

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 In re VOLKSWAGEN “CLEAN
5 DIESEL” MARKETING, SALES
6 PRACTICES AND PRODUCTS
7 LIABILITY LITIGATION

No. 15-md-2672 (CRB) (JSC)

**PRETRIAL ORDER NO. 9:
DISCOVERY SCHEDULE**

This Order Relates To:

Hon. Charles R. Breyer

8 ALL ACTIONS (except securities
9 actions)

10 **THIS MATTER** having come before the Court on Plaintiffs’ application, and this Court
11 having indicated during the initial Case Management Conference that the parties should work
12 cooperatively to advance and efficiently manage this multidistrict litigation (“MDL”), and the
13 parties having met and conferred on how best to achieve that goal, it is hereby ORDERED as
14 follows:

15 **1. Cooperation**

16 The parties agree to work together to coordinate discovery to the maximum extent
17 feasible to promote the efficient and speedy resolution of this MDL, and, to that end, the
18 following discovery schedule and procedures are established.

19 **2. Jurisdiction**

20 i. Volkswagen AG and Audi AG, and the non-Porsche defendant-
21 companies affiliated with them, have deferred any jurisdictional challenge with respect to any
22 particular action consolidated or coordinated within this MDL until after any such action has
23 been remanded to its respective transferor court following the conclusion of consolidated or
24 coordinated pretrial proceedings in this MDL.

25 ii. In the event any of the defendants other than those described in the
26 foregoing Paragraph, reserving all defenses otherwise available to him/her/it under Rule 12(h),
27 decide to assert a Rule 12(b) challenge to jurisdiction, his/her/its counsel shall, within 14 days
28 after service of the Master Consolidated Complaint(s) (“MCC”), confer with Plaintiffs’ Lead

1 Counsel and Government Coordinating Counsel to develop a joint proposed briefing schedule
2 for such jurisdictional challenge, if any. Within 21 days after service of the MCC, such
3 defendant shall either (1) notify the Court that he/she/it has deferred any jurisdictional challenge
4 with respect to any particular action consolidated or coordinated within this MDL until after
5 such action has been remanded to its respective transferor court following the conclusion of
6 consolidated or coordinated pretrial proceedings in this MDL, (2) submit a joint, proposed
7 briefing schedule, or (3) if the parties cannot agree on such a schedule, submit his/her/its own
8 proposal. In the latter circumstance, Plaintiffs may respond to such defendant's proposal within
9 five (5) business days, and the Court will thereafter establish a briefing schedule.

10 **3. Responses to Complaints**

11 A. Subject to the provisions of Paragraph 2 of this order, Defendants Volkswagen
12 AG, Volkswagen Group of America, Inc., Volkswagen Group of America Chattanooga
13 Operations, LLC, Audi AG, Dr. Ing. h.c. F. Porsche AG, and Porsche Cars North America, Inc.
14 shall answer, move to dismiss or otherwise respond to the United States' January 4, 2016
15 complaint on or before **April 15, 2016**.

16 B. Subject to the provisions of Paragraph 2 of this order, Plaintiffs' Lead Counsel,
17 Volkswagen Liaison Counsel and Porsche Liaison Counsel shall meet and confer regarding a
18 schedule for responding to the MCC following the filing and review of the MCC.

19 **4. Discovery**

20 A. *Service.* All discovery requests and written responses and objections may be
21 served by email; for purposes of calculating the deadline to respond, email service will be
22 treated the same as hand-delivery. Defendants shall serve discovery requests and written
23 responses and objections on Plaintiffs' Lead Counsel and Government Coordinating Counsel, as
24 identified in Pre-Trial Order No. 7. *See* Dkt. No. 1084. Plaintiffs shall serve discovery
25 requests, plaintiff fact sheets, and other written discovery responses and objections on
26 Volkswagen Liaison Counsel and Porsche Liaison Counsel, as identified by Defendants in
27 response to Pre-Trial Order No. 7. *See* Dkt. Nos. 1104 & 1111.

1 B. *Rule 26 Initial Disclosures.* Defendants, the United States, and the plaintiffs
2 named in the MCC shall exchange Rule 26 initial disclosures on or before **April 6, 2016**.

3 C. *Stipulations of Fact.* On or before **May 9, 2016**, the parties will meet and confer
4 regarding joint stipulations of fact.

