

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Court File No.: CV-16-549639-00CP

**B E T W E E N :**

**MATTHEW ROBERT QUENNEVILLE, LUCIANO  
TAURO, MICHAEL JOSEPH PARE, THERESE H.  
GADOURY, AMY FITZGERALD, RENEE JAMES,  
AL-NOOR WISSANJI, JACK MASTROMATTEI, JAY  
MACDONALD and JUDITH ANNE BECKETT**

**Plaintiffs**

**- and -**

**ROBERT BOSCH GmbH and ROBERT BOSCH LLC**

**Defendants**

**CONSUMER CLASS ACTION LITIGATION**

Dated as of June 29, 2020

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## RECITALS

- A. There have been a number of actions commenced in Canada against various Volkswagen, Audi, Porsche and Bosch entities seeking damages and other relief on behalf of consumers with Affected Vehicles. In the Canadian Emissions Actions, it is generally alleged that the Affected Vehicles were equipped with a Defeat Device.
- B. In the Action, which is one of the Canadian Emissions Actions, it is alleged Bosch designed, manufactured, developed, tailored, reviewed, approved and supplied elements of the Defeat Device, and is liable to the Plaintiffs and the class they seek to represent in respect of the Emissions Claims (as defined below).
- C. Bosch denies all of the allegations, and believes it has good and reasonable defences in respect of all the Emissions Claims.
- D. The Canadian Emissions Actions have been the subject of two national class action settlements, namely the 2L Settlement and the 3L Settlement (as defined below). A number of different benefits were made available to the 2&3L Settlement Class Members.
- E. Ricepoint (as defined below) was appointed by the Court to act as the administrator of the 2L Settlement and 3L Settlement.
- F. Some persons who owned or leased an Affected Vehicle were excluded from participating in the 2L Settlement or in the 3L Settlement (namely, the 2&3L Excluded Claimants).
- H. On July 16, 2018, and by consent, the Action was certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*.

I. On November 7, 2018, the Court made an Order appointing Ricepoint as administrator for the purposes of disseminating the notice of certification of the Action, and allowing Ricepoint to use, for that purpose, the 2&3L Email Database that Ricepoint used in administering the 2L Settlement and the 3L Settlement. However, to date notice of certification has not yet been given to the certified class.

J. The Parties have reached an agreement on terms and conditions for the resolution of the Emissions Claims advanced against Bosch for the Affected Vehicles in the Action, as set forth in this Settlement Agreement, and subject to the approval of the Court.

K. As part of this resolution, Bosch has agreed to pay the Settlement Amount for the benefit of the Bosch Settlement Class.

L. This Settlement Agreement expressly excludes the claims advanced by Equiterre on its own behalf and on behalf of a proposed class in the Quebec Bosch Action.

M. The Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claim, and taking into account the value of the Settlement Amount and the compensation previously made available to Bosch Settlement Class Members pursuant to the 2L Settlement and the 3L Settlement, the burdens, risk and expense associated with prosecuting the Action, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Bosch Settlement Class they represent.

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, it is agreed by the Parties that the Action be settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

## 1. DEFINITIONS

The capitalized terms in this Settlement Agreement, including the Recitals and the attached schedules and exhibits, have the following meanings, unless this Settlement Agreement specifically provides otherwise. Capitalized terms used in this Settlement Agreement that are not defined in this Section 1 shall have the meanings ascribed to them elsewhere in this Settlement Agreement.

- 1.1 “**2L Settlement**” means the Settlement made with Volkswagen Group Canada, Inc., Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Inc., Audi Aktiengesellschaft, Audi of America, Inc., and VW Credit Canada Inc. in respect of certain Volkswagen and Audi 2.0L diesel vehicles, dated for reference December 15, 2016 and approved by the Ontario Superior Court of Justice in *Quenneville v. Volkswagen Group Canada Inc.*, 2017 ONSC 2448 and by the Superior Court of Quebec in *Option Consommateurs c. Volkswagen Group Canada Inc.*, 2017 QCCS 1411.
- 1.2 “**3L Settlement**” means the Settlement made with Volkswagen Group Canada, Inc., Volkswagen Aktiengesellschaft, Volkswagen Group of America, Inc., Audi Canada, Inc., Audi Aktiengesellschaft, Audi of America, Inc., VW Credit Canada Inc., Porsche Cars Canada Ltd., Porsche Financial Services Canada, Porsche Cars North America, Inc., Dr. Ing. H.C.F. Porsche Aktiengesellschaft and Porsche Enterprises Incorporated in respect of certain Volkswagen, Audi and Porsche 3.0L diesel vehicles, dated for

reference January 9, 2018 and approved by the Ontario Superior Court of Justice in *Quenneville v. Volkswagen Group Canada Inc.*, 2018 ONSC 2516 and by the Superior Court of Quebec in *Option Consommateurs c. Volkswagen Group Canada Inc.*, 2018 QCCS 1726.

- 1.3 “**2&3L Email Database**” means the email address database that was used by Ricepoint to administer the 2L Settlement and the 3L Settlement.
- 1.4 “**2&3L Excluded Claimants**” means persons who owned or leased an Affected Vehicle but who were expressly excluded from the classes certified for the purposes of the 2L Settlement and/or the 3L Settlement, as applicable.
- 1.5 “**2&3L Settlement Class Members**” means persons who were members of the classes certified for the purposes 2L Settlement and the 3L Settlement. For greater certainty, the 2&3L Settlement Class Members include all persons who were eligible to participate in the 2L Settlement and/or the 3L Settlement, regardless of whether they submitted a claim or received any benefits under the 2L Settlement and/or the 3L Settlement.
- 1.6 “**Action**” means the action brought by Mathew Robert Quenneville, Luciano Tauro, Michael Joseph Pare, Therese H. Gadoury, Amy Fitzgerald, Renee James, Al-Noor Wissanji, Jack Mastromattei, Jay MacDonald and Judith Ann Beckett against Robert Bosch GmbH and Robert Bosch LLC in the Ontario Superior Court of Justice and identified by the Court File No. CV-16-549639-00CP;

- 1.7 **“Affected Vehicles”** means certain Volkswagen, Audi and Porsche brand vehicles for model years 2009 to 2016 and equipped with TDI Engines, as particularized in **Schedule “A”** to this Settlement Agreement;
- 1.8 **“Approval Notice”** means the notice that informs Bosch Settlement Class Members of the Approval Order and the right to make a Claim or receive direct benefits pursuant to the Distribution Protocol, substantially in a form to be drafted by Class Counsel and approved by Bosch and the Court in the Action.
- 1.9 **“Approval Notice Date”** means the date on which the Approval Notice is first issued;
- 1.10 **“Approval Order”** means the Court’s order and/or judgment approving this Settlement Agreement.
- 1.11 **“Bosch”** means Robert Bosch GmbH and Robert Bosch LLC.
- 1.12 **“Bosch Released Parties”** includes, without limitation, (1) Robert Bosch GmbH, Robert Bosch LLC, and all current and former parents (direct or indirect), shareholders (direct or indirect), members (direct or indirect), subsidiaries, affiliates, joint venture partners, insurers, contractors, consultants, and auditors, and the predecessors, successors, and assigns of the foregoing (the “Bosch Released Entities”); and (2) all current and former officers, directors, members of the management or supervisory boards, employees, agents, advisors and attorneys of the Bosch Released Entities.
- 1.13 **“Bosch Settlement Class” or “Bosch Settlement Class Members”** means all persons in Canada (including individuals and entities), except for the Excluded Persons and

persons who validly opt out of this Action in accordance with the Pre-Approval Order,  
who:

(a) as of September 18, 2015 owned or leased one of the following vehicles equipped  
with a TDI Engine:

<b>Model</b>	<b>Model Years (inclusive)</b>
Volkswagen Jetta	2009-2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010-2013, 2015
Volkswagen Passat	2012-2015
Volkswagen Beetle	2013-2015
Volkswagen Golf Wagon	2010-2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010-2013, 2015

or:

(b) as of November 2, 2015, owned or leased one of the following vehicles equipped  
with a TDI Engine:

