

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 MATTHEW DU MEE (BAR No. 028468)
4 JOSHUA WHITAKER (BAR No. 032724)
ASSISTANT ATTORNEYS GENERAL
5 OFFICE OF THE ATTORNEY GENERAL
2005 North Central Avenue
6 Phoenix, AZ 85004-1592
7 Telephone: (602) 542-3725
8 Facsimile: (602) 542-4377
Email: consumer@azag.gov
9 [Additional Counsel on Signature Page]

10 *Attorneys for Plaintiff State of Arizona*

11
12 **SUPERIOR COURT OF ARIZONA**
13 **IN MARICOPA COUNTY**
14

15 STATE OF ARIZONA, *ex rel.* MARK
16 BRNOVICH, Attorney General,

17 Plaintiff,

18 v.

19 MERCEDES-BENZ USA, LLC, a Delaware
20 limited liability company; DAIMLER
21 AKTIENGESELLSCHAFT, a foreign
22 corporation; ROBERT BOSCH GMBH, a
23 corporation organized under the laws of
Germany; and ROBERT BOSCH LLC, a
24 Delaware limited liability company,

25 Defendants.
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Case No.: CV2019-000792

**CONSENT JUDGMENT AS TO
MERCEDES DEFENDANTS**

(Assigned to the Hon. Daniel Martin)

1 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a
2 Complaint and a First Amended Complaint alleging violations of the Arizona Consumer Fraud
3 Act, A.R.S. §§ 44-1521 to -1534 (the “CFA”). Among the named defendants are Mercedes-Benz
4 USA, LLC and Daimler Aktiengesellschaft (collectively the “Mercedes Defendants”). This
5 Consent Judgment pertains to the Mercedes Defendants only.

6 The Mercedes Defendants have consented and stipulated to entry of this Consent
7 Judgment to compromise and settle claims, not out of any admission of guilt, wrongdoing,
8 violation, or sanction.

9 **PARTIES**

- 10 1. The State is authorized to bring this action (the “Action”) under the CFA.
11 2. Mercedes-Benz USA, LLC is a Delaware limited liability company.
12 3. Daimler Aktiengesellschaft is a stock company organized under the laws of
13 Germany. It changed its name to Mercedes-Benz Group AG earlier this year.
14 4. This Court has jurisdiction over the Complaint and the First Amended Complaint
15 and the parties necessary for the Court to enter this Consent Judgment and any orders hereafter
16 appropriate pursuant to A.R.S. § 44-1528 and this Consent Judgment.
17 5. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

18 **RECITALS**

19 6. WHEREAS, the State brought the Action against the Mercedes Defendants and
20 Robert Bosch LLC and Robert Bosch GmbH in the Superior Court of Arizona in Maricopa
21 County;

22 7. WHEREAS, the State alleges the Mercedes Defendants and Robert Bosch LLC and
23 Robert Bosch GmbH violated the CFA with respect to Mercedes-Benz BlueTEC II diesel
24 vehicles sold and/or operated within the State of Arizona, as further defined below, and the State
25 further asserts claims for civil penalties and other monetary and injunctive relief;

26 8. WHEREAS, there were 5851 new Mercedes-Benz BlueTEC II diesel vehicles
27 retailed by dealers in the State of Arizona;

28 9. WHEREAS, the State filed suit prior to the Mercedes Defendants’ resolution of the

1 consumer class action in *In re Mercedes-Benz Emissions Litigation*, Case No. 2:16-cv-881
2 (D.N.J.);

3 10. WHEREAS, the State filed suit prior to the filing of the consent decree between
4 the Mercedes Defendants, the U.S. Department of Justice, the U.S. Environmental Protection
5 Agency, and the California Air Resources Board in *United States v. Daimler AG, et al.*, No. 1:20-
6 cv-02564 (D.D.C.);

7 11. WHEREAS, the State was the first state to file suit against the Mercedes
8 Defendants alleging consumer-based claims regarding the Covered Conduct, and has been
9 actively litigating the Action since January 2019;

10 12. WHEREAS, the State and the Mercedes Defendants (collectively the “Parties”)
11 have pursued discovery, investigated the facts and have analyzed the relevant legal issues
12 regarding the claims and defenses asserted in the Action;

13 13. WHEREAS, the Parties have each considered the costs, delays and legal
14 uncertainties associated with the continued prosecution and defense of this litigation, and have
15 agreed to settle and resolve the Action;

16 14. WHEREAS, the Mercedes Defendants deny the material factual allegations and
17 legal claims asserted by the State, including, but not limited to, any and all charges of wrongdoing
18 or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could
19 have been alleged, in the Action, and the Parties agree that nothing in this Consent Judgment
20 shall constitute an admission of any wrongdoing or admission of any violations of law by any
21 Party.

22 15. NOW, THEREFORE, in consideration of the mutual covenants and promises
23 contained herein and other good and valuable consideration, the adequacy and receipt of which
24 the Parties hereby acknowledge, the Parties agree and the Court orders as follows:

25 **1. GENERAL DEFINITIONS**

26 1.1 “Auxiliary Emission Control Device” or “AECD” means “any element of
27 design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold
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1 vacuum, or any other parameter for the purpose of activating, modulating, delaying, or
2 deactivating the operation of any part of the emission control system.” 40 C.F.R. § 86.1803-01.