5 D. *Document Productions.* Following entry of this Order, a Protective Order
6 concerning the treatment of confidential discovery information, and, except as set forth below in
7 Paragraph 4.D.i, a protocol or protocols regarding the production of electronically stored
8 information (“ESI”) and hard-copy documents, documents shall be produced by the parties on a
9 rolling basis as they are located, copied, reviewed and numbered for production.

10 i. *Initial Production.* Defendants agree to prioritize and produce to Plaintiffs,
11 prior to receipt of any document requests from Plaintiffs, all documents that
12 Defendants produced to governmental agencies or regulatory bodies in the
13 United States (including state and federal entities) in connection with
14 governmental investigations or inquiries, except those investigations or
15 inquiries conducted pursuant to grand jury subpoena(s), regarding whether
16 Volkswagen, Audi, or Porsche vehicles were equipped with devices designed
17 to defeat or that did defeat emissions regulations or laws (the “U.S. Prior
18 Productions”), plus any privilege logs produced in connection with those
19 productions. Defendants shall make rolling productions of the U.S. Prior
20 Productions, including produced privilege logs, beginning no later than two
21 (2) business days after entry of a Protective Order. For those U.S. Prior
22 Productions made to governmental agencies or regulatory bodies prior to
23 entry of this Order, Defendants shall endeavor to complete those productions,
24 including produced privilege logs, by **March 31, 2016**. Thereafter,
25 Defendants will produce documents previously gathered from Defendants
26 that Defendants produced to non-U.S.-based governmental agencies or
27 regulatory bodies in connection with governmental or regulatory
28 investigations or inquiries regarding whether Volkswagen, Audi, or Porsche

1 vehicles were equipped with devices designed to defeat or that did defeat
2 emissions regulations or laws (the “Non-U.S. Prior Productions”), plus any
3 privilege logs produced in connection with those productions, to the extent
4 (a) production is not subject to restraint by those non-U.S. governmental
5 agencies or regulatory bodies, and (b) those productions concern vehicles
6 equipped with the same diesel engine type(s) as those included in the
7 vehicles referenced in Appendices A and B to the Complaint filed by the
8 United States against Volkswagen AG and others, dated January 4, 2016.
9 Defendants shall make rolling productions of the Non-U.S. Prior
10 Productions, including produced privilege logs, beginning no later than **April**
11 **15, 2016**. For those Non-U.S. Prior Productions made to governmental
12 agencies or regulatory bodies prior to entry of this Order, Defendants shall
13 endeavor to complete those productions, including produced privilege logs,
14 by **June 30, 2016**. In the event Defendants make any productions of
15 documents to U.S.-based or non-U.S.-based governmental agencies or
16 regulatory bodies in connection with the foregoing investigations after the
17 dates set forth above, then, subject to the limitations set forth above with
18 respect to Non-U.S. Prior Productions, Defendants shall produce those
19 additional documents to Plaintiffs pursuant to their duties to supplement
20 under the Federal Rules of Civil Procedure on a timely basis, and in any
21 event, no later than 21 days after such documents have been produced to the
22 applicable government agency or regulatory body. To the extent reasonably
23 practicable, the parties shall confer concerning the format of the U.S. Prior
24 Productions and the Non-U.S. Prior Productions to determine whether the
25 data can reasonably be produced, at little time and expense, to meet the
26 format requirements of the ESI vendors of Plaintiffs’ Lead Counsel and
27 Government Coordinating Counsel. For the avoidance of doubt, nothing in
28 this paragraph shall require any Defendant to produce any settlement

1 communications, including materials provided to any governmental agency
2 or regulatory body in furtherance of any settlement discussions.

3 ii. *Substantial Completion of Document Production.* The parties shall endeavor
4 to substantially complete their productions of non-privileged, responsive
5 documents by **December 2, 2016**. The parties may apply (jointly or
6 separately) for an extension of this deadline for good cause shown.

7 iii. *Discovery of Documents Maintained in Germany.* Volkswagen AG, Audi
8 AG and Porsche AG, and the defendant-companies affiliated with them, have
9 informed Plaintiffs that they are currently undertaking steps to resolve
10 discovery issues relating to documents that may be subject to German data
11 privacy laws and/or other German laws or regulations that may impact
12 production of such documents in the United States. On or before **March 17,**
13 **2016**, the parties will meet and confer regarding the status of those efforts.
14 To the extent these efforts do not resolve such issues to any party's
15 satisfaction, all parties reserve the right to raise this issue with the Court and
16 seek amendment of the discovery deadlines set forth herein.