<b>Model</b>	<b>Model Years (inclusive)</b>
Audi A6, A7, A8, A8L and Q5	2014-2016
Audi Q7	2009-2015
Porsche Cayenne	2013-2016
Volkswagen Touareg	2009-2016



- 1.14 “**Canadian Emissions Actions**” means:
- a) the Action;
  - b) the action brought by Robert Arvid Nyden against Robert Bosch Inc. in the Supreme Court of British Columbia and identified by the Court File No. S175697 (Vancouver Registry); and
  - c) other actions commenced in Canada against various Volkswagen and Porsche entities alleging that the Affected Vehicles were equipped with Defeat Devices.
- 1.15 “**Certification Order**” means the order of the Court dated July 16, 2018 certifying the Action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
- 1.16 “**Claim**” means a properly completed request for benefits submitted by or on behalf of an Eligible Claimant to the Claims Administrator on or before the end of the Claims Period as required and in accordance with the Claims Program.
- 1.17 “**Claim Form**” means the document that enables an Eligible Claimant to apply for certain benefits pursuant to the Distribution Protocol, the content of which will be as determined by Class Counsel and approved by the Court.
- 1.18 “**Claims Administration Expenses**” means all reasonable costs, plus applicable taxes, incurred by the Claims Administrator to carry out its duties in accordance with this Settlement Agreement, and includes the Notice Expenses and any required translation costs, if any.

- 1.19 “**Claims Administrator**” means the third-party agreed to by the Parties and appointed by the Court in the Action to administer and oversee the Notice Program and the Claims Program, and to receive and report on opt-out requests and/or objections or comments from potential members of the Bosch Settlement Class. The Parties agree that RicePoint Administration Inc. (“**Ricepoint**”) shall serve as Claims Administrator, subject to approval by the Court.
- 1.20 “**Claims Period**” means the period of time in which Eligible Claimants may submit valid Claims for those benefits for which the Distribution Protocol require the submission of a Claim, and extends from the Approval Notice Date to the end of the Claims Period Deadline. Claims submitted outside the Claims Period will be ineligible for consideration pursuant to the terms of this Settlement Agreement.
- 1.21 “**Claims Period Deadline**” means three (3) months from the Approval Notice Date.
- 1.22 “**Claims Program**” means the program through which Bosch Settlement Class Members may submit Claims and, if eligible, obtain benefits under this Settlement Agreement.
- 1.23 “**Class Counsel**” means Camp Fiorante Matthews Mogergerman LLP, McKenzie Lake Lawyers LLP, Siskinds LLP, Koskie Minsky LLP, Strosberg Sasso Sutts LLP, Rochon Genova LLP, Roy O’Connor LLP, Branch MacMaster LLP, and the other law firms that support them.
- 1.24 “**Class Counsel Fees**” means the reasonable legal fees and disbursements of Class Counsel, plus applicable GST, PST or HST, incurred in connection with this Settlement

Agreement and prosecuting the Emissions Claims as against Bosch, as approved by the Court, or on appeal therefrom, for payment to Class Counsel.

- 1.25 **“Court”** means the Ontario Superior Court of Justice.
- 1.26 **“Defeat Device”** means software programming or calibration that reduces the effectiveness of a vehicle’s emission control systems with respect to nitrogen oxides without legal justification or without legally required disclosures to certifying authorities.
- 1.27 **“Distribution Protocol”** has the definition set forth in section 6.1.
- 1.28 **“Emissions Claims”** refers to claims in the Canadian Emissions Actions based upon or relating to the Plaintiffs’ allegations that the Affected Vehicles emit nitrogen oxide at levels that exceed the standards to which the vehicles were certified, and perform differently when operated outside testing conditions.
- 1.29 **“Eligible Claimants”** means Bosch Settlement Class Members who have submitted a Claim and have been determined to be eligible to receive benefits pursuant to the Distribution Protocol;
- 1.30 **“Effective Date”** means two (2) business days after the Settlement Approval Date, unless any appeals are taken from the Approval Order, in which case it means the date upon which all appeals have been fully disposed of in a manner that affirms the Approval Order.
- 1.31 **“Excluded Persons”** means the following entities and individuals:

- (a) The Defendants and their officers and directors;
- (b) The defendants in *Quenneville v Volkswagen*, Court File No. CV-15-15537029-CP and their officers and directors;
- (c) Audi, VW and Porsche authorized motor vehicle dealers as well as the officers and directors of those dealers;
- (d) The heirs, successors, and assigns of the persons described in subparagraphs (i), (ii) and (iii); and
- (e) Putative class members in the Quebec Bosch Action (as defined in paragraph 6 of the Demande Pour Authorisation D'Exercer Une Action Collective dated January 20, 2017);
- (f) Persons who purchased or leased their Affected Diesel Vehicles in Quebec or outside of Canada; and
- (g) Persons who were not eligible to be 2&3L Settlement Class Members.

1.32 **“Execution Date”** means the date on which this Settlement Agreement is executed on behalf of both Parties;

1.33 **“July 2018 Class Members” or “July 2018 Class”** means the class of persons certified by the Certification Order, to be varied as part of the Pre-Approval Order as set out in this Settlement Agreement.

- 1.34 “**Mackinnon Action**” means the proposed class action styled *Mackinnon v. Volkswagen Group Canada, Inc. et al*, and bearing Ontario Superior Court of Justice Court File No. CV-17-582746-00CP.
- 1.35 “**Mackinnon Defendants**” means the named defendants in the Mackinnon Action, namely Volkswagen Aktiengesellschaft, Audi Aktiengesellschaft, Volkswagen Group Canada Inc., Volkswagen Group of America, Inc., Audi of America Inc., Audi Canada Inc and VW Credit Canada Inc..
- 1.36 “**Notice Expenses**” means all reasonable costs and expenses, plus applicable taxes, incurred to implement the Notice Program, including any required translation costs if any.
- 1.37 “**Notice Program**” means a reasonable program, as devised by Class Counsel and approved by Bosch and the Court, and implemented by the Claims Administrator, for distributing the Pre-Approval Notice and the Approval Notice.
- 1.38 “**Nyden Action**” means the proposed class action styled *Roberg Arvid Nyden v. Robert Bosch Inc.* and bearing Supreme Court of British Columbia File No. S175697 (Vancouver Registry).
- 1.39 “**Opt-Out / Objection Deadline**” means the deadline by which (a) a Bosch Settlement Class Member’s objection to this Settlement Agreement must be received by the Claims Administrator in order to be timely and valid, or (b) a Bosch Settlement Class Member

may validly opt-out of the Bosch Settlement Class, and will be forty five (45) days after the Pre-Approval Notice Date.

- 1.40 **“Parties”** means the Plaintiffs and Bosch, collectively.
- 1.41 **“Plaintiffs”** means Matthew Robert Quenneville, Luciano Tauro, Michael Joseph Pare, Therese H. Gadoury, Amy Fitzgerald, Renee James, Al-Noor Wissanji, Jack Mastomattei, Jay MacDonald and Judith Anne Beckett.
- 1.42 **“Porsche Parties”** means Porsche Cars Canada, Ltd., Porsche Cars North America Inc., Dr. Ing h.c.F. Porsche Aktiengesellschaft, Porsche Enterprises Incorporated and Porsche Financial Services Canada, Inc.
- 1.43 **“Pre-Approval Notice”** means the notice, in a form to be agreed to by the Plaintiffs and Bosch, and approved by the Court, which:
- (a) informs July 2018 Class Members of the modifications to the Certification Order and attendant consequences for those who are not Bosch Settlement Class Members; and
  - (b) informs Bosch Settlement Class Members of their right to opt out of the Action, the principal elements of this Settlement Agreement and the proposed Distribution Plan, their right to object to or comment on this Settlement Agreement, and the date and location of the Approval Hearing.
- 1.44 **“Pre-Approval Notice Date”** means the date on which the Pre-Approval Notice is first issued;

- 1.45 “**Pre-Approval Order**” has the definition set forth in Section 2;
- 1.46 “**Quebec Bosch Action**” means the action against the Defendants styled *Equiterre c. Robert Bosch LLC et Robert Bosch GMBH*, bearing Quebec Superior Court File No. 500-06-000840-179;
- 1.47 “**Released Claims**” has the definition set forth in Section 7.1.
- 1.48 “**Releasing Parties**” has the definition set forth in Section 7.1.
- 1.49 “**Ricepoint**” means RicePoint Administration Inc.
- 1.50 “**Settlement Agreement**” means this proposed settlement agreement, including its schedules, exhibits, and any supplemental agreements, as amended and approved.
- 1.51 “**Settlement Amount**” means the all-inclusive sum of USD\$7,000,000, to be paid in Canadian dollars using a conversion rate of 1.324, for a converted payment of CAD\$9,270,000;
- 1.52 “**Settlement Approval Date**” means the date on which the Approval Order is issued.
- 1.53 “**Settlement Approval Hearing**” means the hearing before the Court for the purpose of determining whether to approve this settlement and issue the Approval Order.
- 1.54 “**Settlement Class Notices**” means the English and French versions of the Pre-Approval Notice, Approval Notice, and any other notice to Bosch Settlement Class Members agreed by the Parties and approved by the Court.

