procedure 23(e)(5). Provided that a Class Member has not submitted a written

1 request to opt out, as set forth in Section 7, the Class Member may present written objections, if
2 any, explaining why he or she believes the Class Action Settlement should not be approved by the
3 Court as fair, reasonable, and adequate. No later than such date as is ordered by the Court, a
4 Class Member who wishes to object to any aspect of the Class Action Settlement must file with
5 the Court, or as the Court otherwise may direct, a written statement of the objection(s). The
6 written statement of objection(s) must include a detailed statement of the Class Member's
7 objection(s), as well as the specific reasons, if any, for each such objection, including any
8 evidence and legal authority the Class Member wishes to bring to the Court's attention. That
9 written statement also must contain the Class Member's printed name, address, telephone
10 number, and VIN(s) of the Class Vehicle(s) forming the basis of the Class Member's inclusion in
11 the Class, the dates of the Class Member's ownership or lease of the Class Vehicle(s), a statement
12 that the Class Member has reviewed the Class definition and has not opted out of the Class, and
13 any other supporting papers, materials, or briefs the Class Member wishes the Court to consider
14 when reviewing the objection.

15 **8.2. Objecting Through Counsel.** A Class Member may object on his or her own
16 behalf or through a lawyer hired at that Class Member's own expense, provided the Class
17 Member has not submitted a written request to opt out, as set forth in Section 7. The objection
18 must state whether it applies only to the objector, to a specific subset of the Class, or to the entire
19 Class, and also state with specificity the grounds for the objection. Lawyers asserting objections
20 on behalf of Class Members must: (1) file a notice of appearance with the Court by the date set
21 forth in the Preliminary Approval Order, or as the Court otherwise may direct; (2) file a sworn
22 declaration attesting to his or her representation of each Class Member on whose behalf the
23 objection is being filed or file (in camera) a copy of the contract between that lawyer and each
24 such Class Member; and (3) comply with the procedures described in this Section. Lawyers
25 asserting objections on behalf of Class Members also must file a sworn declaration that specifies
26 the number of times during the prior five-year period they have objected to a class action
27 settlement on their own behalf or on behalf of a class member.
28

1 8.3. **Intent to Appear at the Fairness Hearing.** A Class Member (or counsel
2 individually representing him or her, if any) seeking to make an appearance at the Fairness
3 Hearing must file with the Court, by the date set forth in the Preliminary Approval Order, a
4 written notice of his or her intent to appear at the Fairness Hearing, in accordance with the
5 requirements set forth in the Preliminary Approval Order, or by such time and in such manner as
6 the Court may otherwise direct.

7 8.4. **Consequences of Failure to Object in a Timely and Proper Manner.** Unless
8 the Court directs otherwise, any Class Member who fails to comply with the provisions of this
9 Section will waive and forfeit any and all rights he, she, or it may have to object to the Class
10 Action Settlement and/or to appear and be heard on said objection at the Fairness Hearing.
11 Failure to object waives a Class Member's right to appeal approval of the Settlement.

12 **9. NOTICE PROGRAM**

13 9.1. **Class Notice.** The Parties, in consultation with the Notice Administrator, shall
14 design a notice program that satisfies due process and meets the requirements of Federal Rule of
15 Civil Procedure 23(c) and the Northern District of California's Procedural Guidance for Class
16 Action Settlements. The program will be further detailed in the Motion for Preliminary
17 Approval.

18 9.2. **CAFA Notice.** At the earliest practicable time, and no later than ten days after the
19 Parties file this Class Action Agreement with the Court, Defendants shall send to each appropriate
20 state and federal official the materials specified in 28 U.S.C. § 1715 and otherwise comply with
21 its terms.

22 9.3. **Notice Administrator.** The Notice Administrator shall be responsible for, among
23 other things, (i) preparing and sending individual notice, (ii) executing a publication notice
24 campaign, and (iii) consulting on and effectuating other aspects of the Class Notice Program. All
25 reasonable and necessary costs of the Class Notice Program and the fees and costs of the Notice
26 Administrator will be paid out of the Settlement Value.

