

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE MERCEDES-BENZ EMISSIONS
LITIGATION

Civil Action No. 16-881 (KM) (ESK)

Motion Date: []

ELECTRONICALLY FILED

ORAL ARGUMENT REQUESTED

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE (BOSCH)

James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY, & AGNELLO, P.C.
5 Becker Farm Rd.
Roseland, NJ 07068
Tel: (973) 994-1700

Steve W. Berman
Sean R. Matt
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 2nd Ave., Suite 2000
Seattle, WA 98101
Tel: (206) 623-7292

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Tel: (973) 639-9100
Fax: (973) 639-9393
cseeger@seegerweiss.com

*Lead Counsel for the Proposed Settlement
Class*

Matthew D. Slater
CLEARY GOTTlieb STEEN &
HAMILTON LLP
2112 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 974-1500
Fax: (202) 974-1999

Jeffrey A. Rosenthal
Carmine D. Boccuzzi, Jr.
Jennifer Kennedy Park
Abena Mainoo
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Tel: (212) 225-2000
Fax: (212) 225-3999

*Counsel for Defendant Robert Bosch GmbH
and Robert Bosch LLC*

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1. THE PROPOSED SETTLEMENT

On February 18, 2016, Plaintiffs filed this lawsuit against Daimler AG (“Daimler”) and Mercedes-Benz USA, LLC (“MBUSA”) (together, the “Mercedes Defendants”) in the United States District Court for the District of New Jersey, relating to the Mercedes Defendants’ marketing and sale of Mercedes-Benz BlueTEC II diesel vehicles. The complaint was amended several times through motions and consolidation, and the currently operative pleading, the Fifth Consolidated and Amended Class Action Complaint, Dkt. No. 185, includes as defendants the Mercedes Defendants, as well as defendants Robert Bosch GmbH and Robert Bosch LLC (Robert Bosch GmbH and Robert Bosch LLC together, the “Bosch Defendants”).

The Bosch Defendants deny the material factual allegations and legal claims asserted by the Plaintiffs and Class Members in the Action, including, but not limited to, any and all charges of wrongdoing or liability, or allegations of defect, arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action.

After extensive litigation and settlement efforts, facilitated by mediator Hon. Edward A. Infante (Ret.), Plaintiffs and the Bosch Defendants have reached this agreement to resolve Class Members’ claims against the Bosch Defendants related to the BlueTEC II vehicles sold or leased in the United States (the “Class Action Agreement” or “Agreement”).

As detailed below, the Class Action Agreement, if approved by the Court, provides substantial compensation to all Class Members as an adjunct to the cash and other non-monetary protections and benefits provided in the Mercedes Defendants’ settlement agreement.

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 otherwise.

2.1. “Action” means the class actions that have been consolidated in the United States District Court for the District of New Jersey in *In re Mercedes-Benz Emissions Litigation*,

No. 2:16-cv-0881 (KM) (ESK).

2.2. “Approved Emission Modification(s)” or “AEM(s)” means modifications to the emissions software and certain related hardware of vehicles in the Emission Modification Categories, as defined in the Mercedes Defendants’ settlement agreement.

2.3. Section Left Intentionally Blank

2.4. “Benefits” means all consideration made available to the Class Members pursuant to this Class Action Settlement, including but not limited to Class Member Payments.

2.5. Section Left Intentionally Blank

2.6. “BlueTEC Diesel Matter” means all claims arising from or in any way relating to: (1) the design, manufacture, assembly, testing, development, installation, performance, presence, disclosure, or nondisclosure of any auxiliary emission control device (“AECD”) (as defined in 40 C.F.R. § 86.1803-01) or defeat device (as defined in 40 C.F.R. § 86.1803-01 or 42 U.S.C. § 7522(a)(3)(B)) in any Subject Vehicle, as that term is defined in Section 2.71; (2) the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment and methods and related hardware or software in Subject Vehicles, including Diesel Exhaust Fluid and associated equipment, Selective Catalytic Reduction systems, electronic control units, and emission-related software programming, coding, and calibrations; (3) overpayment or diminution in value related to the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment and methods and related hardware or software in Subject Vehicles; (4) the actual or alleged noncompliance of any Subject Vehicle with state or federal environmental or emissions standards; (5) the marketing or advertisement of the emissions or environmental characteristics or performance of any Subject Vehicle including as clean diesel, clean, low emissions, green, environmentally friendly, and/or compliant with state or federal environmental or emissions standards; (6) the marketing or advertisement of the fuel efficiency, fuel economy, mileage, power, drivability, or performance of any Subject Vehicle, to the extent related in any way to the emissions performance, the design, manufacture, assembly, testing, development, installation, or performance of emission

control equipment and methods, and related hardware or software; (7) any badges, signage, or BlueTEC labels on the Subject Vehicles, including any badges or signage placed on the Subject Vehicles at the point of sale or in an advertisement; (8) performance of the AEM in a Subject Vehicle; (9) whether the Subject Vehicles meet or exceed (or met or exceeded) consumer expectations, to the extent related in any way to the emissions performance, the design, manufacture, assembly, testing, development, installation, or performance of emission control equipment, and methods and related hardware or software; and/or (10) the subject matter of the Action, as well as events or allegations related to the Action, with respect to the Subject Vehicles. Without limiting the foregoing, “BlueTEC Diesel Matter” includes allegations that (i) are related to any Subject Vehicle, (ii) relate to conduct by a Released Party that predates the date of this Class Action Settlement, and (iii) formed or relate to the factual basis for a claim that was made or could have been made in the Complaint.

2.7. “Bosch” or the “Bosch Defendants” means Robert Bosch GmbH and Robert Bosch LLC.

2.8. “Bosch’s Lead Counsel” means Matthew D. Slater and Jennifer Kennedy Park of Cleary Gottlieb Steen & Hamilton LLP.

2.9. “CARB” means the California Air Resources Board and any of its successor departments or agencies.

2.10. “Claim” means the claim of any Class Member or his, her, or its representative submitted on a Claim Form as provided in this Class Action Agreement. Class Members will not be required to submit more than one Claim Form per Subject Vehicle to receive Benefits.

2.11. “Claim Form” means the paper or online form used to submit a Claim under this Class Action Agreement or under the Mercedes Settlement.

2.12. The “Claim Submission Deadline” for various categories of Class Members shall be as defined in the Mercedes Settlement.

2.13. “Claimant” means a Class Member who has completed and submitted a Claim Form and all required documentation, as set forth in more detail in Exhibit 4 or in accordance

with the Mercedes Settlement.

2.14. “Claims Period” means the time period during which Class Members may submit a Claim. The Claims Period begins on the Notice Date and ends as specified in the Mercedes Settlement.

2.15. “Claims Program” means the program through which Class Members may file Claims and, if eligible, obtain Benefits under this Class Action Agreement, as described in Exhibit 4 or in the Mercedes Settlement.

2.16. “Claims Review Committee” or “CRC” means the committee approved by the Court to resolve certain issues raised by Class Members, as set forth in the Mercedes Settlement.