- 1.55 **“Settlement Class Release”** means the release and waiver by Bosch Settlement Class Members described in Section 7.
- 1.56 **“TDI Emissions Matter”** means (1) the installation or presence of any Defeat Device or other auxiliary emission control device in any Affected Vehicle; (2) the design, manufacture, assembly, testing, or development of any Defeat Device or other auxiliary emission control device used or for use in an Affected Vehicle; (3) the marketing or advertisement of any Affected Vehicle as green, environmentally friendly, and/or compliant with federal or provincial emissions standards; (4) the actual or alleged noncompliance of any Affected Vehicle with federal or provincial emissions standards; and/or (5) the subject matter of the Action, as well as any related events or allegations, with respect to Affected Vehicles. For purposes of this definition, “federal or provincial emissions standards” includes emissions standards established by the United States Environmental Protection Agency or by any State of the United States of America.
- 1.57 **“TDI Engine”** refers to a turbocharged direct-injection diesel engine.
- 1.58 **“VW Parties”** means Volkswagen Aktiengesellschaft, Audi Aktiengesellschaft, Volkswagen Group Canada Inc., Audi Canada Inc., Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc. or Audi of America, Inc.), Audi of America, LLC and VW Credit Canada, Inc.

## **2. AMENDMENT TO CLASS DEFINITION AND PRE-APPROVAL NOTICE**

- 2.1 **Pre-Approval Motion.** As soon as possible after the execution of this Settlement Agreement, the Plaintiffs shall bring a motion before the Court for an Order that, among other things:



- (a) Amends the Certification Order such that the definition of the July 2018 Class shall be varied and replaced with the definition of Bosch Settlement Class in this Settlement Agreement;
- (b) Appoints Ricepoint to implement the Notice Program;
- (c) Appoints Ricepoint as Claims Administrator with all attendant duties and responsibilities, as outlined in Section 8 of this Settlement Agreement;
- (d) Authorizes Ricepoint to use the 2&3L Email Database for the purposes of implementing this Settlement Agreement, including giving the Pre-Approval Notice, the Approval Notice and any other notices that may be required pursuant to this Settlement Agreement, or as agreed by the Parties and approved by the Court; and
- (e) approves the content and form of the Pre-Approval Notice and directs its dissemination.

(the “**Pre-Approval Order**”).

2.2 **Form of Pre-Approval Order.** The form of Pre-Approval Order shall be substantially in the form set out at **Schedule B**, or as otherwise agreed by the Parties and approved by the Court.

### **3. SETTLEMENT APPROVAL**

3.1 **Approval Motion.** As soon as possible following the pronouncement of the Pre-Approval Order and the expiry of the Opt-Out / Objection Deadline, the Plaintiffs shall

bring a motion before the Court for an order approving this Settlement Agreement (the “**Approval Order**”).

3.2 **Form of Approval Order.** The form of Approval Order shall be substantially in the form set out at **Schedule C**, or as otherwise agreed by the Parties and approved by the Court.

#### **4. PAYMENT OF SETTLEMENT AMOUNT**

4.1 **Payment.** Within sixty (60) days of the Execution Date, Bosch shall pay the Settlement Amount to Class Counsel in trust for the Bosch Settlement Class Members in full satisfaction of all payment obligations under this Settlement Agreement, and the Released Claims against the Bosch Released Parties.

4.2 **Material Term.** Payment of the Settlement Amount is a material term of this Settlement Agreement. If the totality of the Settlement Amount is not paid as set out in s. 4.1 of this Settlement Agreement, this Settlement Agreement shall be terminated in accordance with s 14.1.

4.3 **Counsel Trust Account.** Class Counsel shall establish and maintain a dedicated trust account (the “Counsel Trust Account”) and shall pay the Settlement Amount into the Counsel Trust Account immediately upon receipt from Bosch. Class Counsel shall not pay out all or part of the monies in the Counsel Trust Account except in accordance with this Settlement Agreement or pursuant to an Order of the Court, obtained after written notice to Bosch.

4.4 **Interim Investment and Payments.** Pending approval of this Settlement Agreement, Class Counsel may:

- (a) Pay out all or part of the monies in the Counsel Trust Account for the purposes of purchasing one or more guaranteed investment certificates (“GICs”) issued by a Canadian Schedule 1 bank or such other secure investments the Parties may agree in writing, provided that any GICs or investments so purchased shall be held in trust for the Parties by Class Counsel and shall be deemed to form part of the Counsel Trust Account, and any proceeds of redemption or sale shall be immediately repaid to and become part of the Settlement Amount; and
- (b) Pay interim Claims Administration Expenses associated in connection with the issuance of the Pre-Approval Notice.

4.5 **Payment of Class Counsel Fees and Transfer to Claims Administrator.** On or after the Effective Date, Class Counsel may pay the approved Class Counsel Fees from the Settlement Amount, and shall thereafter pay what remains in the Counsel Trust Account to the Claims Administrator, including any interest that may have accrued on those amounts.

4.6 **Administrator Trust Account.** The Claims Administrator shall establish and maintain a dedicated trust account (the “Administrator Trust Account”). Upon receipt from Class Counsel of the amounts set out in s. 4.5 above, the Claims Administrator shall immediately pay those amounts into the Administrator Trust Account. The Claims Administrator shall not pay out all or part of the monies in the Administrator Trust

Account except in accordance with this Settlement Agreement, a Court-approved Distribution Protocol or pursuant to an Order of the Court, obtained after written notice to Bosch.

4.7 **Interim Investment and Payments.** Pending completion of the distribution of the balance of the Settlement Amount to Bosch Settlement Class Members, the Claims Administrator may:

- (a) Pay out all or part of the monies in the Administrator Trust Account for the purposes of purchasing one or more guaranteed investment certificates (“GICs”) issued by a Canadian Schedule 1 bank or such other secure investments the Parties may agree in writing, provided that any GICs or investments so purchased shall be held in trust for the Parties by Class Counsel and shall be deemed to form part of the Administrator Trust Account, and any proceeds of redemption or sale shall be immediately repaid to and become part of the Settlement Amount; and
- (b) Pay any remaining Claims Administration Expenses, provided that an account for said expenses has been provided to Class Counsel and approved in writing.

## 5. TAXES AND INTEREST

5.1 **Interest.** Subject to s. 5.3, all interest earned on the Settlement Amount shall accrue to the benefit of the Bosch Settlement Class and shall become part of the Settlement Amount.

5.2 **Taxes.** Subject to s. 5.3, all taxes payable on any interest which accrues on the Settlement Amount shall be the responsibility of the Bosch Settlement Class and payable from the Settlement Amount. Class Counsel shall ensure that all tax reporting and payment obligations arising from the Settlement Amount are fulfilled. All taxes (including interest and penalties) due with respect to income earned on the Settlement Amount shall be paid from the Settlement Amount.