3 1.2 “Claims Administrator” shall mean a third party selected and retained by
4 Arizona to conduct restitution administration activities pursuant to Appendix A.

5 1.3 “Covered Conduct” shall mean any and all acts or omissions with respect
6 to the Subject Vehicles and BlueTEC diesel technology, including all communications,
7 advertisements, or promotions that occurred up to and including the Effective Date of this
8 Consent Judgment, relating to the marketing, advertising, distribution, selling, updating,
9 maintaining, or leasing of any Subject Vehicle or BlueTEC diesel technology, including as clean
10 diesel, clean, low emissions, green, environmentally friendly (or similar such terms), and/or
11 compliant with state or federal law (including any applicable emissions standards), or without
12 disclosing the design, installation or presence of a Defeat Device.¹

13 1.4 The “Effective Date” of this Consent Judgment is the date it is entered by
14 the Court.

15 1.5 “Eligible Consumers” shall mean person(s) who owned or leased a Subject
16 Vehicle that was registered with the Arizona Department of Transportation (“ADOT”) on
17 September 14, 2020, the date the federal government filed a complaint and lodged a consent
18 decree in *United States v. Daimler AG, et al.*, No. 1:20-cv-02564 (D.D.C.). For purposes of this
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20 ¹ The term “Defeat Device” means (a) “an auxiliary emission control device (AECD)
21 that reduces the effectiveness of the emission control system under conditions which may
22 reasonably be expected to be encountered in normal vehicle operation and use, unless: (1) Such
23 conditions are substantially included in the Federal emission test procedure; (2) The need for the
24 AECD is justified in terms of protecting the vehicle against damage or accident; (3) The AECD
25 does not go beyond the requirements of engine starting; or (4) The AECD applies only for
26 emergency vehicles[.]” 40 C.F.R. § 86.1803-01, or (b) “any part or component intended for use
27 with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part
28 or component is to bypass, defeat, or render inoperative any device or element of design installed
on or in a motor vehicle or motor vehicle engine in compliance with [the Emission Standards for
Moving Sources section of the Clean Air Act], and where the person knows or should know that
such part or component is being offered for sale or installed for such use or put to such use,” 42
U.S.C. § 7522(a)(3)(B).

1 Consent Judgment, if ownership of a Subject Vehicle was transferred within Arizona on
2 September 14, 2020, the person(s) who first held ownership on that date is the Eligible Consumer,
3 or, if only one person held ownership in Arizona on that date (i.e., if ownership of the car passed
4 out of state), the person who so held ownership in Arizona is the pertinent Eligible Consumer. If
5 the State is unable to obtain reliable data of Eligible Consumers, then it will distribute restitution
6 at its discretion as consumer data permits.

7 1.6 “Subject Vehicles” means a “Subject Vehicle” as defined in the US-CA
8 Consent Decree, which includes the BlueTEC II diesel vehicles listed in the table below.
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BlueTEC II Diesel Vehicles	
Model	Model Year(s)
E250	2014-2016
E350	2011-2013
GL320	2009
GL350	2010-2016
GLE300d	2016
GLE350d	2016
GLK250	2013-2015
ML250	2015
ML320	2009
ML350	2010-2014
R320	2009
R350	2010-2012
S350	2012-2013
Mercedes-Benz or Freightliner Sprinter (4-cylinder)	2014-2016
Mercedes-Benz or Freightliner Sprinter (6-cylinder)	2010-2016

1.7 “US-CA Consent Decree” means the Consent Decree lodged with the United States District Court for the District of Columbia on or about September 14, 2020 and entered on or about March 9, 2021, in *United States v. Daimler AG, et al.*, No. 1:20-cv-02564, as agreed by (1) the United States on behalf of the EPA; (2) the People of the State of California, by and through CARB and the Attorney General of California; and (3) the Mercedes Defendants, resolving disputes between those parties on the terms described therein.

1 1.8 Other capitalized terms used in this Consent Judgment but not defined in
2 this Section 1 shall have the meanings ascribed to them elsewhere in this Consent Judgment.

3 **2. NO IMPACT UPON OTHER SETTLEMENTS**

4 2.1 The Mercedes Defendants have entered into other settlements, consent
5 decrees, consent judgments, and agreements with other governmental and private parties with
6 respect to the Subject Vehicles and the Covered Conduct. Nothing in this Consent Judgment
7 shall alter in any way the obligations assumed, or rights obtained, by the Mercedes Defendants
8 under those other settlements, consent decrees, consent judgments, or agreements.