2.17. “Class” means, for purposes of this Class Action Settlement only, a nationwide class, including territories of the United States, of all Persons who (1) on or before the Settlement Announcement Date owned or leased, and Registered, a Subject Vehicle, or (2) after the Settlement Announcement Date begin owning or leasing, and Register, a Subject Vehicle for which an AEM has not been installed. The following entities and individuals are excluded from the Class:

- (a) The Mercedes Defendants and their officers, directors and employees; the Mercedes Defendants’ corporate affiliates and corporate affiliates’ officers, directors and employees; their distributors and distributors’ officers, directors and employees;
- (b) Judicial officers and their immediate family members and associated court staff assigned to this case;
- (c) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against the Mercedes Defendants arising from the same core allegations or circumstances as the BlueTEC Diesel Matter (as that term is defined in the Mercedes Settlement); and
- (d) All Persons otherwise in the Class who timely and properly exclude themselves from the Class as provided in this Class Action Agreement.

2.18. “Class Action 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 “Agreement” or the “Class Action Settlement.”

2.19. “Class Counsel” means Carella, Byrne, Cecchi, Olstein, Brody & Agnello, PC, and Hagens Berman Sobol Shapiro LLP, the firms that were appointed by the Court to be Interim Lead Counsel on April 7, 2016 (D.E. 7), as well as Seeger Weiss LLP, which has also represented the Class in connection with negotiations of this Class Action Settlement.

2.20. “Class Member” means a Person who meets the Class definition set forth in Section 2.17 of this Class Action Agreement and who has not timely opted out of the Class pursuant to the procedures set forth in Section 6.

2.21. “Class Member Payment” means the monetary compensation that Bosch Defendants shall pay eligible Class Members who do not opt out of the Class and who submit a Valid Claim, on the conditions set forth in Section 4 and Exhibit 2 and in the Mercedes Settlement. The Class Member Payment includes the Owner/Lessee Payment, Post-Announcement Owner/Lessee Payment, and Former Owner/Lessee Payment.

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

2.23. “Complaint” means the Fifth Consolidated and Amended Class Action Complaint and Demand For Jury Trial (Dkt. No. 185) filed in the Action on March 15, 2019.

2.24. “Court” means the United States District Court for the District of New Jersey.

2.25. “Daimler” means Daimler AG.

2.26. “DVUSA” means Daimler Vans USA, LLC.

2.27. “Defeat Device” has the same meaning as in 40 C.F.R. § 86.1803-01 or 42 U.S.C. § 7522(a)(3)(B).

2.28. “DOJ” means the United States Department of Justice.

2.29. “Effective Date” means the date the Court has entered the Final Approval Order,

provided, however, that if the Court enters the Final Approval Order before the Effective Date of the Mercedes Settlement, then the “Effective Date” means the Effective Date of the Mercedes Settlement.

2.30. “Eligible Current Owners/Lesseees” has the meaning provided in the Mercedes Settlement.

2.31. “Eligible Former Lessee” has the meaning provided in the Mercedes Settlement.

2.32. “Eligible Former Owner” has the meaning provided in the Mercedes Settlement.

2.33. “Eligible Former Owners/Lesseees” has the meaning provided in the Mercedes Settlement.

2.34. “Eligible Lessee” has the meaning provided in the Mercedes Settlement.

2.35. “Eligible Owner” has the meaning provided in the Mercedes Settlement.

2.36. “Eligible Post-Announcement Lessee” has the meaning provided in the Mercedes Settlement.

2.37. “Eligible Post-Announcement Owner” has the meaning provided in the Mercedes Settlement.

2.38. “Emission Modification Program” means the program specified in Paragraph 1 of Appendix A of the US-CA Consent Decree to implement the Approved Emission Modifications.

2.39. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

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

2.41. “Escrow Agent” means the entity agreed upon by Lead Plaintiffs’ Counsel and Bosch’s Lead Counsel to address and hold for distribution the funds identified in this Class Action Agreement pursuant to the terms of the Escrow Agreement. That agreed-upon entity is Esquire Bank.

2.42. “Escrow Agreement” means the agreement by and among Lead Plaintiffs’

Counsel and Bosch's Lead Counsel with respect to the escrow of the funds to be deposited into the Escrow Account pursuant to this Class Action Agreement.

2.43. "Escrow Period" commences upon the first deposit of funds into the Escrow Account and shall continue through and including the date when the Claims Submissions Deadlines have passed and the Parties agree that all claims for a Class Member Payment have been resolved.

2.44. "Fairness Hearing" means the hearing held by the Court for the purpose of determining whether to approve this Class Action Agreement as fair, reasonable, and adequate.

2.45. "Final Approval Order" means the order that may, at the discretion of the Court, be entered by the Court granting final approval of the Class Action Settlement.

2.46. "Former Owner/Lessee Payment" means monetary compensation, in an amount set forth in Exhibit 2, that the Bosch Defendants will pay to Eligible Former Owners/Lessees who submit a Valid Claim, on conditions set forth in Section 4 and Exhibit 2 and in the Mercedes Settlement.

2.47. "Individual Release" means the release that Class Members must execute to receive a Class Member Payment, as described in Section 10 of this Class Action Agreement. The Individual Release will remain valid even if the Court does not enter the Final Approval Order, the Final Approval Order is later reversed and/or vacated on appeal, or if this Class Action Agreement is abrogated or otherwise voided in whole or in part. The Individual Release binds Class Members when they receive a Class Member Payment.

2.48. "Lead Plaintiffs' Counsel" means James E. Cecchi of Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C; Steve W. Berman of Hagens Berman Sobol Shapiro LLP; and Christopher A. Seeger of SeegerWeiss LLP.

2.49. "Long Form Notice" means the Long Form Notice substantially in the form attached hereto as Exhibit 3.

2.50. "MBUSA" means Mercedes-Benz USA, LLC.

2.51. Mercedes Defendants means Mercedes-Benz USA, LLC and Daimler AG.

2.52. “Mercedes Defendants’ Lead Counsel” means Daniel W. Nelson of Gibson, Dunn & Crutcher LLP, and Troy M. Yoshino of Squire Patton Boggs (US) LLP.

2.53. “Mercedes Settlement” means the settlement related to the Subject Vehicles that was entered into between plaintiffs and the Mercedes Defendants in this Action. That settlement was filed with the Court on September 14, 2020 (ECF No. 299-2).

2.54. “Notice Date” has the meaning provided in the Mercedes Settlement.

2.55. “Operable” has the same meaning as defined in the Mercedes Settlement.

2.56. “Opt-Out Deadline” means the last day a Person within the definition of the Class may opt out of the Class Action Settlement, which is 60 days from the Notice Date. Requests to opt-out must be received by the Settlement Administrator by the Opt-Out Deadline.

2.57. “Order Approving Notice” means the order that may, at the discretion of the Court, be entered by the Court approving modifications to notices to the Class approved for the Mercedes Class Action Settlement to include this Class Action Settlement and concluding that the Court will likely be able to approve the Class Action Settlement and modify the Class already provisionally certified for the Mercedes Class Action Settlement to include this Class Action Settlement, all as outlined in Section 3 of this Class Action Agreement.

