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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

11 IN RE: VOLKSWAGEN “CLEAN DIESEL”
 12 MARKETING, SALES PRACTICES, AND
 13 PRODUCTS LIABILITY LITIGATION

MDL NO. 2672 CRB (JSC)

**FTC’S STATEMENT SUPPORTING
 THE 3.0L “CLEAN DIESEL”
 CONSUMER SETTLEMENTS**

14 This document relates to:

Hon. Charles R. Breyer

15 ALL ACTIONS

17 As part of its effort to protect American consumers, the Commission voted unanimously
 18 to approve the proposed FTC Order, which resolves its claims concerning 3.0-liter vehicles with
 19 “Clean Diesel” TDI engines. Volkswagen employed defeat devices in its TDI engines to cheat
 20 on emissions tests and deceived consumers through its extensive and brazenly false “Clean
 21 Diesel” marketing campaign. Along with the Plaintiffs Steering Committee’s (“PSC’s”)
 22 companion settlement, this joint consumer resolution fully compensates “Clean Diesel” owners
 23 through a comprehensive package of monetary relief and other consumer-friendly provisions.
 24 As explained below, the restitution includes a buyback at favorable prices for consumers with
 25 older vehicles. For consumers with newer cars, Volkswagen must repair them to meet emissions
 26 standards without materially affecting fuel economy or power, and pay additional restitution.

1 **Model Years 2009-2012**

2 With respect to older cars, the FTC Order requires Volkswagen to offer to buy back all
3 3.0-liter TDI engine vehicles from model years 2009-2012. The buyback has important
4 consumer-friendly features:

- 5
- 6 ■ The buyback prices are based on retail¹ prices in September 2015—
approximately two months before it became clear that the defeat device
7 scandal affected 3.0-liter vehicles.²
 - 8 ■ In addition to September 2015 Clean Retail, consumers will receive a
restitution payment to compensate for their economic losses. *See Ex. A*
9 (listing approximate restitution ranges).

10 Importantly, consumers will receive September 2015 retail value (plus compensation) even if
11 Volkswagen does not repurchase their cars until as late as 2019.³

12 **Model Years 2013-2016**

13 For owners of TDI engine vehicles from model years 2013-2016, the FTC Order ensures
14 that consumers will receive the car they thought they purchased.⁴ First, these owners will

15 _____
16 ¹ Specifically, the FTC used National Association of Automobile Dealers (“NADA”)
“Clean Retail” figures. “Clean Retail” represents the price a consumer “could reasonably pay
17 for a vehicle [in good condition] at a dealer’s lot,” as opposed to “Clean Trade,” which is the
18 amount consumers could expect to receive when trading in a comparable vehicle in good
19 condition. *See* www.nada.com/b2b/support/glossary.aspx (viewed Jan. 26, 2017). Because
20 dealers mark up trade-ins before resale, Clean Retail is always higher than Clean Trade.
Additionally, for 2015 and 2016 vehicles that NADA did not yet catalog in September 2015, the
FTC used a generous, consumer-friendly inferred value to ensure these owners receive full
compensation.

21 ² The Environmental Protection Agency (“EPA”) issued a Notice of Violation (“NOV”)
concerning 2.0-liter TDI engine vehicles in September 2015. EPA issued an NOV concerning
22 3.0-liter vehicles in November 2015.

23 ³ If EPA and CARB approve an emissions Modification, owners of 3.0-liter TDI engine
vehicles from model years 2009-2012 will also have the choice to obtain that Modification free
24 under the FTC Order and the related DOJ settlement of environmental claims, along with as
much as \$15,380 in additional restitution. *See Ex. A*. The Approved Emissions Modification
25 (“Modification”) would improve vehicle emissions but not render them fully compliant.
Notably, the FTC Order and DOJ Consent Decree use different terminology, but both documents
26 and the PSC Settlement distinguish between technical changes that would reduce NOx but not
27 achieve full compliance (or reduce other emissions), on one hand, and technical changes that
would achieve full compliance, on the other.

1 receive a Certified Emissions Repair (“Repair”) at no cost. Unlike an Approved Emissions
 2 Modification (“Modification”), a Repair must fully restore the vehicle to the emissions standard
 3 Volkswagen originally promised consumers (a Modification reduces nitrogen oxide (NOx)
 4 emissions but not to the standards to which they were originally certified). Second, the FTC
 5 Order requires Volkswagen to accomplish this full Repair without materially diminishing the
 6 vehicles’ performance (fuel economy, torque, and horsepower – attributes important to “Clean
 7 Diesel” purchasers). Third, these consumers will receive restitution ranging from more than
 8 \$8,539 to \$17,614.⁵ See Ex. A (restitution ranges).⁶ Simply put, these consumers will have the
 9 car they thought they purchased—in terms of emissions, fuel economy, torque, and
 10 horsepower—along with significant financial restitution that will fully compensate them.⁷

11 **Other Consumer-Friendly Order Provisions**

12 The FTC Order (and PSC Settlement) includes important additional consumer-friendly
 13 provisions:

14
 15
 16 ⁴ These 2013-2016 vehicles include one Porsche model, one Volkswagen model, and
 several Audi models.

17 ⁵ Consumers with newer vehicles who elect to participate in the settlement may receive
 18 half of their restitution in advance, before their vehicle undergoes a Repair. FTC Order § IX(A).

19 ⁶ The global consumer settlement’s restitution figures include approximately \$276.5
 20 million for consumers from Bosch, which manufactured the defeat device Volkswagen used.
 The FTC engaged with Bosch and allocated Bosch’s contribution among consumers in an
 equitable manner that the Commission determined reflects the public interest.