27 9.4. **List of Opt Outs.** Not later than ten days before the date of the Fairness Hearing,
28 the Notice Administrator shall file with the Court a list of those persons who have opted out or

1 excluded themselves from the Settlement. The Notice Administrator shall file with the Court the
2 details outlining the scope, method, and results of the Class Notice Program.

3 **10. RELEASE AND WAIVER**

4 10.1. The Parties agree to the following release and waiver (as defined above, the
5 Release), which shall take effect upon entry of the Final Approval Order. The terms of the
6 Release are a material term of the Class Action Agreement and will be reflected in the Final
7 Approval Order.

8 10.2. **Released Parties.** Released Parties means any person who, or entity that, is or
9 could be responsible or liable in any way whatsoever, whether directly or indirectly, for the
10 Sport+ Matter and Fuel Economy Matter. The Released Parties include, without limitation,
11 (1) Volkswagen AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc.),
12 Volkswagen Group of America Chattanooga Operations, LLC, VW Credit, Inc., VW Credit
13 Leasing, Ltd., VCI Loan Services, LLC, Porsche Automobil Holding SE, Dr. Ing. h.c. F. Porsche
14 AG, Porsche Cars North America, Inc., Porsche Financial Services, Inc., Porsche Leasing Ltd.,
15 and any former, present, and future owners, shareholders (direct or indirect), members (direct or
16 indirect), directors, officers, members of management or supervisory boards, employees,
17 attorneys, affiliates, parent companies (direct or indirect), subsidiaries (direct or indirect),
18 predecessors, and successors of any of the foregoing (the "Released Entities"); (2) any and all
19 contractors, subcontractors, joint venture partners, consultants, auditors, and suppliers of the
20 Released Entities; (3) any and all persons and entities indemnified by any Released Entity with
21 respect to the Sport+ Matter and Fuel Economy Matter; (4) any and all other persons and entities
22 involved in the design, research, development, manufacture, assembly, testing, sale, leasing,
23 repair, warranting, marketing, advertising, public relations, promotion, or distribution of any
24 Class Vehicle, even if such persons are not specifically named in this paragraph, including
25 without limitation all Authorized Dealers, as well as Non-Authorized Dealers and sellers; (5) the
26 Claims Administrator; (6) the Notice Administrator; (7) lenders, creditors, financial institutions,
27 or any other parties that financed any purchase or lease of a Class Vehicle; and (8) for each of the
28 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, members of management or supervisory boards, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.

10.3. **Class Release.** In consideration for the Settlement, Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys (including any attorney engaged by Class Members who is not Class Counsel), representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that they may have, purport to have, or may have hereafter against any Released Party, as defined above, arising out of or in any way related to the Sport+ Matter or Fuel Economy Matter or any allegation, claim or other subject matter of the Complaint or this Action. This Release applies to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, contractual, quasi-contractual or statutory, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to the Sport+ Matter, Fuel Economy Matter or other matters that are the subject of the Complaint or this Action, including without limitation (1) any claims that were or could have been asserted in the Action; and (2) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, liens, injunctive relief, attorneys’ fees, costs, or attorneys’ liens (except as provided in Section 12 of this Class Action Agreement), expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with this Settlement or to attorneys other than Class Counsel, or any other liabilities, that were or could have been asserted in any civil, administrative, or other proceeding, including arbitration (the “Released Claims”). This Release applies without limitation to any and

all Released Claims regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or foreign or international law, or statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether existing under the laws of the United States, a State, territory, or possession of the United States, or of any other foreign or domestic state, territory, or other legal or governmental body, whether existing now or arising in the future. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful death or personal injury.

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

10.5. **Waiver of California Civil Code Section 1542 and Analogous Provisions.** Settlement Class Representatives expressly understand and acknowledge, and Class Members will be deemed to understand and acknowledge Section 1542 of the California Civil Code, which provides: “**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**” Each Settlement Class Representative expressly acknowledges that he, she, or it has been advised by Class Counsel of the contents and effect of Section 1542 and

1 that he, she, or it has considered the possibility that the number or magnitude of all claims may
 2 not currently be known. To ensure that this Release is interpreted fully in accordance with its
 3 terms, Class Members expressly waive and relinquish any and all rights and benefits that they
 4 may have under Section 1542 to the extent that such Section may be applicable to the Release.
 5 Class Members likewise expressly waive and relinquish any rights or benefits of any law of any
 6 state or territory of the United States, federal law or principle of common law, or of international
 7 or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the
 8 California Code to the extent that such laws or principles may be applicable to the Release.