2.58. “Owner/Lessee Payment” means certain monetary compensation the Bosch Defendants will pay to Eligible Owners and Eligible Lessees who do not opt out of the Class and who submit a Valid Claim, on the conditions set forth in Section 4 and Exhibit 2 and in the Mercedes Settlement.

2.59. “Parties” means the Settlement Class Representatives and the Bosch Defendants, collectively, as each of those terms is defined in this Class Action Agreement.

2.60. “Party” means the Settlement Class Representatives or the Bosch Defendants, as applicable.

2.61. “Person” or “Persons” includes individuals and entities.

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

Agreement:

- 2.62.1. if no appeal has been taken from the Final Approval Order, “Post-Appeal Date” means the date on which the time to appeal therefrom has expired;
or
- 2.62.2. if any appeal has been taken from the Final Approval Order, “Post-Appeal Date” means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc* and petitions for a writ of *certiorari* or any other form of review, have been fully disposed of in a manner that affirms the Final Approval Order; or
- 2.62.3. if Lead Plaintiffs’ Counsel and the Bosch Defendants agree in writing, the “Post-Appeal Date” can occur on any other earlier agreed date.

2.63. “Register” means to register a vehicle with a Department of Motor Vehicles or equivalent agency in the name of the owner or, for a leased vehicle, the lessee, in the United States or its territories. “Registered” means to have registered a vehicle with a Department of Motor Vehicles or equivalent agency in the name of the owner or, for a leased vehicle, the lessee, in the United States or its territories.

2.64. “Release” means the release and waiver described in Section 10 of this Class Action Agreement and in the Final Approval Order.

2.65. “Released Party” or “Released Parties” has the definition set forth in Section 10 of this Class Action Agreement.

2.66. “Settlement Administrator” means the third-party agent agreed to by the Parties and appointed by the Court to oversee the Claims Program, including the claims process described in Section 5, and to implement the Class Notice Program. The Parties agree that JND Legal Administration shall serve as the Settlement Administrator, subject to approval by the Court.

2.67. “Settlement Class Representative” means a Plaintiff who meets the Class definition set forth in Section 2.20 of this Class Action Agreement, and who has agreed to

represent the Class for purposes of obtaining approval of, and effectuating, this Class Action Agreement, as listed in the moving papers submitted for the motion for an Order Approving Notice.

2.68. “Settlement Website” means the public website that provides information and key filings regarding the Class Action Settlement, including Frequently Asked Questions. Class Members will be able to access a “Claims Portal” on the Settlement Website. The Settlement Website shall be maintained by the Settlement Administrator in consultation with Lead Plaintiffs’ Counsel, Bosch’s Lead Counsel, and the Mercedes Defendants’ Lead Counsel.

2.69. “Settlement Announcement Date” means September 14, 2020.

2.70. “Short Form Notice” means the Short Form Notice(s) substantially in the form as attached hereto as Exhibit 2 . For the avoidance of doubt, there is no Exhibit 1 to this Class Action Agreement.

2.71. “Subject Vehicles” means a “Subject Vehicle” as defined in the US-CA Consent Decree, which includes the diesel vehicles listed in the table below.

BlueTEC II Diesel Vehicles	
Model	Model Year(s)
E250	2014-2016
E350	2011-2013
GL320	2009
GL350	2010-2016
GLE300d	2016
GLE350d	2016
GLK250	2013-2015
ML250	2015
ML320	2009
ML350	2010-2014
R320	2009
R350	2010-2012
S350	2012-2013
Mercedes-Benz Sprinter (4-cylinder)	2014-2016
Freightliner Sprinter (4-cylinder)	2014-2016
Mercedes-Benz Sprinter (6-cylinder)	2010-2016
Freightliner Sprinter (6-cylinder)	2010-2016

2.72. “US-CA Consent Decree” means the Consent Decree lodged with a federal district court on or about September 14, 2020, as agreed by (1) the United States on behalf of the EPA; (2) the People of the State of California, by and through CARB and the Attorney General of California; and (3) the Mercedes Defendants, resolving disputes between those parties on the terms described therein. If the federal district court approves and enters the Consent Decree, “US-CA Consent Decree” shall mean the decree as and in the form that it is ultimately approved and entered by the federal district court.

2.73. “Valid Claim” means a Claim that is accurate, truthful, complete, executed by a Class Member or authorized representative, and submitted to the Settlement Administrator by the applicable claims deadline. A Valid Claim must include a fully executed Individual Release and all required documentation, including, for Eligible Current Owners/Lessees, proof that the Approved Emission Modification has been installed in their Subject Vehicle by an Authorized Service Provider (e.g., by repair order).

2.74. “VIN” means the unique alphanumeric vehicle identification number assigned to

each vehicle.

2.75. 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 or in the Mercedes Settlement.

2.76. The terms “he or she” and “his or her” include “it” or “its” where applicable; the terms “they” or “their” include “he,” “she,” “his,” “her,” “it,” or “its,” as applicable.

3. ORDER APPROVING NOTICE

3.1. Promptly after this Agreement is signed, the Parties shall file the Agreement with the Court, together with a Motion to Approve Notice to the Class. Simultaneously, the Settlement Class Representatives shall move for certification of the Class for settlement purposes only and for entry of an order preliminarily approving the Class Settlement (“Preliminary Approval Order”), pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 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 the Bosch Defendants do not waive any arguments that they may have that class certification for any other purpose would be improper.

3.2. Until the Preliminary Approval Order is entered, Settlement Class Representatives and Class Counsel shall not pursue any litigation proceedings against the Released Parties; the Bosch Defendants shall not pursue litigation proceedings against the Releasing Parties; and the Parties and their respective counsel shall not in any way subsequently argue that the Released Parties or Releasing Parties have failed to comply with their litigation obligations in any respect by reason of the Released Parties’ or Releasing Parties’ suspension of litigation efforts following the execution of this Class Action Agreement. Upon entry of the Preliminary Approval Order, all proceedings in this Action pertaining to the Bosch Defendants, other than the proceedings necessary to effectuate this Class Action Agreement, shall be stayed and suspended until further notice of the Court.

3.3. The Parties agree to take all actions and steps reasonably necessary to obtain a Preliminary Approval Order and Final Approval Order from the Court and to fully implement

and effectuate this Class Action Settlement.

4. CLASS MEMBER COMPENSATION AND REMEDIES

4.1. **Overview of Benefits.** The Class Action Agreement provides substantial compensation to owners and lessees, as detailed in this Section and in Exhibit 2 (Class Member Benefits). The compensation described in this Section is available only to Class Members who do not opt out and who submit a Valid Claim under this Agreement and the Mercedes Settlement. The compensation described in this Section is in addition to amounts that may be available under the Mercedes Settlement.

4.2. **Overview of Distribution.** Class Member Payments will be a maximum payment per Subject Vehicle VIN of \$300 (minus any amounts awarded as attorneys' fees and expenses as provided in Section 12 of this Agreement), to be allocated among eligible current and former owners and lessees of such Subject Vehicle VIN as provided below and in accordance with the Mercedes Settlement, less any attorneys' fees and expenses as may be awarded by the Court with respect to this Class Settlement.