5.3 Bosch shall have no responsibility for making any tax filings or payments in relation to the Settlement Amount, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount shall be paid to Bosch who, in such case, shall be responsible for making any tax filings or payments in relation to said interest.

## 6. **DISTRIBUTION OF SETTLEMENT BENEFITS TO CLASS MEMBERS**

6.1 **Distribution Protocol.** Following conclusion of the Claims Period, any settlement benefits payable pursuant to this Settlement Agreement to Bosch Settlement Class Members shall be paid to Eligible Claimants pursuant to a distribution protocol to be devised by Class Counsel and approved by the Court (the “**Distribution Protocol**”).

6.2 **Consultation.** For the purposes of devising an appropriate Distribution Protocol, Class Counsel may but shall have no obligation to consult with the parties involved in the 2L Settlement and 3L Settlement, as well as with Ricepoint, in its capacity as administrator of the 2L Settlement and 3L Settlement.

6.3 **No Opposition by Bosch.** Bosch shall have no right or standing to oppose the approval of the Distribution Protocol by the Court, and hereby agrees to take no position on any motion for approval of the Distribution Protocol.

## 7. RELEASE AND WAIVER

7.1 **Settlement Class Release.** In consideration of this Settlement Agreement and the consideration provided by it, the sufficiency of which is hereby acknowledged, and upon the Effective Date, Bosch Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, lawyers, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through or under them (individually and collectively, 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 noncontingent, suspected or unsuspected, whether or not concealed or hidden, that they may have, purport to have, or may have hereafter against any and all Bosch Released Parties, that arise from or in any way relate to the TDI Emissions Matter, including without limitation (1) any claims that were or could have been asserted in the Action; (2) all marketing and advertising claims related to Eligible Vehicles; (3) all claims arising out of or in any way related to emissions, emissions control equipment, electronic control units, electronic transmission units, CAN-bus-related hardware, or software programs, programing, coding, or calibration in Affected Vehicles; (4) all claims arising out of or in any way related to a TDI Emissions Matter; and (5) any claims for fines, penalties, criminal assessments, economic damages, punitive damages, exemplary damages, statutory damages or civil penalties, liens,

rescission or equitable or injunctive relief, attorneys', expert, consultant, or other litigation fees, costs, or expenses, or any other liabilities, that were or could have been asserted in any civil, criminal, administrative, or other proceeding, including arbitration (the "**Released Claims**"). This Settlement Class Release applies without limitation to 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, provincial, territorial, municipal, local, tribal, administrative or international law, statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether existing now or arising in the future, that arise from or in any way relate to the Released Claims. Notwithstanding the foregoing, this Settlement Agreement does not apply to the claims advanced in the Quebec Bosch Action and does not release any claims for wrongful death. Notwithstanding the foregoing or any other provision herein, this Settlement Agreement and this Release also do not apply to, preclude or prejudice any claim by any member (or putative member) of the proposed class in the Mackinnon Action as against the Mackinnon Defendants. For any Releasing Parties who are members (or putative members) of the proposed class in the Mackinnon Action and who are resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Bosch Released Parties but instead irrevocably covenant not to sue the Bosch Released Parties, or any of them, including on a joint, several and/or solidary liability basis, and

undertakes not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Released Parties, or any of them for, in respect of, or in relation to the Released Claims, or any of them.

7.2 **Possible Future Claims.** For the avoidance of doubt, Bosch Settlement 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 Released Claims, the Action, the Affected Vehicles, and/or the Settlement Class Release. Nevertheless, it is the intention of Class Counsel and the Plaintiffs in executing this Settlement Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims.

7.3 **Actions or Proceedings Involving Released Claims.** Bosch Settlement Class Members expressly agree that the Settlement Class Release, and the Approval Order, are, will be, and may be raised as a complete defence to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Settlement Class Release whether in Canada or elsewhere. Bosch Settlement Class Members 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, whether in Canada or elsewhere, against the Bosch Released Parties with respect to the claims, causes of action, and/or any other matters subject to the Settlement Class Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not



already encompassed by the Action, whether in Canada or elsewhere, Bosch Settlement Class Members shall cause such suit, action, or proceeding to come to an end, with prejudice where available, consistent with Section 15.1. If a Bosch Settlement Class Member commences, files, initiates, or institutes any new legal action or other proceeding for any Released Claim against any Bosch Released Party in any federal, state, provincial, or territorial court, arbitral tribunal, or administrative or other forum, whether in Canada or elsewhere, (a) such legal action or other proceeding shall, at that Bosch Settlement Class Member's cost, be brought to an end, with prejudice where available, consistent with Section 15.1; and (b) if permitted by law, the respective Bosch Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Bosch Settlement Class Member arising as a result of that Bosch Settlement Class Member's breach of his, her or its obligations under this Settlement Class Release. Notwithstanding the foregoing, this Section does not apply to preclude the continuation of any suit, action, or proceeding, whether in Canada or elsewhere, as to any claim that is not a Released Claim, including the Quebec Bosch Action and the claims by class members (or putative class members) in the Mackinnon Action as against the Mackinnon Defendants.

7.4 **Total Satisfaction of Released Claims.** Any benefits available to Bosch Settlement Class Members pursuant to this Settlement Agreement are (a) in full, complete, and total satisfaction of all of the Released Claims against the Bosch Released Parties, and (b) sufficient and adequate consideration for each and every term of the Settlement Class Release. The Settlement Class Release shall be irrevocably binding upon the Plaintiffs and all Bosch Settlement Class Members.

- 7.5 **Release Not Conditioned on Claim or Payment.** The Settlement Class Release shall be effective with respect to all Releasing Parties, including all Bosch Settlement Class Members, regardless of whether those Bosch Settlement Class Members are eligible to file a Claim, ultimately file a Claim or receive compensation pursuant to the Distribution Protocol.
- 7.6 **Basis for Entering Release.** Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to recommend the approval of this Settlement Agreement to the Courts and that they execute this Settlement Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Bosch Released Parties or any person or entity representing the Bosch Released Parties, other than as set forth in this Settlement Agreement. The Plaintiffs agree and specifically represent and warrant that they have discussed with Class Counsel the terms of this Settlement Agreement and have received legal advice with respect to the advisability of entering into this Settlement Agreement and the Settlement Class Release, and the legal effect of this Settlement Agreement and the Settlement Class Release. The representations and warranties made throughout this Settlement Agreement shall survive the execution of this Settlement Agreement and shall be binding upon the respective heirs, representatives, successors, and assigns of the Plaintiffs and Class Counsel, as applicable.
- 7.7 **Material Term.** The Plaintiffs and Class Counsel hereby agree and acknowledge that this Section 7 constitutes a key, material term of this Settlement Agreement that shall be reflected in the Approval Order. The failure the Court to approve this Settlement

Agreement, the Settlement Class Release, and the dismissals and other terminations of proceedings involving Released Claims contemplated in Sections 7.3 and 15.1, or if a Court approves any of them in a materially modified form from that contemplated herein, shall give rise to a right of termination by Bosch or the Plaintiffs, through Class Counsel, pursuant to Section 14.2.

7.8 **No Admission of Liability.** The Plaintiffs, Class Counsel, the Bosch Settlement Class, and the Releasing Parties agree, whether or not this Settlement Agreement is approved, terminated, or otherwise fails to take effect for any reason, that this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission by any of the Bosch Released Parties, or as any evidence in any proceeding, of any violation of any statute or law, or of any wrongdoing, fault, omission, or liability by any of the Bosch Released Parties, or of the truth or validity of any of the claims or allegations contained in the Action or any other pleading filed against Bosch by, or on behalf of, the Plaintiffs, Related Action Plaintiffs, Bosch Settlement Class, or any class that may be certified or authorized in the Canadian Emissions Actions.

7.9 **Settlement Agreement Not Evidence.** The Plaintiffs, Class Counsel, the Bosch Settlement Class and the Bosch Releasing Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be

referred to, offered as evidence, or received in evidence in any present, pending or future civil, criminal, or administrative action or proceeding, except in a proceeding to approve, implement, and/or enforce this Settlement Agreement, or as otherwise required by law or as provided in this Settlement Agreement.