9 **10.6. Individual Release.** Each Class Member who receives a Settlement Benefit
 10 pursuant to this Class Action Agreement shall, as a precondition to receiving such payment, be
 11 required to agree to an Individual Release of their claims. Consistent with the Release provided
 12 in this Agreement, the Individual Release will release all of the Released Parties from any and all
 13 present and future claims (as described in Section 10) arising out of or related to the Sport+
 14 Matter or Fuel Economy Matter or other matters that are the subject of the Complaint or this
 15 Action. In connection with the Individual Release, Class Members hereby agree to release any
 16 potential claims under the Trade Regulation Rule Concerning the Preservation of Consumers'
 17 Claims and Defenses, 16 C.F.R. § 433.2 (the "Holder Rule"), relating to the Sport+ Matter or
 18 Fuel Economy Matter or other matters that are the subject of the Complaint or the Action. The
 19 Individual Release will be effective upon acceptance of the Settlement Benefit and shall remain
 20 effective even if the Final Approval Order is reversed and/or vacated on appeal, or if this Class
 21 Action Agreement is abrogated or otherwise voided in whole or in part.

22 **10.7. Actions or Proceedings Involving Released Claims.** Class Members who do not
 23 opt out in accordance with Section 7.1 expressly agree that this Release, and the Final Approval
 24 Order, is, will be, and may be raised as a complete defense to, and will preclude, any action or
 25 proceeding specified in, or involving claims encompassed by, this Release. Class Members who
 26 do not opt out shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in
 27 the institution, commencement, filing or prosecution of any suit, action, and/or other proceeding,
 28 against the Released Parties with respect to the claims, causes of action and/or any other matters

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

12 **10.8. Ownership of Released Claims.** Class Members submitting a Claim Form shall
 13 represent and warrant therein that they are the sole and exclusive owner of all claims that they
 14 personally are releasing under the Class Action Agreement and that they have not assigned,
 15 pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title,
 16 interest or claim arising out of or in any way whatsoever pertaining to the Action, including
 17 without limitation, any claim for benefits, proceeds or value under the Action, and that such Class
 18 Members are not aware of anyone other than themselves claiming any interest, in whole or in
 19 part, in any benefits, proceeds or values to which those Class Members may be entitled as a result
 20 of the Sport+ Matter or Fuel Economy Matter.

21 **10.9. Total Satisfaction of Released Claims.** Any benefits pursuant to the Class
 22 Action Agreement are in full, complete, and total satisfaction of all of the Released Claims
 23 against the Released Parties. Such benefits are sufficient and adequate consideration for each and
 24 every term of this Release, and this Release shall be irrevocably binding upon Settlement Class
 25 Representatives and Class Members who do not opt out of the Class.

26 **10.10. Release Not Conditioned on Claim or Payment.** The Release shall be effective
 27 with respect to all Releasing Parties, including all Class Members who do not opt out, regardless
 28 of whether those Class Members ultimately submit a Claim under this Class Action Agreement.

1 **10.11. Basis for Entering Release.** Class Counsel acknowledge that they have
2 conducted sufficient independent investigation and discovery to enter into this Class Action
3 Agreement and that they execute this Class Action Agreement freely, voluntarily, and without
4 being pressured or influenced by, or relying on any statements, representations, promises, or
5 inducements made by the Released Parties or any person or entity representing the Released
6 Parties, other than as set forth in this Class Action Agreement. Settlement Class Representatives
7 acknowledge, agree, and specifically represent and warrant that they have discussed with Class
8 Counsel the terms of this Class Action Agreement and have received legal advice with respect to
9 the advisability of entering into this Class Action Agreement and the Release, and the legal effect
10 of this Class Action Agreement and the Release. The representations and warranties made
11 throughout the Class Action Agreement shall survive the execution of the Class Action
12 Agreement and shall be binding upon the respective heirs, representatives, successors and assigns
13 of the Parties.