4.2.1. **Current Owner/Lessee Payment.** Eligible Owners or Eligible Lessees who receive an Approved Emissions Modification and submit a Valid Claim are entitled to a Current Owner/Lessee Payment. The Current Owner/Lessee Payment will be **\$300** per Subject Vehicle VIN (minus any amounts awarded as attorneys' fees and expenses as provided in Section 12 of this Agreement), unless an Eligible Former Owner or Eligible Former Lessee files a Valid Claim for that same Subject Vehicle VIN, in which case the Current Owner/Lessee Payment will be **\$225** (minus any amounts awarded as attorneys' fees and expenses as provided in Section 12 of this Agreement). Full details on Current Owner/Lessee Payments can be found in paragraph 2 of Exhibit 2.

4.2.2. **Former Owner/Lessee Payment.** Eligible Former Owners/Lessees who submit a Valid Claim will be entitled to a Former Owner/Lessee

Payment. The Former Owner/Lessee Payment is a maximum of **\$75** per Subject Vehicle VIN (minus any amounts awarded as attorneys' fees and expenses as provided in Section 12 of this Agreement). In the event that there are more than one Eligible Former Owners or Eligible Former Lessees, the maximum \$75 payment per Subject Vehicle VIN shall be divided equally among the Eligible Former Owners and Eligible Former Lessees who submit Valid Claims on the same Subject Vehicle VIN.

- 4.2.3. **Post-Announcement Owner/Lessee Payment.** Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees whose Subject Vehicle receives an Approved Emission Modification and who submit a Valid Claim are entitled to a Post-Announcement Owner/Lessee Payment. The Post-Announcement Owner/Lessee Payment will be **\$225** per Subject Vehicle VIN (minus any amounts awarded as attorneys' fees and expenses as provided in Section 12 of this Agreement). The requirements and conditions for a Post-Announcement Owner/Lessee Payment are set forth in the Mercedes Settlement.
- 4.2.4. There shall be no contingent payments under this Agreement even if such payments are required under Section 5.3 of the Mercedes Settlement. However, if an AEM is not made available by the AEM Availability Deadline (as that term is defined in the Mercedes Settlement) in accordance with Section 5.3.6 of the Mercedes Settlement, Current Owners/Lessees are eligible to receive the payments described above in Section 4.2.1, and Eligible Post-Announcement Owners and Eligible Post-Announcement Lessees are eligible to receive the payments described above in Section 4.2.3. To obtain a payment pursuant to this Section 4.2.4, eligible Class Members must submit a Valid Claim within

60 days of the AEM Availability Deadline (as that term is defined in the Mercedes Settlement).

4.2.5. Notwithstanding any other provision herein, the Parties agree that the Bosch Defendants shall not pay to Eligible Owners, Eligible Lessees, Eligible Post-Announcement Owners, Eligible Post-Announcement Lessees, Eligible Former Owners, and Eligible Former Lessees in aggregate more than 100% of the \$300 maximum amount (inclusive of attorneys' fees and expenses) for any specific Subject Vehicle VIN under the terms of this Class Action Agreement. For the avoidance of doubt, the Parties agree that this is a claims-made settlement, meaning that the Bosch Defendants must make payments only up to the maximum amount for any Subject Vehicle VIN under the terms of this Class Action Agreement.

4.2.6. For the avoidance of doubt, the Bosch Defendants shall have no responsibility to Class Members for the Approved Emissions Modification(s) or the Extended Modification Warranty under the US-CA Consent Decree.

4.3. **Responsibility for Required Payments by Bosch.** Bosch's obligations under this Class Action Agreement are limited solely to the payment of not more than \$63.3 million in accordance with Section 11 of this Class Action Agreement, inclusive of attorneys' fees, costs, and expenses, if any, as may be ordered as provided under this Class Action Agreement. Robert Bosch GmbH shall bear the ultimate responsibility for Bosch's payment obligations under this Class Action Agreement. Bosch's obligations under the Class Action Agreement apply to, and are binding upon, Robert Bosch GmbH and Robert Bosch LLC and any successors, assigns, or other entities or persons otherwise bound by law to satisfy their obligations.

4.4. **Tax Implications.** Class Members should consult their personal tax advisor for assistance regarding any tax ramifications of this Class Action Settlement. Neither Class

Counsel nor the Bosch Defendants and their counsel are providing any opinion or advice as to the tax consequences or liabilities of Class Members as a result of any payments or Benefits under this Class Action Settlement.

4.5. Section Intentionally Left Blank

4.6. Notwithstanding anything else in this Agreement, the following Persons are not eligible to and shall not receive any compensation from the Bosch Defendants under this Section 4: the Bosch Defendants and their officers, directors and employees, and the Bosch Defendants' corporate affiliates and corporate affiliates' officers, directors and employees.

5. CLASS CLAIMS PROCESS AND ADMINISTRATION

5.1. The Settlement 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.

5.2. Any Class Member whose filed claim has been approved or is approved in the future will receive a Class Member Payment via the same method that the Class Member receives their payment from the Mercedes Settlement.

5.3. The Court retains ongoing and exclusive jurisdiction and independent case management authority, under Fed. R. Civ. P. 23, regarding the general operation of the Claims Program and those appointed to implement and oversee it.

6. REQUESTS FOR EXCLUSION

6.1. **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 validly opt out from the Class, a Person must personally sign and date, and send a written request to opt out stating "I have reviewed the Long Form Notice and wish to exclude myself from the Class in *In re Mercedes-Benz Emissions Litigation*, 2:16-cv-0881" (or substantially similar clear and unambiguous language) to the Settlement Administrator at an address to be provided by the Mercedes Defendants. The written request to opt out must be postmarked on or before the Opt Out

Deadline, and must include: (1) the Person's name, address, telephone number, (2) the VIN of the Subject Vehicle forming the basis of the Person's inclusion in the Class definition and a statement as to whether the Person owns/owned or leases/leased the Subject Vehicle, and (3) a "wet" signature not affixed via electronic means. If a question is raised about the authenticity of a request to opt out, the Settlement Administrator will have the right to demand additional proof of the individual's identity and intent. The Parties retain discretion to determine whether any opt-out request substantially complies with the requirements above. The Settlement Administrator will provide bi-weekly summary reports and copies of all opt-out requests to Lead Plaintiffs' Counsel and Bosch's Lead Counsel. Opt-out requests that are signed by an attorney but not by the Person requesting to be excluded from the Class are invalid.

6.2. **Opt Out Deadline.** Requests to opt out must be postmarked no later than 60 days from the Notice Date.

6.3. **Consequences of Failure to Opt Out in a Timely and Proper Manner.** All Persons fitting the Class definition 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, including the Release, and the Final Approval Order upon the Effective Date.

6.4. **Opting Out and Objecting Are Mutually Exclusive Options.** Any Person who opts out pursuant to Section 7 may not also object to the Class Action Settlement. Any Class Member who elects to object pursuant to Section 7 herein may not also opt out pursuant to this Section.