7.10 **Release of VW Parties by Bosch.** As of the Effective Date, Bosch releases the VW Parties and the Porsche Parties from any claim for indemnification or contribution arising from or relating in any way to the Canadian Emissions Actions, save and except for the claims advanced in the Quebec Bosch Action.

## **8. CLAIMS ADMINISTRATION**

8.1 **Distribution Protocol.** The Distribution Protocol shall set out the details of the Claims Program to be implemented to give effect to the terms of this Settlement Agreement.

8.2 **Beginning of the Claims Program.** The Claims Program will begin at the Approval Notice Date.

8.3 **Role of Claims Administrator.** The Claims Administrator will be responsible for the implementation and administration of the Notice Program and Claims Program, including but not limited to (a) advising Class Counsel on notice and claims issues, including the design of the Distribution Protocol; (b) ensuring that each of the Pre-Approval Notice and Approval Notice are disseminated in accordance with the Notice Program; (c) receiving, collecting and reporting to Class Counsel and Counsel for Bosch any requests to Opt-Out; (d) receiving, collecting and reporting to Class Counsel and Counsel for Bosch any objections or comments to the Settlement Agreement; (e) receiving and responding to inquiries from Bosch Settlement Class Members and where

appropriate, referring those inquiries to Class Counsel for response; (f) receiving Claims Forms; (g) verifying and determining Claim eligibility for benefits pursuant to the Distribution Protocol; and (h) calculating and making payments to Eligible Claimants. The Claims Administrator shall have the authority to perform all actions, to the extent not prohibited by, or otherwise inconsistent with, any provision of this Settlement Agreement, deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Settlement Agreement, including requesting supplemental information from Bosch Settlement Class Members.

- 8.4 **Limited Bosch Role.** Bosch shall have no obligation whatsoever in respect of the development or implementation of the Claims Program or the Distribution Protocol.
- 8.5 **Reports.** The Claims Administrator will prepare periodic reports on the progress and status of the Claims Program that will be provided to Class Counsel from time to time or upon request. These reports will include information sufficient to allow Class Counsel to assess the Claims Program's progress. When the Claims Program is concluded, the Claims Administrator must provide a final report to the Court, Class Counsel and Bosch. Such final report shall include information concerning any unused portion of the Settlement Amount and cheques for payment of Claims that remain uncashed.
- 8.6 **Personal Information.** Any personal information of Bosch Settlement Class Members or persons who believe they are Bosch Settlement Class Members acquired as the result of this Settlement Agreement shall be used solely for purposes of evaluating and paying Claims and other direct benefits pursuant to the Distribution Protocol. All information relating to the Claims Program and processing is confidential and proprietary and shall

not be disclosed, except as necessary to the Claims Administrator, Bosch, Class Counsel, and the Court in accordance with the terms of this Settlement Agreement or the Distribution Protocol, and as required by legal process or to comply with obligations to regulators in Canada. The Claims Administrator shall take security measures to prevent unauthorized access to personal information it obtains under this Settlement Agreement, as well as to prevent the loss, destruction, falsification, and leakage of such personal information.

## **9. COOPERATION TO IMPLEMENT THE SETTLEMENT**

- 9.1 **Good faith.** The Parties and their respective counsel will cooperate with each other, act in good faith, and use commercially reasonable efforts to give effect to the terms of this Settlement Agreement as soon as reasonably practicable after the Execution Date.
- 9.2 The Parties and their successors, assigns, and counsel undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.
- 9.3 **Extensions.** 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 Settlement Agreement.
- 9.4 **Dispute Resolution.** In the event that the Parties are unable to reach agreement on the form or content of any document needed to implement this Settlement Agreement, or on any supplemental provisions that may become necessary to implement the terms of this Settlement Agreement, Bosch and Class Counsel may seek the assistance of the Courts to resolve such matters.

## **10. NOTICE OF THIS SETTLEMENT AGREEMENT**

10.1 **Reasonable Notice.** Bosch and Class Counsel agree that reasonable notice consistent with due process requirements shall be given to the Bosch Settlement Class, in a form and in a manner as agreed by the Plaintiffs and Bosch, and as approved by the Court.

10.2 **Notice Costs.** All of the costs of the Settlement Class Notices (such as the costs of printing, mailing, and postage) shall be paid from the Settlement Amount.

## **11. SETTLEMENT CLASS MEMBERS' RIGHTS TO OPT OUT AND OBJECT**

11.1 **Claims Administrator.** The Court will appoint the Claims Administrator to receive any written elections to opt out of the Bosch Settlement Class and objections to this Settlement Agreement.

11.2 **Elections to Opt-Out and Objections -** Elections to opt out of the Bosch Settlement Class and objections to this Settlement Agreement must be received by the Claims Administrator by mail or courier on or before the Opt-Out / Objection Deadline.

11.3 **Content.** All written elections to opt out of the Bosch Settlement Class and objections to this Settlement Agreement shall be signed by the potential Bosch Settlement Class Member and shall include the following:

- a) The potential Bosch Settlement Class Member's name, mailing address, telephone number, and e-mail address (if available), and if applicable, any person acting on behalf of the Bosch Settlement Class Member

- b) The brand, model, model year, and VIN of the proposed Eligible Vehicle, and the period of time in which it was owned or leased by the Bosch Settlement Class Member;
- c) A statement that the potential Bosch Settlement Class Member elects to be excluded from the Bosch Settlement Class, or a brief statement of the nature of and reason for the objection to this Settlement Agreement, as applicable;
- d) If the potential Bosch Settlement Class Member elects to be excluded from the Bosch Settlement Class, a copy of his, her, or its Proof Of Ownership; and
- e) If objecting to this Settlement Agreement, whether the potential Bosch Settlement Class Member intends to appear in person or by counsel at the Settlement Approval Hearing, and if appearing by counsel, the name, address, telephone number, and e-mail address of counsel.

11.4 Notwithstanding Section 11.3, if the potential Bosch Settlement Class Member is deceased, a minor, or otherwise incapable of making their own election to opt out or their own written objection to this Settlement Agreement, the information required by Section 11.3 must be provided along with the contact information of the person acting on behalf of the potential Bosch Settlement Class Member, together with a copy of the power of attorney, court order, or other authorization serving as the proposed basis for permitting such person to represent the potential Bosch Settlement Class Member.

11.5 Potential Bosch Settlement Class Members who elect to opt out of the Bosch Settlement Class may re-elect in writing to become potential Bosch Settlement Class Members, if



their re-election request is received by the Claims Administrator on or before the Opt-Out / Objection Deadline or, thereafter, only by order of the Court.

- 11.6 Any potential Settlement Class Member who elects to opt out of the Bosch Settlement Class may not also object to this Settlement Agreement, subject to Section 11.5. If a potential Bosch Settlement Class Member elects to opt out of the Bosch Settlement Class and objects to this Settlement Agreement, the opt out election shall supersede the objection and the objection shall be deemed withdrawn.
- 11.7 **Consequences of Failure to Opt Out in a Timely and Proper Manner.** All potential Bosch Settlement Class Members who do not opt out in a timely and proper manner will, in all respects, be bound as of the Effective Date by all terms of this Settlement Agreement, as approved by the Approval Order.
- 11.8 The Claims Administrator will provide copies of all opt-out elections and objections to Class Counsel and Bosch within three (3) days after their receipt. Wherever reasonably possible, such copies shall be provided in electronic form and in the most cost-effective manner.
- 11.9 The Claims Administrator shall, seven (7) days before the Settlement Approval Hearing, provide to Bosch and Class Counsel and file with the Court an affidavit reporting on the number of opt-out elections and re-elections received on or before the Opt-Out / Objection Deadline, and compiling all of the written objections received on or before the Opt-Out / Objection Deadline.