14 **10.12. Material Term.** Settlement Class Representatives and Class Counsel hereby
15 agree and acknowledge that this Section 10 in its entirety was separately bargained for and
16 constitutes a key, material term of the Class Action Agreement that shall be reflected in the Final
17 Approval Order.

18 **10.13. Reservation of Claims.** This Class Action Agreement shall resolve the claims of
19 Class Members who do not opt out only as they relate to the Released Claims. The Parties
20 reserve all rights to litigate liability and equitable relief of any sort for any subset of vehicles,
21 purchasers, or lessees not expressly covered by this Class Action Agreement.

22 **10.14. Released Parties' Releases of Settlement Class Representatives, the Class, and**
23 **Counsel.** Upon the Effective Date, Released Parties absolutely and unconditionally release and
24 forever discharge the Settlement Class Representatives, Class Members, Defendants' counsel and
25 Class Counsel from any and all claims relating to the institution or prosecution of the Action.

26 **10.15. Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over all
27 Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise
28 regarding this Class Action Agreement or in relation to this Action, including any dispute

1 regarding validity, performance, interpretation, administration, enforcement, enforceability, or
2 termination of the Class Action Agreement, and no Party shall oppose the reopening and
3 reinstatement of the Action on the Court's active docket for the purposes of effecting this Section.

4 **11. ESCROW ACCOUNT**

5 11.1. Provided that Plaintiffs' Lead Counsel provides Porsche AG with all necessary
6 payment information at least 20 days prior to the Final Approval hearing, Porsche AG will fund at
7 least \$30 million of the Settlement Value no later than 10 days prior to the Final Approval
8 hearing. Within ten business days after the Effective Date, Porsche AG shall fund the Escrow
9 Account with the remaining Settlement Value, which funds shall be used as described in this
10 Agreement.

11 11.2. In the event that the Class Action Settlement is terminated or invalidated for any
12 reason prior to the conclusion of the Claims Period, any funds in the Escrow Account, including
13 all interest accrued, shall be returned to Defendants.

14 **12. ATTORNEYS' FEES AND EXPENSES**

15 12.1. Defendants and Class Counsel represent that they have not discussed the amount
16 of fees and expenses to be paid prior to agreement on the terms of this Class Action Agreement.
17 Class Counsel shall file a motion for court approval of their attorneys' fees and expenses for work
18 performed pursuant to PTO 11 in connection with the Action. Any fees and expenses ordered or
19 approved by the Court will be paid from the total Settlement Value and wired from the Escrow
20 Account to an account specified by Plaintiffs' Lead Counsel within three business days of the
21 Court's order approving such fees and expenses. Defendants reserve the right to oppose Class
22 Counsel's motion. No Class Members or their attorneys other than Class Counsel or Participating
23 Counsel who perform work pursuant to PTO 11 in connection with this Action shall receive fees
24 or expenses under this Class Action Agreement, any fee-shifting statute, or attorneys' lien. If the
25 Class Action Agreement is terminated pursuant to section 15.2, any attorneys' fees paid to Class
26 Counsel will be returned to Defendants within seven days of such termination.

13. PROPOSED SCHEDULE FOR APPROVAL OF SETTLEMENT

13.1. A comprehensive potential schedule for the approval of this Settlement is set forth below, subject to Court approval. The Parties will use their best efforts to advance the Settlement along the lines outlined in the proposed schedule set forth below, recognizing it is subject to change, as required by Court order and/or agreed to by the Parties.

Date	Event
June 15, 2022	Motion for Preliminary Approval
July 22, 2022	Hearing on Motion for Preliminary Approval [Remainder of schedule assumes entry of Preliminary Approval Order on this date]
July 22, 2022	Class Notice Program begins
August 19, 2022	Motions for Final Approval and Attorneys' Fees and Expenses filed
September 23, 2022	Objection and Opt-Out Deadline
October 7, 2022	Reply Memoranda in Support of Final Approval and Fee/Expense Application filed
October 21, 2022	Final Approval Hearing

14. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

14.1. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Class Action Agreement. The persons signing this Class Action Agreement on behalf of each Party warrant that he or she is authorized to sign this Class Action Agreement on behalf of that Party.