7. **OBJECTIONS TO THE SETTLEMENT**

7.1. **Manner of Objecting.** The Class Notice Program will provide instructions regarding the procedures that must be followed to object to the Class Action Settlement pursuant to Federal Rule of Civil Procedure 23(e)(5). Provided that a Class Member has not submitted a written request to opt out, as set forth in Section 6, the Class Member may present a written statement of objection(s), if any, explaining why he or she believes the Class Action Settlement should not be approved by the Court as fair, reasonable, and adequate. No later than 60 days

after the Notice Date, a Class Member who wishes to object to any aspect of the Class Action Settlement must file with the Court, or as the Court otherwise may direct, a written statement of the objection(s) and serve the objection on Lead Plaintiffs' Counsel and the Bosch Defendants' Lead Counsel. The written statement of objection(s) must include: (1) a statement as to whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention; (2) the Class Member's printed name, address, and telephone number; (3) the VIN of the Subject Vehicle forming the basis of the Class Member's inclusion in the Class and the beginning and end dates (if applicable) of the Class Member's ownership or lease of the Subject Vehicle; (4) a statement that the Class Member has reviewed the Class definition and has not opted out of the Class; (5) any supporting papers, materials, or briefs the Class Member wishes the Court to consider when reviewing the objection; (6) a statement of whether the Class Member intends to appear at the final approval hearing; and (7) a dated "wet" signature not affixed by electronic means.

7.2. Objecting Through Counsel. A Class Member may submit a written statement of objection(s) on his or her own behalf or through a lawyer hired at that Class Member's own expense, provided the Class Member has not submitted a written request to opt out, as set forth in Section 6. Lawyers asserting objections on behalf of Class Members must: (1) file a notice of appearance with the Court by the deadline set by the Court in the Order Approving Notice and Class Certification Order, or as the Court otherwise may direct; (2) file a sworn declaration attesting to his or her representation of each Class Member on whose behalf the objection is being filed or file (in camera) a copy of the contract between that lawyer and each such Class Member; and (3) comply with the requirements and procedures described in this Section, including the provision of all information set forth in Section 7.1. Lawyers asserting objections on behalf of Class Members also must file a sworn declaration that specifies the number of times during the prior five-year period they have objected to a class action settlement on their own behalf or on behalf of a member of a class.

7.3. Intent to Appear at the Fairness Hearing. A Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the deadline set by the Court in the Order Approving Notice, a written notice of his or her intent to appear at the Fairness Hearing, in accordance with the requirements set forth in the Order Approving Notice, or by such time and in such manner as the Court may otherwise direct. A Class Member who does not timely submit a notice of intent to appear at the Fairness Hearing in accordance with all of the requirements of Section 7 shall not be allowed to appear at the hearing. The Court may hold the Fairness Hearing via videoconference or teleconference.

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

8. DUTIES OF THE SETTLEMENT ADMINISTRATOR

8.1. The Settlement Administrator shall be responsible for, without limitation: (1) printing, mailing by First-Class U.S. Mail, postage paid, or arranging for the mailing of, and/or e-mailing of, the Long Form Notice and/or Short Form Notice (attached as Exhibits 2-3); (2) updating Class Member address information prior to mailing using the National Change of Address (NCOA) system; (3) handling returned notice-related mail not delivered to Class Members; (4) attempting to obtain updated address information for any Short Form Notices returned without a forwarding address; (5) establishing a post-office box for the receipt of any correspondence; (6) responding to requests from Class Counsel or Bosch's Lead Counsel; (7) assisting in the creation of Notice-related content for the Settlement Website to which Class Members may refer for information about the Action and the Class Action Settlement; (8) otherwise implementing and/or assisting with the dissemination of the notice of the Class Action Settlement; (9) consulting on the Settlement Website during the Escrow Period; and (10)

processing and issuing the Class Member Payments from the Escrow Account in accordance with this Agreement.

8.2. The Settlement Administrator shall be responsible for arranging for the publication of notice in accordance with the Class Notice Program and ordered by the Court, and for consulting on other aspects of the Class Notice Program.

8.3. All reasonable and necessary costs of the Class Notice Program and the fees and costs of the Settlement Administrator in connection with the Mercedes Settlement shall be borne exclusively by MBUSA and without additional payment by Bosch.

8.4. Within ten (10) days after this Class Action Agreement is filed in Court, the Settlement Administrator will cause a notice of the proposed settlement consisting of the materials required by the Class Action Fairness Act (28 U.S.C. § 1715) (“CAFA”) to be served upon the appropriate state official in each state of the United States as well as the appropriate federal officials. Within 15 days after the Notice Date, the Settlement Administrator shall provide declarations to the Court, with a copy to Class Counsel and the Bosch Defendants’ Lead Counsel, attesting to the measures undertaken to provide notice as directed by CAFA.

8.5. Not later than ten (10) days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court a list of those persons who have opted out or excluded themselves from the Settlement. The Settlement Administrator shall file with the Court the details outlining the scope, method and results of the Class Notice Program.

8.6. The Settlement Administrator and the Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

9. SECTION LEFT INTENTIONALLY BLANK

10. RELEASE AND WAIVER

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

10.2. Released Parties. “Released Parties” means any person who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for the BlueTEC Diesel Matter, and include, without limitation, (1) Robert Bosch LLC and Robert Bosch GmbH, and any former, present, and future owners, shareholders (direct or indirect), members (direct or indirect), directors, officers, members of management or supervisory boards, employees, attorneys, affiliates, parent companies (direct or indirect), subsidiaries (direct or indirect), predecessors, and successors of any of the foregoing (the “Released Entities”); (2) any and all contractors, subcontractors, joint venture partners, consultants, auditors, dealers, and suppliers of the Released Entities; (3) any and all persons and entities indemnified by any Released Entity with respect to the BlueTEC Diesel Matter; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Subject Vehicle, even if such persons are not specifically named in this Section 10.2; (5) Settlement Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of a Subject Vehicle; (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint venturers, 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; and (8) any other person or entity that is or could be alleged to be responsible or liable in any way whatsoever, whether directly or indirectly, for the BlueTEC Diesel Matter. For the avoidance of doubt, Released Parties do not include the Mercedes Defendants.

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, 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 BlueTEC Diesel Matter, including without limitation (1) any claims or allegations that are, were, or could have been asserted in the Action; and (2) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, statutory damages, liens, injunctive relief, attorneys’ fees (except as provided in Section 12 of this Class Action Agreement), expert, consultant, or other litigation fees or costs, or (3) any other liabilities that were or could have been asserted in any civil, administrative, or other proceeding, including arbitration (the “Released Claims”). The Released Claims include without limitation any and all such claims, demands, actions, or causes of action 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 international law, or statute, ordinance, code, rule, 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, county, city, or municipality, or any other legal or governmental body, whether existing now or arising in the future, that arise from, in whole or in part, or in any way relate to the BlueTEC Diesel Matter. 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 Counsel, the

Settlement Class Representatives, and 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 BlueTEC Diesel Matter, the Action, the Released Claims, and/or the Release herein. Nevertheless, it is the intention of Class Counsel, the Settlement Class Representatives, and Class Members in executing this Class Action Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters and Released Claims, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding).