## **12. CLASS COUNSEL FEES AND NOTICE EXPENSES**

- 12.1 **Notice Expenses.** The Notice Expenses will be paid from the Settlement Amount.
- 12.2 **Class Counsel Fees.** Class Counsel may seek the Court's approval to pay Class Counsel's Fees contemporaneously with seeking approval of this Settlement Agreement, or at such other time thereafter as they shall determine in their sole discretion. Bosch will not oppose such motions.
- 12.3 **Honorarium.** Class Counsel may request the Court to confer on the Plaintiffs a reasonable honorarium in a total amount not to exceed \$20,000.00 in total for all Plaintiffs to be paid from the Settlement Amount.
- 12.4 It is a fundamental term of this Settlement Agreement that the Parties must agree on the form and content of the Pre-Approval Order and Settlement Approval Order.
- 12.5 This Settlement Agreement shall be null and void and of no force and effect unless the Pre-Approval Order and Settlement Approval Orders are granted in the Action in substantially the same form as set out in **Schedules B and C**, respectively, or as otherwise agreed by the parties, and, further, that the Effective Date occurs.

## **13. MODIFICATION OF THIS SETTLEMENT AGREEMENT**

- 13.1 The terms and provisions of this Settlement 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 Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all schedules and exhibits hereto) without

further notice to the Settlement Class or approval by the Court if such changes are consistent with the Approval Order and do not limit the rights of Bosch Settlement Class Members under this Settlement Agreement.

#### **14. TERMINATION OF THIS SETTLEMENT AGREEMENT**

14.1 This Settlement Agreement will be terminated if the Settlement Amount is not paid in accordance with sections 4.1 and 4.2.

14.2 This Settlement Agreement may be terminated at the sole discretion of Bosch or the Plaintiffs, in the event that:

(a) the Court, or any appellate court therefrom, rejects, modifies, or denies approval of any portion of this Settlement Agreement, including the Settlement Class Release; or

(b) the Court, or any appellate court therefrom, fails to issue the Final Order in substantially the form submitted or agreed by the Parties.

14.3 If an option to withdraw from and terminate this Settlement Agreement arises, neither Bosch nor the Plaintiffs 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 In order to exercise a right of termination under section 14.2 a terminating party shall deliver a notice of termination within fifteen (15) business days of the terminating party learning of the condition for termination being met, or within such further time as the Parties may agree in writing. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.6(c), shall be

null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

14.5 Any order, ruling or determination made by the Court with respect to Class Counsel Fees or the Distribution Protocol shall not be deemed to be a material modification of all, or a part of, this Settlement Agreement, and shall not provide any basis for its termination.

14.6 If, but only if, this Settlement Agreement is not approved or is terminated in accordance with this section, or otherwise fails to take effect for any reason:

- a) This Settlement Agreement, including the Settlement Class Release, shall be null and void and shall have no force or effect, and no Party to this Settlement Agreement shall be bound by any of its terms, except for the terms of Sections 4.3, 4.6, 5.3, 7.8, 7.9, 8.5, 8.6, 9.1-9.4, 12.1, 14.6-14.9, 15.3, and 16.1, and the definitions and any exhibits and schedules applicable thereto
- b) All of the provisions of this Settlement Agreement, and all negotiations, statements, and proceedings relating to it, shall be without prejudice to the rights of Bosch, the Plaintiffs or any Bosch Settlement Class Members, all of whom shall be restored to their respective positions existing immediately before the execution of this Settlement Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no substantive or procedural rights in the Action are prejudiced by the settlement negotiations and proceedings.

- 14.7 If this Settlement Agreement is terminated, or otherwise fails to take effect as set out in Section 14.6, Class Counsel or Ricepoint, as the case may be, shall within thirty (30) days of written notice of such fact return to Bosch the Settlement Amount, plus all accrued interest thereon and less any taxes paid on interest, and, if the Settlement Agreement is terminated based on the failure of Bosch to fulfill its obligations herein, less any costs actually incurred or payable in accordance with Section 10.2 (notice costs) or Section 16.7 (translation costs, if any required).
- 14.8 The Released Parties expressly and affirmatively reserve all defences, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that Bosch Settlement Class Members have been fully compensated as a result of the 2L Settlement or the 3L Settlement.
- 14.9 Neither this Settlement 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 other than to enforce the terms of this Settlement Agreement or any provision of it. Accordingly, any Bosch Released Party may file this Settlement 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.

**15. TERMINATION OF CLASS ACTION AND JURISDICTION OF THE COURT**

- 15.1 Upon issuance of the Approval Order, the Action shall be dismissed with no additional costs to any party, and as soon as possible thereafter, the Nyden Action shall be dismissed, also without additional costs to any party.
- 15.2 Class Counsel will cooperate with Bosch's efforts to give effect to this Settlement Agreement and to bring an end to, without costs, without reservation, and, where available, with prejudice, all Released Claims by any Bosch Settlement Class Member in any pending litigation and in any future litigation other than the Quebec Bosch Action.
- 15.3 **Courts' Ongoing and Exclusive Jurisdiction.** The Court shall retain ongoing and exclusive jurisdiction over the Action in order to resolve any dispute or other matters that may arise in the implementation of this Settlement Agreement (including with respect to Counsel Fees) or the Approval Order. For clarity, the Court shall retain jurisdiction to resolve any dispute that may arise in relation to the validity, performance, interpretation, administration, enforcement, enforceability, or termination of this Settlement Agreement and no Party shall oppose the reopening and reinstatement of the Action for the purposes of giving effect to this Section.
- 15.4 If one Party to this Settlement Agreement considers another Party to be in material breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged material breach and provide a reasonable opportunity to cure such breach before taking any action to enforce any rights under this Settlement Agreement.

15.5 In the event any one or more of the provisions contained in this Settlement 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 the Parties agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

**16. OTHER TERMS AND CONDITIONS**

16.1 This Settlement Agreement shall be binding upon, and enure to the benefit of Bosch, the Bosch Released Parties, the Plaintiffs and all Bosch Settlement Class Members, and their respective agents, heirs, executors, administrators, successors, transferees, and assigns.

16.2 The matters addressed in this Settlement Agreement relate solely to proceedings in Canada and shall not be construed as any admission in these or other proceedings including with respect to Bosch's alleged conduct outside Canada. Moreover, the parties recognize that the matters do not relate to the enforcement of the laws of countries other than Canada, including the emission laws or regulations of those countries. Nothing in this Settlement Agreement is intended to apply to or affect Bosch's obligations under the laws or regulations of any jurisdiction outside Canada.

16.3 Class Counsel represent that (a) Class Counsel are authorized by the Plaintiffs to enter into this Settlement Agreement; and (b) Class Counsel are seeking to protect the interests of the Bosch Settlement Class.

- 16.4 The waiver by one Party of any breach of this Settlement Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.
- 16.5 All time periods in this Settlement Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Settlement Agreement, in computing any period of time in this Settlement Agreement or by order of a Court, the day of the act or event shall not be included, and the last day of the period shall be included, unless it is a Saturday, a Sunday, or a Canadian statutory holiday, or, when the act to be done is a court filing, 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.
- 16.6 This Settlement Agreement sets forth the entire agreement among the Parties with respect to its subject matter. Any agreement purporting to change or modify the terms of this Settlement Agreement must be executed by Bosch and by Class Counsel (on behalf of the Plaintiffs). The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them, and that in deciding to enter into this Settlement Agreement, they have relied solely upon their own judgment and knowledge. This Settlement Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Settlement Agreement.



16.7 The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. To the extent that the Court requires a French translation of this Settlement Agreement, Class Counsel shall make arrangements for the preparation of the French translation, which will be subject to approval from Bosch before it is made publicly available, and the costs of such translation will be paid from the Settlement Amount. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation of this Settlement Agreement, the English language version shall govern.