17 iv. *Privilege Issues.* Within fourteen (14) days of the entry of this Order,
18 Plaintiffs' Lead Counsel, Government Coordinating Counsel, Volkswagen
19 Liaison Counsel, and Porsche Liaison Counsel shall meet and confer to
20 discuss a protocol for asserting any privilege or right to confidentiality as a
21 protection from the disclosure of otherwise discoverable information,
22 including a plan for preservation or non-waiver of any applicable privileges
23 or rights to confidentiality, and a plan for the production of privilege logs.
24 Thereafter, and no later than thirty (30) days after the entry of this Order, the
25 parties shall submit a joint proposed protocol on privilege issues. If the
26 parties are unable to agree on the contents of such a protocol, then each side
27 shall submit its own proposed order with a memorandum (not to exceed ten
28 (10) pages) explaining why the Court should adopt that party's particular

1 proposal. Nothing in this paragraph shall delay the initial productions called
2 for under Paragraph 4.D.i, and the parties are specifically directed to proceed
3 with those productions in advance of the entry of an order regarding a
4 privilege protocol; provided, however, that the initial productions called for
5 under Paragraph 4.D.i shall be deemed to have been made pursuant to the
6 privilege protocol order even if those productions precede entry of that order.

7 E. *Written Discovery Requests.* Unless otherwise specified herein, written
8 discovery requests, and responses and objections thereto, shall be made in accordance with the
9 Federal Rules of Civil Procedure and the Local Rules of the U.S. District Court for the Northern
10 District of California. Defendants may serve discovery requests on one another.

11 i. Except as otherwise provided herein, written discovery requests (document
12 requests, interrogatories, or requests for admissions) may be served following
13 entry of this Order.

14 ii. *Discovery of Defendants:*

15 1. *Written Discovery Responses and Objections.* Written responses and
16 objections to requests for the production of documents shall be due 45
17 days after service of the request. Written responses and objections to
18 interrogatories and requests for admission shall be due 60 days after
19 service of the request. Verifications of interrogatories shall be
20 provided within 14 days after service of written responses and
21 objections to those interrogatories.

22 2. *Interrogatories.* Unless otherwise agreed by the parties, Plaintiffs'
23 Lead Counsel may serve no more than seventy-five (75)
24 interrogatories, including discrete subparts, on each Defendant.
25 Unless otherwise agreed by the parties, Government Coordinating
26 Counsel may serve no more than twenty-five (25) interrogatories,
27 including discrete subparts, on each Defendant. Leave to serve
28 additional interrogatories may be granted to the extent consistent with

1 Rule 26(b)(1) and (2).

2 iii. *Discovery of Plaintiffs:*

3 1. *Plaintiff Fact Sheets.* On or before **April 15, 2016**, each Plaintiff
4 named in the MCC will produce to Defendants a completed Plaintiff
5 Fact Sheet (“PFS”). The form and content of the PFS shall be
6 negotiated and agreed to by the parties by **March 11, 2016**. In the
7 event the parties cannot reach agreement on the terms of the PFS, the
8 parties will submit their respective proposed PFS to the Court by
9 **March 11, 2016**. All objections to the admissibility of information
10 contained in or provided with the PFS are reserved and, therefore, no
11 objections need be lodged in the responses to the questions and
12 requests contained in the PFS. The PFS process is designed to
13 streamline the production of relevant information and documents, but
14 that process in no way limits any party from seeking additional
15 information and documents from any plaintiff that completes a PFS
16 through other discovery requests under the Federal Rules of Civil
17 Procedure. The timing and limitations of such requests and responses
18 shall be governed by the Federal Rules of Civil Procedure. Any
19 request for additional information or documents must be non-
20 duplicative of information included in the PFSs, and must be relevant
21 to Plaintiffs’ claims and/or Defendants’ defenses.

22 2. *Discovery with respect to the United States.* Notwithstanding
23 anything to the contrary herein, the United States and Defendants
24 may serve written discovery requests (document requests,
25 interrogatories, and requests for admissions) upon each other no
26 sooner than April 15, 2016. Written responses and objections by the
27 United States to document requests, interrogatories, and requests for
28 admissions shall be due 60 days after service of the request.