10.5. Release of “Holder Rule” Claims. In exchange for the Benefits, Class Members release their potential claims under the Trade Regulation Rule Concerning the Preservation of Consumers’ Claims and Defenses, 16 C.F.R. § 433.2 (the “Holder Rule”), relating to the BlueTEC Diesel Matter.

10.6. 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** 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 of the California Civil Code and that he, she, or it has considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Release is interpreted fully in accordance with its terms, Class Members expressly waive and relinquish any and all rights and benefits that they may have under Section 1542 of the California Civil Code to the extent that Section 1542 of the California Civil Code may be applicable to the Release. Class Members likewise expressly waive and relinquish any rights or benefits of any law of any State, territory, county,

municipality, or city of the United States, federal law or principle of common law, or of international, foreign, or tribal law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Civil Code to the extent that such laws or principles may be applicable to the Release.

10.7. Individual Release. Each Class Member who submits a Claim shall be required to execute an Individual Release, in the form attached as Exhibit 5, as a precondition to receiving a Class Member Payment. Consistent with the Release provided in this Agreement, the Individual Release will provide that the Class Member releases all of the Released Parties from any and all present and future claims (as described in Section 10) arising out of or related to the BlueTEC Diesel Matter. The Individual Release shall remain effective even if the Court does not enter the Final Approval Order, the Final Approval Order is reversed and/or vacated on appeal, or if this Class Action Agreement is abrogated or otherwise voided in whole or in part. The Individual Release binds Class Members when they receive a Class Member Payment.

10.8. Actions or Proceedings Involving Released Claims. Class Members who do not opt out expressly agree that this Release, and the Final Approval Order, each is, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Release. Class Members who do not opt out shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action, and/or other proceeding, against the Released Parties with respect to the claims, causes of action and/or any other matters subject to this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, Class Members who do not opt out shall promptly cause their claims in any such suit, action, or proceeding to be dismissed with prejudice. If a Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) such legal action or other proceeding shall be dismissed with prejudice and at that Class Member's cost; and (2) any

refusal or failure to immediately dismiss such claims shall provide a basis for any Released Party to seek an injunction, sanctions, or other appropriate relief; and (3) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Class Member arising as a result of that Class Member's breach of his, her, or its obligations under this Release. Within five business days of the Post-Appeal Date, Class Counsel will dismiss the Complaint with prejudice.

10.9. Ownership of Released Claims. Settlement Class Representatives represent and warrant that they are the sole and exclusive owners of any and all claims that they are releasing under this Class Action Agreement. Settlement Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the BlueTEC Diesel Matter, including without limitation, any claim for Benefits, proceeds or value under the Action, and that Settlement Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in any Benefits, proceeds or values to which Settlement Class Representatives may be entitled as a result of the BlueTEC Diesel Matter. Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they are releasing under the Class Action Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the BlueTEC Diesel Matter, including without limitation, any claim for Benefits, proceeds or value under the Actions or the BlueTEC Diesel Matter, and that such Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any Benefits, proceeds or values to which those Class Members may be entitled as a result of the Action or the BlueTEC Diesel Matter.

10.10. Total Satisfaction of Released Claims. Any benefits pursuant to the Class Action Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. Such benefits are sufficient and adequate consideration for each

and every term of this Release, and this Release shall be irrevocably binding upon Settlement Class Representatives and Class Members who do not opt out of the Class.

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

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

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

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

prosecution of the Action, provided, however, that nothing in this Section 10.14 relieves Settlement Class Representatives, Class Members, and Class Counsel of their continuing obligations under the protective order (Dkt. No. 236) that has been entered in the Action, and this Section 10.14 may not be interposed as a defense to a claim of a breach of the terms of such protective order.

10.15. Class Counsel shall cooperate with Released Parties to ensure that the release set forth in the Final Approval Order is given its full force and effect (including by seeking the inclusion of the releases in the Final Approval Order, Final Judgment, and the Claims Forms) and to ensure that Releasing Parties comply with their obligations set forth in this Class Action Agreement.

11. ESCROW ACCOUNT

11.1. In consideration for the full and complete Release and the Final Approval Order, as contemplated in this Class Action Settlement Agreement, within ten business days after the Court enters the Final Approval Order, Bosch shall fund the Escrow Account with its respective “Funding Amount,” which funds shall be used, as necessary, to compensate Class Members who submit valid Claims pursuant to this Class Action Agreement (and any attorneys’ fees and expenses as provided in Section 12 of this Agreement). The initial Funding Amount shall be \$15 million from Bosch. If and when the funding level of the Escrow Account falls below 15% of Bosch’s outstanding remaining liability to Class Members under this Class Action Agreement, the Escrow Agent shall notify Bosch in writing. Bosch shall, within ten business days thereafter deposit such funds in the Escrow Account as are necessary to bring the balance of the Escrow Account back to no less than 15% of the outstanding remaining liabilities to Class Members, provided, however, that Bosch shall in no event be required to deposit more than a total of \$63.3 million in the Escrow Account, and provided further that the minimum balance will in no event exceed the remaining maximum compensation due from Bosch to all Class Members.

11.2. The Escrow Period shall commence upon the first deposit of funds into the Escrow Account and shall continue through and including the date when the Claims Submissions

Deadlines have passed and the Parties agree that all claims for a Class Member Payment have been resolved. Funds deposited in the Escrow Account, plus any interest earned thereon, will be distributed through a combination of payments to Class Members and payment of Court-approved attorneys' fees and expenses throughout the Escrow Period. Within thirty days of the conclusion of the Escrow Period, any funds in the Escrow Account (if any), including all interest accrued, shall be returned to Bosch.

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

12. ATTORNEYS' FEES AND EXPENSES

12.1. The Parties agree that reasonable attorneys' fees and expenses for work performed by Class Counsel in connection with the Action shall be paid from the Escrow Account. At the same time that they file their Motion for Final Approval of this Agreement, Class Counsel will file with the Court an application for attorneys' fees and expenses to be paid from the Escrow Account. The percentage shall be established by the Court, provided that it shall not exceed 25% of the maximum payment otherwise payable to Class Members for a given Subject Vehicle VIN (i.e., a maximum of attorneys' fees and expenses of \$75 per Subject Vehicle VIN, regardless of the number of claims paid on such Subject Vehicle VIN). Those fees and expenses shall be paid periodically from the Escrow Account to an escrow account specified by Lead Plaintiffs' Counsel. The Court's order awarding such fees may authorize the Settlement Administrator to aggregate and pay in advance a portion of the fees from the initial deposit into the Escrow Account and quarterly thereafter to reflect anticipated payments from the Escrow Account during such quarter, subject to quarterly reconciliation. By way of example, the Court may award an amount up to 25% of the initial deposit into the Escrow Account as an initial deposit of the attorneys' fee award and such amounts it deems appropriate from the Escrow Account on a quarterly basis thereafter, subject to quarterly reconciliation to attorneys' fees and expenses actually earned on Class Member Payments during such quarter. The Parties agree that Bosch

shall not be required to pay any amounts for attorneys' fees and expenses in addition to the amount awarded by the Court from the Escrow Account, and Class Members and Class Counsel expressly release the Bosch Defendants from any such payments that otherwise may be due by operation of law or otherwise. For the avoidance of doubt, the Parties agree that the only payments to be made by Bosch are those to the Escrow Account as provided in Section 11.1 and that no additional amounts of money will be paid by Bosch for attorneys' fees and expenses.