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

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

15. MODIFICATION OR TERMINATION OF THE CLASS ACTION AGREEMENT

15.1. The terms and provisions of this Class Action Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Class Action Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Approval Order and do not limit the rights of Class Members under this Class Action Agreement.

15.2. This Class Action Agreement shall terminate at the discretion of either Defendants or the Settlement Class Representatives, through Lead Counsel, if: (1) Lead Counsel determines through confirmatory discovery that the Settlement is not fair, reasonable, or adequate; (2) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Class Action Agreement or the proposed Settlement that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material, including, without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (3) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party in its (or their) sole judgment and discretion reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Class Action Agreement, as provided in this Section 15, by a signed writing served on the other Parties no later than twenty days after receiving notice of the event prompting the termination. The Parties will be returned to their positions status quo ante.

15.3. If an option to withdraw from and terminate this Class Action Agreement arises under Section 15.2 above, neither Defendants nor Settlement Class Representatives are required

1 for any reason or under any circumstance to exercise that option and any exercise of that option
2 shall be in good faith.

3 15.4. If, but only if, this Class Action Agreement is terminated pursuant to Section 15.2,
4 above, then:

5 15.4.1. This Class Action Agreement shall be null and void and shall have no
6 force or effect, and no Party to this Class Action Agreement shall be
7 bound by any of its terms, except for the terms of Section 15.2 herein;

8 15.4.2. The Parties will petition the Court to have any stay orders entered
9 pursuant to this Class Action Agreement lifted;

10 15.4.3. All of the provisions of this Class Action Agreement, and all negotiations,
11 statements, and proceedings relating to it, shall be without prejudice to
12 the rights of Defendants, Settlement Class Representatives, or any Class
13 Member, all of whom shall be restored to their respective positions
14 existing immediately before the execution of this Class Action
15 Agreement, except that the Parties shall cooperate in requesting that the
16 Court set a new scheduling order such that no Party's substantive or
17 procedural rights are prejudiced by the settlement negotiations and
18 proceedings;

19 15.4.4. Released Parties expressly and affirmatively reserve all defenses,
20 arguments, and motions as to all claims that have been or might later be
21 asserted in the Action, including, without limitation, the argument that the
22 Action may not be litigated as a class action;

23 15.4.5. Settlement Class Representatives and all other Class Members, on behalf
24 of themselves and their heirs, assigns, executors, administrators,
25 predecessors, and successors, expressly and affirmatively reserve and do
26 not waive all motions as to, and arguments in support of, all claims,
27 causes of action or remedies that have been or might later be asserted in
28

1 the Action including, without limitation, any argument concerning class
2 certification, and treble or other damages;

3 15.4.6. Defendants expressly and affirmatively reserve and do not waive all
4 motions and positions as to, and arguments in support of, all defenses to
5 the causes of action or remedies that have been sought or might be later
6 asserted in the Action, including without limitation, any argument or
7 position opposing class certification, liability, damages, or injunctive
8 relief;

9 15.4.7. Neither this Class Action Agreement, the fact of its having been entered
10 into, nor the negotiations leading to it shall be admissible or entered into
11 evidence for any purpose whatsoever;

12 15.4.8. Any settlement-related order(s) or judgment(s) entered in this Action after
13 the date of execution of this Class Action Agreement shall be deemed
14 vacated and shall be without any force or effect; and

15 15.4.9. Defendants shall bear all reasonable and necessary costs incurred by the
16 Claims Administrator and Notice Administrator in connection with the
17 implementation of this Class Action Settlement up until its termination.
18 Neither the Settlement Class Representatives nor Class Counsel shall be
19 responsible for any such settlement-related costs.

20 15.4.10. All funds remaining in the Escrow Account or that have been remitted to
21 Plaintiffs' Lead Counsel, Class Counsel or Participating Counsel
22 including any attorneys' fees awarded pursuant to Section 12.1 shall be
23 immediately returned to Defendants.