21 ⁷ If Volkswagen cannot fully and timely Repair the vehicles’ emissions according to a set
 22 timetable, then these owners will have their cars bought back using September 2015 Clean Retail
 23 prices plus additional restitution (they may also have the option to accept a partial repair – an
 24 emissions Modification – if one exists, plus additional restitution). If Volkswagen’s Repairs
 25 diminish fuel economy by more than 3 MPG, torque by more than 5%, or horsepower by more
 26 than 5%, then Volkswagen must make an automatic extra payment to consumers. FTC Order §
 27 VIII(B). Additionally, there are two other protections against reduced performance. First,
 whether or not these three specific triggers apply, the existing FTC Order restitution amounts
 provide compensation for some reduced performance (including other performance attributes).
 Second, depending on the severity of the reduced performance, Volkswagen could face
 additional remedies the Court directs, including free repairs, further compensation, or even a full
 buyback. FTC Order § VIII(B).

- 1 ▪ **Loan Forgiveness.** Consumers eligible for a buyback but with loan
2 balances exceeding their vehicle’s value may receive loan forgiveness up
3 to 130% of the vehicle’s full buyback amount.⁸
- 4 ▪ **Relief for American Servicemembers.** The FTC Order ensures that
5 members of our armed forces serving abroad must receive the same (or
6 substantially equivalent) benefits as everyone else—even if Volkswagen
7 must pay additional expenses associated with buying back vehicles or
8 making Repairs to vehicles overseas.⁹
- 9 ▪ **Protection for Consumers in Rural Areas and Hawaiian Residents.**
10 The FTC Order ensures that Volkswagen must provide the Order’s
11 benefits (or substantially equivalent benefits) to eligible consumers whose
12 geographic location unduly burdens their ability to participate (such as
13 consumers who reside on Hawaiian islands without a dealer, or rural
14 residents residing a significant distance from the nearest dealer).
15 Volkswagen is responsible for any associated costs.¹⁰
- 16 ▪ **Restitution for Consumers Who Sold After the Scandal Broke.** Many
17 consumers—understandably offended by Volkswagen’s emissions
18 cheating and unwilling to drive a polluting vehicle—sold their vehicles
19 shortly after the scandal broke. This created a “firesale” situation where,
20 due to the scandal, these consumers had no choice but to accept depressed
21 prices for their cars. The FTC Order provides these consumers with
22 substantial compensation.¹¹
- 23 ▪ **Compensation for Lessees.**¹² The FTC Order provides substantial
24 restitution for lessees of 3.0-liter TDI vehicles. These consumers were
25 also affected by Volkswagen’s deceptive marketing. Additionally, certain
26 lessees have the option to terminate their leases without any early
27 termination penalties.
- 28 ▪ **Pro-Rated Extended Warranty Refunds.** Many consumers who
 purchased “Clean Diesel” vehicles also bought expensive extended
 warranties or service plans that they cannot use after Volkswagen buys
 back their car. The FTC Order provides consumers with pro-rated refunds
 for the unused portions of service contracts or extended warranties.¹³
- **Warranty and Lemon Law Protection.** The FTC Order provides
 consumers who receive Modifications to their emissions systems or full

⁸ FTC Order § IV(G)(1).

⁹ *Id.* § XVI(C)(7).

¹⁰ *Id.*

¹¹ *Id.* § XIV.

¹² *Id.* §§ VI, XII-XIII.

¹³ *Id.* § XV(O).

Repairs with a robust warranty covering any vehicle components that the Repair (or Modification) might reasonably affect.¹⁴ Most importantly, if Volkswagen cannot fix the vehicles after several attempts, Volkswagen must offer to buy them back at favorable prices.¹⁵

- **Other Consumer-Friendly Provisions.** Among other things, the proposed FTC Order (1) imposes stringent claims processing deadlines;¹⁶ (2) appoints a neutral, independent Claims Supervisor to monitor and report on Volkswagen’s compliance;¹⁷ (3) requires Volkswagen to offer consumers multiple choices as to when they bring their vehicle to the dealer for a buyback, Repair, or Modification (and allows consumers to choose the dealer);¹⁸ (4) requires Volkswagen to offer a loaner vehicle for Repairs or Modifications that take longer than three hours;¹⁹ (5) requires Volkswagen to offer consumers the option to receive restitution through an Electronic Funds Transfer (“EFT”);²⁰ and (6) prohibits Volkswagen from using information it collects during the claims process for any other purpose (such as marketing).²¹

In short, the FTC Order is clearly in the public interest. Indeed, if it were not, the FTC would never have approved it. *See, e.g., United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) (explaining that deference is appropriate “where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement”) (citing *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir. 1987) (discussing need for judicial deference “to the agency’s determination that the settlement is appropriate”)); *State of California Dep’t of Toxic Substances Control v. Waymire Drum Co.*, No. C-98-03834, 1999 WL 169536, *2 (N.D. Cal. Mar. 19, 1999) (quoting *Cannons*; “The presumption in favor of settlement is particularly strong where a consent decree has been negotiated by a governmental agency specially equipped, trained, or oriented in the field.”). As

¹⁴ *Id.* § XV(A).

¹⁵ *Id.* § XV(L).

¹⁶ *Id.* § XVI.

¹⁷ *Id.* § XVII.

¹⁸ *Id.* § XVII(C)(4).

¹⁹ *Id.* § XI(F).

²⁰ *Id.* § XVI(D).

²¹ *Id.* at XVII(C)(10).

1 the federal agency with a statutory mandate to protect consumers, the FTC urges the Court to
2 enter both consumer settlements quickly so that redress can begin.

3
4 Dated: January 31, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jonathan Cohen, hereby certify that on January 31, 2017, I caused to be served true copies of the foregoing by electronic means, by filing such documents through the Court's Electronic Case Filing System.



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