

1 JONATHAN COHEN, DC Bar 483454; jcohen2@ftc.gov  
 MICHELLE L. SCHAEFER, DC Bar 478773; mschaefer@ftc.gov  
 2 AMANDA B. KOSTNER, CA Bar 245345; akostner@ftc.gov  
 SANGJOON “SIMON” HAN, DC Bar 998971; shan@ftc.gov  
 3 MEGAN A. BARTLEY, VA Bar 81840; mbartley@ftc.gov  
 Federal Trade Commission  
 4 600 Pennsylvania Avenue NW, CC-9528  
 Washington, DC 20580  
 5 (202) 326-2551 (Cohen); -3515 (Schaefer);  
 -2880 (Kostner); -2495 (Han); -3424 (Bartley);  
 6 -3197 (fax)

7 *Attorneys for Plaintiff Federal Trade Commission*

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  
 PRODUCTS LIABILITY LITIGATION

MDL NO. 2672 CRB (JSC)

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

13 \_\_\_\_\_  
 14 This document relates to:

Hon. Charles R. Breyer

15 ALL ACTIONS

16  
 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.  
 27  
 28

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 retail<sup>1</sup> prices in September 2015—  
approximately two months before it became clear that the defeat device  
7 scandal affected 3.0-liter vehicles.<sup>2</sup>
  - 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.<sup>3</sup>

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.<sup>4</sup> First, these owners will

15 \_\_\_\_\_  
16 <sup>1</sup> Specifically, the FTC used National Association of Automobile Dealers (“NADA”) “Clean Retail” figures. “Clean Retail” represents the price a consumer “could reasonably pay for a vehicle [in good condition] at a dealer’s lot,” as opposed to “Clean Trade,” which is the amount consumers could expect to receive when trading in a comparable vehicle in good condition. *See* [www.nada.com/b2b/support/glossary.aspx](http://www.nada.com/b2b/support/glossary.aspx) (viewed Jan. 26, 2017). Because 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 <sup>2</sup> 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 3.0-liter vehicles in November 2015.

23 <sup>3</sup> 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 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 (“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 and the PSC Settlement distinguish between technical changes that would reduce NOx but not 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.<sup>5</sup> See Ex. A (restitution ranges).<sup>6</sup> 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.<sup>7</sup>

### 11 **Other Consumer-Friendly Order Provisions**

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

---

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

17 <sup>5</sup> 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 <sup>6</sup> 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 <sup>7</sup> 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.<sup>8</sup>
- 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.<sup>9</sup>
- 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.<sup>10</sup>
- 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.<sup>11</sup>
- 23       ▪       **Compensation for Lessees.**<sup>12</sup> 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.<sup>13</sup>
- **Warranty and Lemon Law Protection.** The FTC Order provides  
      consumers who receive Modifications to their emissions systems or full

---

<sup>8</sup> FTC Order § IV(G)(1).

<sup>9</sup> *Id.* § XVI(C)(7).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* § XIV.

<sup>12</sup> *Id.* §§ VI, XII-XIII.

<sup>13</sup> *Id.* § XV(O).

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

- **Other Consumer-Friendly Provisions.** Among other things, the proposed FTC Order (1) imposes stringent claims processing deadlines;<sup>16</sup> (2) appoints a neutral, independent Claims Supervisor to monitor and report on Volkswagen's compliance;<sup>17</sup> (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);<sup>18</sup> (4) requires Volkswagen to offer a loaner vehicle for Repairs or Modifications that take longer than three hours;<sup>19</sup> (5) requires Volkswagen to offer consumers the option to receive restitution through an Electronic Funds Transfer ("EFT");<sup>20</sup> and (6) prohibits Volkswagen from using information it collects during the claims process for any other purpose (such as marketing).<sup>21</sup>

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

---

<sup>14</sup> *Id.* § XV(A).

<sup>15</sup> *Id.* § XV(L).

<sup>16</sup> *Id.* § XVI.

<sup>17</sup> *Id.* § XVII.

<sup>18</sup> *Id.* § XVII(C)(4).

<sup>19</sup> *Id.* § XI(F).

<sup>20</sup> *Id.* § XVI(D).

<sup>21</sup> *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,

5  
6   
Jonathan Cohen (jcohen2@ftc.gov)  
Michelle L. Schaefer (mschaefer@ftc.gov)  
7 Amanda B. Kostner (akostner@ftc.gov)  
Sangjoon "Simon" Han (shan@ftc.gov)  
8 Megan A. Bartley (mbartley@ftc.gov)  
Federal Trade Commission  
9 600 Pennsylvania Avenue NW, CC-9528  
Washington, DC 20580  
10 (202) 326-2551 (Cohen); -3515 (Schaefer); -2880  
(Kostner); -2495 (Han); -3424 (Bartley); -3197 (fax)

11 *Attorneys for Plaintiff Federal Trade Commission*



**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.



Jonathan Cohen (jcohen2@ftc.gov)  
Attorney for Plaintiff  
Federal Trade Commission

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28