24 15.5. Notwithstanding the terms of this Section 15, Class Members who have received a
25 Settlement Benefit under the Class Action Agreement prior to its termination or invalidation and
26 shall be bound by the terms of the Individual Release, which terms shall survive termination or
27 invalidation of the Class Action Agreement.
28

1 **16. REPRESENTATIONS AND WARRANTIES**

2 16.1. Class Counsel represents that: (1) they are authorized by the Settlement Class
3 Representatives to enter into this Class Action Agreement with respect to the claims asserted in
4 the Action and any other claims covered by the Release; and (2) they are seeking to protect the
5 interests of the Class.

6 16.2. Class Counsel further represents that the Settlement Class Representatives:
7 (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are
8 willing, able, and ready to perform all of the duties and obligations of representatives of the
9 Class; (3) have read the pleadings in the Action, including the Complaint, or have had the
10 contents of such pleadings described to them; (4) have consulted with Class Counsel about the
11 obligations imposed on representatives of the Class; (5) understand that they are entitled only to
12 the rights and remedies of Class Members under this Class Action Agreement and not to any
13 additional compensation by virtue of their status as Settlement Class Representative except that
14 Class Counsel may seek reasonable and appropriate service awards for Settlement Class
15 Representatives up to \$250, to be paid in addition to the Settlement Class Benefits, subject to
16 Court approval; and (6) shall remain and serve as representatives of the Class until the terms of
17 this Class Action Agreement are effectuated, this Class Action Agreement is terminated in
18 accordance with its terms, or the Court at any time determines that said Settlement Class
19 Representatives cannot represent the Class. Defendants shall retain the right to object to the
20 payment of any service awards, including the amount thereof, which if ordered, is to be paid out
21 of the Settlement Value.

22 16.3. Porsche represents and warrants that the individual(s) executing this Class Action
23 Agreement are authorized to enter into this Class Action Agreement on behalf of Porsche.

24 16.4. The Parties acknowledge and agree that no opinion concerning the tax
25 consequences of the proposed Settlement to Class Members is given or will be given by the
26 Parties, nor are any representations or warranties in this regard made by virtue of this Class
27 Action Agreement. In addition, the Parties acknowledge and agree that no tax ruling from any
28 governmental tax authority in relation to a Class Member's tax consequences will be requested by

Defendants. The Parties further acknowledge and agree that nothing in this Agreement should be relied upon by any Class Member as the provision of tax advice. Each Class Member's tax consequences or liabilities, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that each Class Member's federal, state, or foreign tax consequences or liabilities may vary depending on the particular circumstances of each individual Class Member. Class Members shall hold Defendants and their counsel harmless from any federal, state, or foreign tax assessments, interest, and/or penalties that result for any amounts paid or benefits provided under this Agreement, and Defendants shall not be liable for the payment of any additional amounts now or in the future for any amount related to a Class Member's tax consequences.

17. GENERAL MATTERS AND RESERVATIONS

17.1. This Class Action Agreement will be binding upon, and inure to the benefit of, the successors, transferees, and assigns of Defendants, the Settlement Class Representatives, and Class Members.

17.2. The Parties agree and acknowledge that (1) no government or governmental entity is a party to the Action or to this Class Action Agreement; (2) each Party is entering into this Class Action Agreement of its own volition, and no Party is entering into this Class Action Agreement at the direction of a government or governmental entity, or otherwise compelled by a government or governmental entity to do so; and (3) this Class Action Agreement is for the purpose of restitution, compensation or/and remediation for harm or damage alleged in the Complaint.

17.3. Defendants' obligations under Section 4 in this Class Action Agreement are and shall be contingent upon each of the following:

17.3.1. Entry by the Court of the Final Approval Order approving the Class Action Settlement;

17.3.2. The occurrence of the Effective Date; and

17.3.3. The satisfaction of any other conditions set forth in this Class Action Agreement.

1 17.4. The Parties and their counsel agree to keep the existence and contents of this Class
2 Action Agreement confidential until the date on which the Class Action Agreement is filed;
3 provided, however, that this Section shall not prevent Defendants from disclosing such
4 information, prior to such date, to state and federal agencies, other relevant government
5 authorities, independent accountants, actuaries, advisors, financial analysts, insurers, or lawyers.
6 The Parties and their counsel may also disclose the existence and contents of this Class Action
7 Agreement to persons or entities (such as experts, courts, co-counsel, and/or administrators) to
8 whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of
9 this Class Action Agreement.