12.2. Settlement Class Representatives, Class Counsel, and Class Members will not seek in excess of the sums specified in Section 12.1, and in any event, they agree that the Bosch Defendants shall not pay, nor be obligated to pay, any sum in excess of the cap amounts specified in Section 12.1. In furtherance of the agreements in this Section 12, in the event of any objections to the Class Action Settlement or appeal from any order of the Court granting final approval, Class Counsel agree that they will be responsible for responding to objectors and intervenors, and defending the Court's Final Approval Order and Final Judgment on appeal, if any, at their own cost. The Bosch Defendants reserve the right to respond to objectors and intervenors, and to join in the defense of the Final Approval Order and Final Judgment. The Bosch Defendants agree not to appeal, or otherwise support any appeal, of an order or judgment entered by the Court that is consistent with the terms of the Class Action Settlement. Any costs incurred by Class Counsel in such appeals, including costs incurred to settle any claims by objectors or intervenors, are the sole responsibility of Class Counsel. No Person may seek to recover such costs from the Bosch Defendants.

13. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT

13.1. 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 warrants that he or she is authorized to sign this Class Action Agreement on behalf of that Party.

13.2. The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of the Class Action Agreement

and advance the Settlement Claims Program. 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.

13.3. 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.

14. MODIFICATION OR TERMINATION OF THIS CLASS ACTION AGREEMENT

14.1. 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.

14.2. This Class Action Agreement shall terminate at the discretion of either the Bosch Defendants or the Settlement Class Representatives, through Lead Plaintiffs' Counsel, if: (1) 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 (2) 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 14, 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 as of the date immediately before the Parties' execution of the Class Action Agreement.

14.3. If an option to withdraw from and terminate this Class Action Agreement arises under Section 14.2 above, neither the Bosch Defendants nor Settlement Class Representatives are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

14.4. If, but only if, this Class Action Agreement is terminated pursuant to Section 14.2, above, then:

14.4.1. This Class Action Agreement shall be null and void and shall have no force or effect, and no Party to this Class Action Agreement shall be bound by any of its terms, except for the terms of Section 14.4 herein;

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

14.4.3. All of the provisions of this Class Action Agreement, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of the Bosch Defendants, Settlement Class Representatives, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Class Action Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings, and provided further that all Class Members who have signed Individual Releases shall remain bound by them;

- 14.4.4. Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that the Action may not be litigated as a class action;
- 14.4.5. Settlement Class Representatives and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of action or remedies that have been or might later be asserted in the Action including, without limitation, any argument concerning class certification, and treble or other damages;
- 14.4.6. The Bosch Defendants expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the Action, including without limitation, any argument or position opposing class certification, liability, damages, or injunctive relief;
- 14.4.7. Neither this Class Action Agreement, the fact of its having been entered into, nor the negotiations leading to it shall be admissible or entered into evidence for any purpose whatsoever;
- 14.4.8. Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Class Action Agreement shall be deemed vacated and shall be without any force or effect;
- 14.4.9. The Mercedes Defendants shall bear all reasonable and necessary costs incurred by the Settlement Administrator in connection with the implementation of the Mercedes Settlement. Bosch shall not be responsible for any such costs. Neither the Settlement Class

Representatives nor Class Counsel shall be responsible for any such settlement-related costs except as may be provided in the Mercedes Settlement; and

14.4.10. Within five (5) business days, any funds in the Escrow Account, including any interest accrued, shall revert to Bosch.

14.4.11. Class Counsel shall promptly return or reimburse to the Bosch Defendants any attorneys' fees and costs paid by the Bosch Defendants in respect of any Class Members who have not provided the Bosch Defendants an Individual Release.

14.5. Notwithstanding the terms of Sections 14.4.1 through 14.4.10 above, if a Class Member has (1) received compensation under the Class Action Agreement prior to its termination or invalidation and (2) executed an Individual Release, such a Class Member and the Bosch Defendants shall be bound by the terms of the Individual Release, which terms shall survive termination or invalidation of the Class Action Agreement.

15. REPRESENTATIONS AND WARRANTIES

15.1. Class Counsel represent that they have conducted sufficient independent investigation and discovery to enter into this Class Action Agreement and that they execute this Class Action Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Class Action Agreement. Class Counsel represent that they are authorized by the Settlement Class Representatives to enter into this Class Action Agreement with respect to the claims asserted in the Action and all other claims covered by the Release, and that they are seeking to protect the interests of the Class. Settlement Class Representatives acknowledge, agree, and specifically represent and warrant that they have discussed with Class Counsel the terms of this Class Action Agreement and have received legal advice with respect to the advisability of entering into this Class Action Agreement and the Release, and the legal effect of this Class

Action Agreement and the Release.

15.2. Class Counsel further represents that the Settlement Class Representatives: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class; (3) have read the pleadings in the Action, including the Complaint, or have had the contents of such pleadings described to them; (4) have consulted with Class Counsel about the obligations imposed on representatives of the Class; (5) understand that they are entitled only to the rights and remedies of Class Members under this Class Action Agreement and not to any additional compensation by virtue of their status as Settlement Class Representatives; and (6) shall remain and serve as representatives of the Class until the terms of this Class Action Agreement are effectuated, this Class Action Agreement is terminated in accordance with its terms, or the Court at any time determines that said Settlement Class Representatives cannot represent the Class.

15.3. Bosch represents and warrants that the individual(s) executing this Class Action Agreement are authorized to enter into this Class Action Agreement on behalf of Bosch.

15.4. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Class Action Agreement. In addition, the Parties acknowledge and agree that no tax ruling from any governmental tax authority in relation to a Class Member's tax consequences will be requested by the Bosch 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, county, city, or foreign tax consequences or liabilities may vary depending on the particular circumstances of each individual Class Member. Class Members shall hold the Bosch Defendants and their counsel harmless from any federal, state, county, city, or foreign tax

assessments, interest, and/or penalties that result for any amounts paid or Benefits provided under this Agreement, and the Bosch 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.

15.5. The representations and warranties made throughout the Class Action Agreement shall survive the execution of the Class Action Agreement and shall be binding upon the respective heirs, representatives, successors, and assigns of the Parties.

16. GENERAL MATTERS AND RESERVATIONS

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

16.2. The Parties agree and acknowledge that (a) no government or governmental entity is a party to the Action or to this Class Action Agreement; (b) 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 (c) this Class Action Agreement is for the purpose of restitution, compensation or/and remediation for harm or damage alleged in the Complaint.

16.3. The Parties and their counsel agree to keep the existence and contents of this Class Action Agreement confidential until the date on which the Motion for an Order Approving Notice is filed; provided, however, that this Section shall not prevent the Bosch Defendants from disclosing such information, prior to the date on which the Motion for an Order Approving Notice is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, or lawyers. The Parties and their counsel may also disclose the existence and contents of this Class Action Agreement to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Class Action Agreement.