16.8 Whenever this Settlement 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 Canadian statutory holidays) express delivery service as follows:

If to Bosch then to:

Robert Kwinter  
BLAKE, CASSELS & GRAYDON LLP  
199 Bay Street, Suite 4000  
Toronto, ON M5L 1A9  
E-mail: [robert.kwinter@blakes.com](mailto:robert.kwinter@blakes.com)

If to the Bosch Settlement Class, then to:

Luciana P. Brasil  
BRANCH MACMASTER LLP  
#1410 – 777 Hornby Street  
Vancouver, BC V6Z 1S4  
E-mail: [lbrasil@branmac.com](mailto:lbrasil@branmac.com)

[and:](#)

Charles Wright  
SISKINDS LLP  
680 Waterloo St.  
London, ON N6A 3V8  
E-mail: [Charles.wright@siskinds.com](mailto:Charles.wright@siskinds.com)

- 16.14 The Bosch Settlement Class, Plaintiffs, and/or Bosch shall not be deemed to be the drafter of this Settlement 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 Settlement 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 Settlement Agreement was made or executed.
- 16.15 The division of this Settlement Agreement into sections and the insertion of topic and section headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.
- 16.16 The Parties agree that this Settlement Agreement was reached voluntarily after consultation with competent legal counsel.
- 16.17 This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law rule or principle that would mandate or permit application of the substantive law of any other jurisdiction.
- 16.18 This Settlement Agreement may be signed with an electronic signature and in counterparts, each of which shall constitute a duplicate original.

16.19 The Parties have executed this Settlement Agreement as of the date on the cover page.

Counsel for PLAINTIFFS

By: \_\_\_\_\_  
CHARLES WRIGHT,  
On behalf of CLASS COUNSEL  
SISKINDS LLP

Counsel for ROBERT BOSCH LLC

By:   
\_\_\_\_\_  
ROBERT KWINTER  
BLAKE, CASSELS & GRAYDON LLP

Counsel for ROBERT BOSCH GmbH

By:



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ROBERT KWINTER  
BLAKE, CASSELS & GRAYDON LLP

**SCHEDULE A - AFFECTED VEHICLES**

	<b>Model</b>	<b>Model Years (inclusive)</b>
<b>September 18, 2015 Vehicles</b>	Volkswagen Jetta	2009-2015
	Volkswagen Jetta Wagon	2009
	Volkswagen Golf	2010-2013, 2015
	Volkswagen Passat	2012-2015
	Volkswagen Beetle	2013-2015
	Volkswagen Golf Wagon	2010-2014
	Volkswagen Golf Sportswagon	2015
	Audi A3	2010-2013, 2015
<b>November 2, 2015 Vehicles</b>	Audi A6, A7, A8, A8L and Q5	2014-2016
	Audi Q7	2009-2015
	Porsche Cayenne	2013-2016
	Volkswagen Touareg	2009-2016

**SCHEDULE B – DRAFT PRE-APPROVAL ORDER**

Court File No. CV-16-549639-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_\_  
DAY  
MR. JUSTICE BELOBABA ) OF \_\_\_\_\_, 2020  
B E T W E E N

MATTHEW ROBERT QUENNEVILLE, LUCIANO TAURO, MICHAEL JOSEPH  
PARE, THERESE H. GADOURY, AMY FITZGERALD, RENEE JAMES,

AL-NOOR WISSANJI,

JACK MASTROMATTEI , JAY MACDONALD and JUDITH ANNE BECKETT

Plaintiffs

and

ROBERT BOSCH GmbH

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**(Pre-Approval)**

**THIS MOTION** made by the Plaintiffs for an order amending the certification order made on July 16, 2018 (the “Certification Order”); approving the Pre-Approval Notice and the means by which it will be disseminated to the Bosch Settlement Class; setting the opt-out and objection processes and deadlines; and setting a date and time for the Approval Hearing was heard this day in Toronto, Ontario;

**AND ON READING** the materials filed, including the moving parties’ motion record;

**AND ON BEING ADVISED** that the Parties have entered into a settlement agreement (the “Bosch Settlement Agreement”), which is subject to the approval of this Court, in respect of certain Volkswagen, Audi and Porsche vehicles which were also the subject of previous settlements approved by this Court in other proceedings on April 21, 2017, which approval was reported at 2017 ONSC 2448 (the “2L Settlement”) and on April 19, 2018, which approval was reported at 2018 ONSC 2516 (the “3L Settlement”);

**AND ON BEING ADVISED** that Ricepoint Administration Inc. consents to its appointment as Claims Administrator;

**AND ON BEING ADVISED** that the Parties consent to the form and content of this Order;

**AND ON BEING ADVISED** that Volkswagen Group Canada Inc., Volkswagen Group of America, Inc., Audi Canada Inc., Audi Aktiengesellschaft, Audi of America Inc., VW Credit Canada, Inc. and Volkswagen Aktiengesellschaft (collectively, “VW”) and Porsche Cars Canada Ltd., Porsche Financial Services Canada and Porsche Financial Services Canada (collectively, “Porsche”) consent to the proposed extended use of the 2&3L Email Database;

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Pre-Approval Order, the definitions set out in the Bosch Settlement Agreement attached hereto as **Schedule “A”** apply to and are incorporated into this Pre-Approval Order.
2. **THIS COURT ORDERS** that for the purposes of the implementation of the Bosch

Settlement Agreement, the definition of “Class” in the Certification Order made on July 16, 2018 (the “July 2018 Class”) shall be varied and replaced with the below (hereinafter referred to as the “**Bosch Settlement Class**”):

All persons in Canada (including individuals and entities), except for the Excluded Persons and persons who validly opt out of this Action in accordance with the Pre-Approval Order, who:

- (a) as of September 18, 2015 owned or leased one of the following vehicles equipped with a TDI Engine:

MODEL	MODEL YEARS: INCLUSIVE
Volkswagen Jetta	2009-2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010-2013, 2015
Volkswagen Passat	2012-2015
Volkswagen Beetle	2013-2015
Volkswagen Golf Wagon	2010-2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010-2013, 2015

or,

- (b) as of November 2, 2015 owned or leased one of the following vehicles equipped with a TDI Engine:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6, A7, A8, A8L and Q5	2014-2016
Audi Q7	2009-2015
Porsche Cayenne	2013-2016
Volkswagen Touareg	2009-2016

"Excluded Persons" means:

- (i) the Defendants and their officers and directors;
- (ii) the defendants in *Quenneville v. Volkswagen*, Court File No. CV-15537029-CP and their officers and directors;
- (iii) Audi, VW and Porsche authorized motor vehicle dealers as well as the officers and directors of those dealers;
- (iv) the heirs, successors and assigns of the persons described in subparagraphs (i), (ii) and (iii);



(v) putative class members in the Quebec Bosch Action (as defined in paragraph 6 of the Demande Pour Authorisation D'Exercer Une Action Collective dated January 20, 2017);

(vi) persons who purchased or leased their Affected Vehicles in Quebec or outside of Canada; and,

(vii) persons who were not eligible to be 2&3L Settlement Class Members.

3. **THIS COURT ORDERS** that Ricepoint Administration Inc. is hereby appointed as the Claims Administrator to administer and oversee the Notice Program and receive and report on opt-out requests and/or comments or objections received from potential members of the Bosch Settlement Class.

4. **THIS COURT ORDERS** that, further to the Order made by this Court on November 7, 2018, the Claims Administrator may use the 2&3L Email Database for the purposes of communicating with Bosch Settlement Class Members to give any Notice required in connection with the Bosch Settlement Agreement.

5. **THIS COURT ORDERS** that the opt-out period shall expire 45 days after the Pre-Approval Notice is first issued (the "Opt-Out / Objection Deadline"), and no member of the Bosch Settlement Class may opt out of this class action thereafter.

6. **THIS COURT ORDERS** that all written elections to opt out of the Bosch Settlement Class and written objections or comments to the Bosch Settlement shall contain the following information:

(a) The name, mailing address, telephone number and e-mail address (if applicable) of the potential member of the Bosch Settlement Class Member and, if applicable, any person acting on behalf of the potential member of the Bosch Settlement Class;

(b) The brand, model, model year and VIN of the proposed Affected Vehicle and the period of time in which it was owned or leased by the Bosch Settlement Class Member;

(c) A statement that the potential member of the Bosch Settlement Class elects to be

- excluded from the Bosch Settlement Class, or a brief statement of the nature of and reason for the objection to the Bosch Settlement Agreement, as applicable;
- (d) If opting out of the Bosch Settlement Agreement, a copy of the Bosch Settlement Class Member's proof of ownership of the Affected Vehicle and
  - (e) If objecting to or commenting on the Bosch Settlement Agreement, whether the potential member of the Bosch Settlement Class intends to appear in person or by counsel at the Settlement Approval Hearing in Toronto, Ontario, and if appearing by counsel, the name, address, telephone number and e-mail address of counsel.