10 17.5. Settlement Class Representatives and Class Counsel agree that confidential
11 information was made available to them solely through the settlement process provided pursuant
12 to the protections of Federal Rule of Evidence 408 and any equivalent rule in other states or
13 territories, and was made available on the condition that it not be disclosed to third parties (other
14 than experts or consultants retained by Settlement Class Representatives in connection with the
15 Action) or used for any purpose other than settlement of this Action.

16 17.6. Information provided by Defendants and/or Defendants' counsel to Settlement
17 Class Representatives, Class Counsel, any individual Class Member, counsel for any individual
18 Class Member, and/or administrators, pursuant to the negotiation and implementation of this
19 Class Action Agreement, includes trade secrets and highly confidential and proprietary business
20 information and shall be deemed "Highly Confidential" pursuant to the protective orders that
21 have been or will be entered in the Action, and shall be subject to all of the provisions thereof.
22 Any materials inadvertently produced shall, upon any Defendants' request, be promptly returned
23 to the requesting Defendants' counsel, as appropriate, and there shall be no implied or express
24 waiver of any privileges, rights and defenses.

25 17.7. This Class Action Agreement, complete with its exhibits and all documents filed
26 with the Court, sets forth the entire agreement among the Parties with respect to its subject matter,
27 and it may not be altered, amended, or modified except by written instrument executed by
28 Plaintiffs' Lead Counsel and Defendants' Lead Counsel. The Parties expressly acknowledge that

no other agreements, arrangements, or understandings regarding vehicles not expressed in this Class Action Agreement or the documents filed with the Court exist among or between them, and that in deciding to enter into this Class Action Agreement, they have relied solely upon their own judgment and knowledge. This Class Action Agreement and the accompanying documents filed with the Court supersede any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Class Action Agreement.

17.8. This Class Action Agreement and any amendments thereto, and any dispute arising out of or related to this Class Action Agreement, 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.

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

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

If to Defendants, then to:

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

Cari K. Dawson
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Email: cari.dawson@alston.com

If to the Class, then to:

Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Email: ecabraser@lchb.com

1 17.11. All time periods in this Class Action Agreement shall be computed in calendar
2 days unless otherwise expressly provided. In computing any period of time in this Class Action
3 Agreement or by order of the Court, the day of the act or event shall not be included. The last day
4 of the period shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when
5 the act to be done is the filing of a paper in court, a day on which the court is closed, in which
6 case the period shall run until the end of the next day that is not one of the aforementioned days.
7 As used in this Class Action Agreement, “Federal Holiday” includes holidays designated in
8 Federal Rule of Civil Procedure 6(a) or by the Clerk of the United States District Court for the
9 Northern District of California.

10 17.12. The Parties reserve the right, subject to the Court’s approval, to agree to any
11 reasonable extensions of time that might be necessary to carry out any of the provisions of this
12 Class Action Agreement.

13 17.13. The Class, Settlement Class Representatives, Class Counsel, Defendants, and/or
14 Defendants’ Lead Counsel shall not be deemed to be the drafter of this Class Action Agreement
15 or of any particular provision, nor shall they argue that any particular provision should be
16 construed against its drafter. All Parties agree that this Class Action Agreement was drafted by
17 counsel for the Parties during extensive arm’s-length negotiations. No parol or other evidence
18 may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or
19 their counsel, or the circumstances under which this Class Action Agreement was made or
20 executed.

21 17.14. The Parties expressly acknowledge and agree that this Class Action Agreement
22 and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations,
23 related notes, and correspondence, constitute an offer of compromise and a compromise within
24 the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or
25 territory.