16.4. Settlement Class Representatives and Class Counsel agree that confidential information made available to them solely through the settlement process was made available on the condition that it not be disclosed to third parties (other than experts or consultants retained by Settlement Class Representatives in connection with the Action). This confidential information cannot be used for any purpose other than effectuating this Class Action Settlement. For the avoidance of doubt, Settlement Class Representatives and Class Counsel agree that they cannot use any confidential information provided in the course of settlement negotiations in any other action, litigation, arbitration, mediation, proceeding, or matter of any kind.

16.5. Information provided by the Bosch Defendants and/or the Bosch Defendants' counsel to Settlement Class Representatives, Class Counsel, any individual Class Member, counsel for any individual Class Member, and/or administrators, pursuant to the negotiation and implementation of this Class Action Agreement, includes trade secrets and highly confidential and proprietary business information and shall be deemed "Highly Confidential" pursuant to the protective order (Dkt. No. 236) that has been entered in the Action, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon any the Bosch Defendants' request, be promptly returned to the requesting the Bosch Defendants' counsel, as appropriate, and there shall be no implied or express waiver of any privileges, rights and defenses.

16.6. This Class Action Agreement, complete with its exhibits and all documents filed with the Court, sets forth the entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Lead Plaintiffs' Counsel and Bosch's 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.

16.7. 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 New Jersey notwithstanding its conflict of law provisions.

16.8. The Court shall retain exclusive and continuing jurisdiction over all Parties, Class Members, the Action, and this Class Action Agreement to resolve any suit, action, proceeding, case, controversy, or dispute that may arise regarding this Class Action Agreement, the Class Notice Program, the Claims Program, application of the Release, or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Class Action Agreement (“Disputes”). Accordingly, any disagreement and/or action to enforce this Class Action Agreement, if not resolved by mediation or other consensual means, shall be commenced and maintained only in the United States District Court for the District of New Jersey. The Parties, and each Class Member who has not validly and timely opted-out of this Class Action Agreement, hereby irrevocably submit to the exclusive jurisdiction and venue of the Court for resolution of Disputes, and irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is in any way an improper venue or an inconvenient forum. No Party or Class Member shall oppose the reopening and reinstatement of the Action for the purposes of effecting the Release described in Section 10. The Parties and Class Members hereby agree to pay, and the Court is authorized to award, attorneys’ fees and costs to the prevailing party in connection with a Dispute. Notwithstanding anything else in this Section 16.8, all determinations of the CRC are final and binding, and in any event those determinations shall not be subject to this Section 16.8.

16.9. 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 Bosch, then to:

Matthew D. Slater.
CLEARY GOTTLIEB STEEN & HAMILTON LLP
2112 Pennsylvania Ave., NW
Washington, DC 20037
Email: mslater@cgsh.com

Jennifer Kennedy Park
CLEARY GOTTLIEB STEEN & HAMILTON LLP
One Liberty Plaza
New York, NY 10006
Email: jkpark@cgsh.com

If to the Class, then to:

James E. Cecchi
CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY, & AGNELLO
5 Becker Farm Road
Roseland, NJ 07068
Email: JCecchi@carellabyrne.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Ave., Suite 2000
Seattle, WA 98101
Email: steve@hbsslaw.com

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Email: cseeger@seegerweiss.com

16.10. All time periods in this Class Action Agreement shall be computed in calendar days unless otherwise expressly provided. In computing any period of time in this Class Action Agreement or by order of the Court, the day of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which the court is closed, in which case the period shall run until the end of the next day that is not one of the aforementioned

days. As used in this Class Action Agreement, “Federal Holiday” includes holidays designated in Fed. R. Civ. P. 6(a) or by the Clerk of the United States District Court for the District of New Jersey.

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

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

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

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

16.15. Neither this Class Action Agreement, the Claims Program, nor the Emission Modification Program, nor any act performed or document executed pursuant to or in furtherance of this Class Action Agreement, the Claims Program, or the Emission Modification Program is or may be deemed to be or may be used or construed as an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing or liability of any Released Parties; nor may this Class Action Agreement, the Class Notice Program, the Claims Program, or the Emission Modification Program be deemed to be or be used or construed as an admission of, or

evidence of, any fault or omission of any Released Parties in any civil, criminal, regulatory, or administrative proceeding in any court, administrative agency or other tribunal. Nor shall this Class Action Agreement, the Class Notice Program, the Claims Program, or the Emission Modification Program be deemed an admission by any Party as to the merits of any claim or defense.

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

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

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

16.19. If one Party to this Class Action Agreement considers another Party to be in breach of its obligations under this Class Action Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Class Action Agreement.

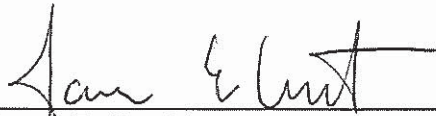
16.20. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Class Action Agreement and to use their best efforts to implement this Class Action Agreement.

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

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

COUNSEL FOR PLAINTIFFS:

Date: October 16, 2020



James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY, &
AGNELLO, P.C.
5 Becker Farm Rd.
Roseland, NJ 07068
Tel: (973) 994-1700



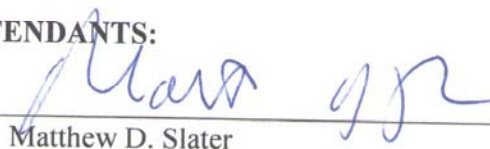
Steve W. Berman
Sean R. Matt
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 2nd Ave., Suite 2000
Seattle, WA 98101
Tel: (206) 623-7292




Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Tel: (973) 639-9100
Fax: (973) 639-9393

COUNSEL FOR THE BOSCH DEFENDANTS:

Date: October 16, 2020



Matthew D. Slater
Cleary Gottlieb Steen & Hamilton LLP
2112 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 974-1500
Fax: (202) 974-1999



Jeffrey A. Rosenthal
Carmine D. Boccuzzi, Jr.
Jennifer Kennedy Park
Abena Mainoo
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Tel: (212) 225-2000
Fax: (212) 225-3999

FOR ROBERT BOSCH GMBH:

Date: October 16, 2020

A handwritten signature in blue ink, appearing to read "Dr. S. Biedenkopf", written over a horizontal line.

Dr. Sebastian Biedenkopf
Senior Vice President
Robert Bosch GmbH

A handwritten signature in blue ink, appearing to read "Reuter Martin", written over a horizontal line.

Reuter Martin
Vice President
Robert Bosch GmbH

FOR ROBERT BOSCH LLC:

Date: October __, 2020

pki, BOSCH, US, M, I, Mike.Mansuetti
Digitally signed by pki, BOSCH,
US, M, I, Mike.Mansuetti
Date: 2020.10.16 09:15:13 -04'00'

NAME
TITLE
Robert Bosch LLC

NAME
TITLE
Robert Bosch LLC

FOR ROBERT BOSCH LLC:

Date: October 16, 2020

NAME

TITLE

Robert Bosch LLC



NAME

Erik Dyhrkopp

TITLE

General Counsel Americas

Robert Bosch LLC