7. **THIS COURT ORDERS** that any member of the Bosch Settlement Class who wishes to object to the Bosch Settlement Agreement must deliver, on or before the Opt-Out / Objection Deadline, a personally (or through a valid power of attorney) signed written objection which includes the information outlined at paragraph 6 above to the Claims Administrator by mail, as follows:

Ricepoint Administration Inc.  
RBQ – Bosch Settlement  
PO Box 4454, Toronto Station A  
25 The Esplanade  
Toronto, ON. M5W 4B1

8. **THIS COURT ORDERS** that any potential member of the Bosch Settlement Class who wishes to opt out of this Action must deliver, on or before the Opt-Out Objection Deadline, a written election to opt-out which includes the information outlined at paragraph 6 above to the Claims Administrator by mail at the address listed in paragraph 7 above.

9. **THIS COURT ORDERS** that, subject to paragraph 10 below, any potential member of the Bosch Settlement Class who elects to opt-out of this Action in accordance with the provisions of this Pre-Approval Order may not also object to the Bosch Settlement Agreement, and any such objection received therefrom shall be deemed withdrawn.

10. **THIS COURT ORDERS** that any potential member of the Bosch Settlement Class who elects to opt-out of this Action in accordance with the provisions of this Pre-Approval Order shall have the right to re-elect to be a member of the Bosch Settlement Class by delivering, on or before the Opt-Out / Objection Deadline, a signed written election to be included in the Bosch Settlement Class to the Claims Administrator by mail at the address listed in paragraph 7 above.
11. **THIS COURT ORDERS** that any potential member of the Bosch Settlement Class who timely and validly opts out of this Action in accordance with the provisions of this Pre-Approval Order shall not be bound by the Bosch Settlement Agreement, shall not be entitled to receive any share of benefits payable in connection with the Bosch Settlement Agreement, and shall cease to be a Bosch Settlement Class Member.
12. **THIS COURT ORDERS** that any member of the Bosch Settlement Class who does not timely and validly opt out of this Action in accordance with the provisions of this Pre-Approval Order shall be bound by the Bosch Settlement Agreement if it is approved by the Court and becomes effective, including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with.
13. **THIS COURT ORDERS AND DECLARES** that the hearing to consider approval of the Bosch Settlement Agreement shall take place at the Courthouse, 130 Queen Street West, Toronto, Ontario at 10:00 am on August 28, 2020.
14. **THIS COURT ORDERS** that Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedules B1 (Short-Form Pre-Approval Notice), B2 (Long Form Pre-Approval Notice) and B3 (Headline Pre-Approval Notice)**.
15. **THIS COURT ORDERS** that the Notice Program is hereby approved substantially in the form attached hereto as **Schedule C**.

16. **THIS COURT ORDERS AND DECLARES** that Pre-Approval Notice shall be disseminated in accordance with the Notice Program.

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THE HONOURABLE JUSTICE  
EDWARD BELOBABA

**SCHEDULE C – DRAFT APPROVAL ORDER**

Court File No. CV-16-549639-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_\_  
DAY  
MR. JUSTICE BELOBABA ) OF \_\_\_\_\_, 2020  
B E T W E E N

MATTHEW ROBERT QUENNEVILLE, LUCIANO TAURO, MICHAEL JOSEPH  
PARE, THERESE H. GADOURY, AMY FITZGERALD, RENEE JAMES,

AL-NOOR WISSANJI,

JACK MASTROMATTEI , JAY MACDONALD and JUDITH ANNE BECKETT

Plaintiffs

and

ROBERT BOSCH GmbH

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**(Approval)**

**THIS MOTION** made by the Plaintiffs for an order (a) approving the Bosch Settlement Agreement dated <date>, (b) approving the Approval Notice, and (c) confirming the appointment of RicePoint Administration Inc. (“Ricepoint”) as the Claims Administrator coming on for hearing on August 28, 2020 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario;

**UPON HEARING** the submissions of counsel for the plaintiffs

**AND ON READING** the pleadings and materials filed, including the moving parties’ motion record;

**AND ON BEING ADVISED** that Volkswagen Group Canada Inc., Volkswagen Group of America, Inc., Audi Canada Inc., Audi Aktiengesellschaft, Audi of America Inc., VW Credit Canada, Inc. and Volkswagen Aktiengesellschaft (collectively, “VW”) and Porsche Cars Canada Ltd., Porsche Financial Services Canada and Porsche Financial Services Canada (collectively, “Porsche”) consent to the proposed extended use of the 2&3L Email Database;

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Approval Order, the definitions set out in the Bosch Settlement Agreement attached hereto as **Schedule “A”** apply to and are incorporated into this Approval Order.
2. **THIS COURT DECLARES** that the Bosch Settlement Agreement is fair, reasonable and in the best interest of the Bosch Settlement Class;
3. **THIS COURT ORDERS** that the Bosch Settlement Agreement is approved pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c. 6.
4. **THIS COURT DECLARES** that all provisions of the Bosch Settlement Agreement (including Recitals and Definitions) form part of this Approval Order and are binding upon

## SETTLEMENT PRIVILEGED

Bosch, the Bosch Class Representatives, and upon all members of the Bosch Settlement Class who did not opt-out of this action in accordance with the Order of this Court dated <date> (the “Pre-Approval Order), including those persons who are minors or mentally incapable.

5. **THIS COURT DECLARES** that compliance with requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 is waived.

6. **THIS COURT ORDERS AND DECLARES** that the Settlement Class Release set out in Section 7.1 of the Bosch Settlement Agreement is approved and shall take effect upon the Effective Date, and any Releasing Party who has not validly opted out of this Action has released and shall conclusively deemed to have forever, finally and absolutely released the Bosch Released Parties from the Released Claims.

7. **THIS COURT ORDERS** that this Action shall be and is hereby dismissed, without costs and with prejudice;

8. **THIS COURT ORDERS** that upon the Effective Date, each Releasing Party 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, whether in Canada or elsewhere, against the Bosch Released Parties with respect to the claims, caused of action and/or any other matters subject to the Settlement Class Release, save and except for the continuation of the Quebec Bosch Action, which is expressly excluded from the scope of the Settlement Class Release;

9. **THIS COURT ORDERS** that an honorarium in the sum of \$12,000 is approved and will be paid from the Settlement Amount and divided equally among and paid to each of the Bosch Class Representatives;

10. **THIS COURT ORDERS** that the Approval Notice, substantially in the form attached as **Schedule “B”**, is approved.

11. **THIS COURT ORDERS** that the Approval Notice shall be disseminated in

## SETTLEMENT PRIVILEGED

accordance with the Notice Program, previously approved in the Pre-Approval Notice, and attached as **Schedule “C”**.

12. **THIS COURT ORDERS** that Ricepoint is appointed as the Claims Administrator.

13. **THIS COURT DECLARES** that the Claims Period Deadline will be three (3) months from the Approval Notice Date.

14. **THIS COURT DECLARES** that the Parties may, without further notice to the Bosch Settlement Class or further Order of the Court, amend, modify, or expand the terms and provisions of the Bosch Settlement Agreement by written agreement provided any such changes are consistent with this Order and do not limit the rights of members of the Bosch Settlement Class under the Bosch Settlement Agreement.

15. **THIS COURT DECLARES** that in the event the Bosch Settlement Agreement is terminated in accordance with s. 14, this Order will be null and void, *nunc pro tunc*, and the Parties shall be restored to their respective positions prior to the execution of the Bosch Settlement Agreement, save and except that the certification of the Bosch Settlement Class, originally made on July 16, 2018, and varied by the Pre-Approval Order, shall remain in force and effect.

16. **THIS COURT ORDERS** that the Bosch Settlement Agreement be implemented in accordance with its terms.

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THE HONOURABLE JUSTICE  
EDWARD BELOBABA