26 17.15. The Settlement Class Representatives expressly affirm that the allegations
27 contained in the Complaint were made in good faith, but consider it desirable for the Action to be
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1 settled and dismissed as to the Class Vehicles only because of the substantial benefits that the
2 Settlement will provide to Class Members.

3 17.16. The Parties agree that the Class Action Agreement was reached voluntarily after
4 consultation with competent legal counsel.

5 17.17. Neither this Class Action Agreement nor any act performed or document executed
6 pursuant to or in furtherance of this Class Action Agreement is or may be deemed to be or may be
7 used or construed as an admission of, or evidence of, (i) the validity of any of the Released
8 Claims, or of any wrongdoing or liability of any Released Parties or (ii) any fault or omission of
9 any Released Parties in any civil, criminal, regulatory, or administrative proceeding in any court,
10 administrative agency or other tribunal. Nor shall this Class Action Agreement be deemed an
11 admission by any Party as to the merits of any claim or defense.

12 17.18. Any of the Released Parties may file this Class Action Agreement and/or the Final
13 Approval Order in any action that may be brought against it in order to support any defense or
14 counterclaim, including without limitation those based on principles of *res judicata*, collateral
15 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
16 preclusion or issue preclusion or similar defense or counterclaim.

17 17.19. The Parties, their successors and assigns, and their counsel undertake to implement
18 the terms of this Class Action Agreement in good faith, and to use good faith in resolving any
19 disputes that may arise in the implementation of the terms of this Class Action Agreement.

20 17.20. The waiver by one Party of any breach of this Class Action Agreement by another
21 Party shall not be deemed a waiver of any prior or subsequent breach of this Class Action
22 Agreement.

23 17.21. If one Party to this Class Action Agreement considers another Party to be in
24 breach of its obligations under this Class Action Agreement, that Party must provide the
25 breaching Party with written notice of the alleged breach and provide a reasonable opportunity to
26 cure the breach before taking any action to enforce any rights under this Class Action Agreement.
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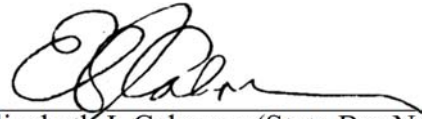
1 17.22. The Parties, their successors and assigns, and their counsel agree to cooperate fully
2 with one another in seeking Court approval of this Class Action Agreement and to use their best
3 efforts to implement this Class Action Agreement.

4 17.23. This Class Action Agreement may be signed with an electronic or facsimile
5 signature and in counterparts, each of which shall constitute a duplicate original.

6 17.24. In the event any one or more of the provisions contained in this Class Action
7 Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect,
8 such invalidity, illegality, or unenforceability shall not affect any other provision if Defendants'
9 Lead Counsel on behalf of Defendants, and Plaintiffs' Lead Counsel, on behalf of Settlement
10 Class Representatives and Class Members, mutually agree in writing to proceed as if such invalid,
11 illegal, or unenforceable provision had never been included in this Class Action Agreement. Any
12 such agreement shall be reviewed and approved by the Court before it becomes effective.

1 FOR CLASS COUNSEL:


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3 Date: 6/15/2022



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1 FOR VOLKSWAGEN AG:

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3 Date: June 15, 2022



Manfred Doess
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10 Date: June 15, 2022



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1 COUNSEL FOR VOLKSWAGEN AG, PORSCHE AG, AND PORSCHE CARS NORTH
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3 Date: June 15, 2022

/s/ Sharon L. Nelles

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1 FOR DR. ING. H.C. F. PORSCHE AG:

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1 FOR DR. ING. H.C. F. PORSCHE AG:

Angela Kreitz

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3 Date: *June 10, 2022*

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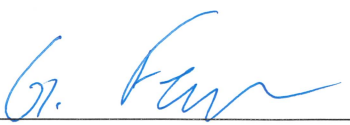
1 COUNSEL FOR DR. ING. H.C. F. PORSCHE AG:
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3 Date: 6-10-2022

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1 FOR PORSCHE CARS NORTH AMERICA, INC.:

2
3 Date: June 15, 2022


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1 COUNSEL FOR PORSCHE CARS NORTH AMERICA, INC.:
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