1 3. *Interrogatories Specifically Directed at Each Plaintiff Named in the*
2 *MCC.* In the event the parties reach agreement on the terms of the
3 PFS, then (a) unless otherwise agreed by the parties, Defendants’
4 Liaison Counsel collectively may serve no more than seven (7)
5 interrogatories, including discrete subparts, on each Plaintiff named in
6 the MCC specifically directed at each such Plaintiff, and (b) leave to
7 serve additional interrogatories may be granted to the extent
8 consistent with Rule 26(b)(1) and (2).

9 4. *Interrogatories on the United States.* Unless otherwise agreed by the
10 parties, Defendants’ Liaison Counsel collectively may serve no more
11 than twenty-five (25) interrogatories, including discrete subparts, on
12 the United States. Leave to serve additional interrogatories may be
13 granted to the extent consistent with Rule 26(b)(1) and (2).

14 F. *Additional Discovery Requests.* Subject to the foregoing, the parties are free to
15 serve additional fact discovery requests without leave of Court. Additional requests will be
16 governed by the Federal Rules of Civil Procedure and the Local Rules of the U.S. District Court
17 for the Northern District of California.

18 G. *Depositions and Expert Discovery.* On or before **April 15, 2016**, the parties will
19 meet and confer about a pre-trial order regarding deposition discovery, a protocol for
20 depositions, and expert discovery. The parties will submit a joint proposed pre-trial order(s)
21 regarding depositions and expert discovery on or before **May 5, 2016**. If the parties are unable
22 to agree on the contents of such order(s), then each shall submit its own proposal with a
23 memorandum (not to exceed five (5) pages) explaining why the Court should adopt that party’s
24 proposal.

25 **5. Amendment of Complaint or Addition of Parties**

26 A. Plaintiffs may amend the complaint, add parties, and/or add claims up to and
27 through **May 20, 2016**, and, in the event of any amendment or addition, the parties shall
28 thereafter meet and confer to discuss the scheduling of a response deadline and any related

1 matters. If facts emerge in discovery or otherwise after that date that support amendment and/or
2 adding parties, Plaintiffs may seek leave of Court to do so.

3 **6. Electronically Stored Information and Preservation of Documents and ESI**

4 A. Within fourteen (14) days of the entry of this Order, Plaintiffs' Lead Counsel,
5 Government Coordinating Counsel, Volkswagen Liaison Counsel, and Porsche Liaison Counsel
6 shall meet and confer to further discuss the ESI protocols that will be followed in this case. To
7 aid in the discussions, the parties will include individuals knowledgeable about ESI and relevant
8 IT systems in the scheduled meet and confer. Thereafter, and no later than thirty (30) days after
9 the entry of this Order, the parties shall submit a joint proposed ESI Protocol. If the parties are
10 unable to agree on the contents of such a protocol, then each side shall submit its own proposed
11 order regarding production of ESI with a memorandum (not to exceed ten (10) pages)
12 explaining why the Court should adopt that party's particular proposal. Nothing in this
13 paragraph shall delay the initial productions called for under Paragraph 4.D.i, and the parties are
14 specifically directed to proceed with those productions in advance of the entry of an ESI
15 Protocol.

16 B. Within seven (7) days of the entry of this Order, Plaintiffs' Lead Counsel,
17 Government Coordinating Counsel, Volkswagen Liaison Counsel, and Porsche Liaison Counsel
18 shall meet and confer to further discuss the preservation of documents, ESI and tangible things.
19 No later than fourteen (14) days after the entry of this Order, the parties shall submit joint
20 proposed preservation order(s). If the parties are unable to agree on the contents of such
21 preservation order(s), then each side shall submit its own proposed order(s) regarding
22 preservation of documents, ESI and tangible things with a memorandum (not to exceed five (5)
23 pages) explaining why the Court should adopt that party's particular proposal(s).

24 **7. Discovery Dispute Resolution**

25 A. Discovery disputes will be raised with Magistrate Judge Corley, and shall be
26 presented consistent with the procedure for resolving civil discovery disputes as set forth in the
27 Civil Standing Order for Magistrate Judge Corley (revised February 23, 2016). All discovery
28 disputes shall be raised with the Court within two weeks of the parties having reached impasse

1 following the required meet-and-confer discussions.

2 B. If the parties believe an issue is too complicated to resolve through the joint letter
3 brief procedure, they shall contact Judge Corley's courtroom deputy clerk to arrange a
4 telephone conference with the Court to set a briefing and hearing schedule.

5 **IT IS SO ORDERED.**

6 Dated: February 25, 2016

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CHARLES R. BREYER
United States District Judge

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