9 **3. MONETARY PAYMENT**

10 3.1 In full and complete satisfaction of all claims asserted in the Action, the
11 Mercedes Defendants agree to pay, and are jointly and severally liable to pay, to the State Five
12 Million, Six Hundred Thousand dollars (\$5,600,000) (the “Monetary Payment”) to be used in the
13 manner set forth in subsections 3.1(a) *et seq.* The Mercedes Defendants shall deliver the
14 Monetary Payment via wire transfer to the State. To effectuate this transfer, within three (3)
15 business days of the Effective Date, the State shall provide the Mercedes Defendants with an IRS
16 Form W-9 and wire instructions. The Mercedes Defendants will transfer the Monetary Payment
17 to the State within twenty (20) business days of the later of the Effective Date or the receipt of
18 the wire instructions.

19 (a) The Mercedes Defendants shall pay \$2,835,000 to the Attorney General, to
20 be deposited into an interest-bearing consumer restitution subaccount of the Consumer
21 Restitution and Remediation Revolving Fund. This payment will be used as consumer
22 restitution to be distributed to Eligible Consumers by the Attorney General’s Office
23 pursuant to A.R.S. § 44-1531.02(B). The State will have sole discretion as to how and
24 when restitution is distributed and whether any particular consumer is an Eligible
25 Consumer. Payments made to Eligible Consumers pursuant to this subsection will be
26 made in the amount of up to \$625 per Subject Vehicle. In the event the restitution ordered
27 herein is insufficient to provide \$625 to all Eligible Consumers per Subject Vehicle,
28 payments will be distributed to Eligible Consumers on a pro rata basis in a manner to be

1 determined by the State. In the event any portion of the restitution ordered herein cannot
2 be distributed to Eligible Consumers, or the restitution ordered herein would exceed \$625
3 for Eligible Consumers per Subject Vehicle, such portion shall be remitted by the Claims
4 Administrator to the State, to be used as stated in subsection 3.1(c) below.

5 (b) The Mercedes Defendants shall pay \$50,000 to the Attorney General, to be
6 deposited into an interest-bearing consumer restitution subaccount of the Consumer
7 Restitution and Remediation Revolving Fund. This payment will be used to pay for the
8 costs and expenses of the Claims Administrator.

9 (c) The remaining \$2,715,000, less the State's counsel's fees and costs under
10 its contract with the State, will be paid to the Attorney General and deposited in the
11 revolving fund established pursuant to A.R.S. § 44-1531.01 to be used for purposes set
12 forth in A.R.S. § 44-1531.01(C). In addition, any money not claimed by Eligible
13 Consumers and remitted to the State (as described in § 3.1(a) above), less counsel's fees
14 and costs, shall be deposited into the revolving fund established pursuant to A.R.S. § 44-
15 1531.01 and used for the purposes set forth in A.R.S. § 44-1531.01(C). For the avoidance
16 of doubt, the Mercedes Defendants had no involvement in the negotiation of, or the
17 methodology for payment of, attorneys' fees and costs to the State's counsel. The
18 provisions herein relating to attorneys' fees and costs were negotiated by the State and the
19 State's counsel, not the Mercedes Defendants. Accordingly, any and all disputes
20 regarding those fees and costs are solely for, and the responsibility of, the State and its
21 counsel, not the Mercedes Defendants. The State's fee agreement with its counsel is based
22 on the contingent fee percentages set forth in A.R.S. § 41-4803 and is calculated only
23 based upon the recovery and collection of civil penalties pursuant to A.R.S. § 41-1531 or
24 disgorgement pursuant to A.R.S. § 41-1529(A)(3). The fee agreement, Contract No.
25 #AG18-0013, dated December 20th, 2018, is available for public review at
26 <https://www.azag.gov/procurement>.

27 3.2 The Claims Administrator will conduct restitution administration activities,
28 including obtaining current address information for Eligible Consumers, notifying consumers of

1 this Consent Judgment using documents drafted by the State and reviewed by the Mercedes
2 Defendants, creating the distribution checks, and mailing the distribution checks to Eligible
3 Consumers. The Claims Administrator will maintain the confidentiality and security of all
4 personally identifying information provided under this Consent Judgment.

5 3.3 The Court authorizes the Claims Administrator through data aggregators or
6 otherwise, to request, obtain, and utilize vehicle registration information from the Arizona
7 Department of Transportation for the purposes of determining the identity of and contact
8 information for Eligible Consumers. Vehicle registration information includes, but is not limited
9 to, owner/lessee name and address information, registration date, year, and vehicle make and
10 model. The Claims Administrator is authorized to take all necessary steps to obtain this
11 information, and the Arizona Department of Transportation is asked to cooperate with the Claims
12 Administrator as needed.

13 3.4 The Consent Judgment resolves all claims that were or could have been
14 asserted under the CFA.

15 3.5 Upon the Mercedes Defendants making the Monetary Payment as
16 described herein, the Mercedes Defendants shall be fully divested of any interest in, or ownership
17 of, the monies paid and all interest in the monies, and any subsequent interest or income derived
18 therefrom, shall inure entirely to the benefit of the Arizona Attorney General's Office pursuant
19 to the terms herein.

20 **4. INJUNCTIVE RELIEF**

21 4.1 Except as otherwise stated herein, the Mercedes Defendants and their
22 officers and employees are hereby enjoined as follows:

23 (a) The Mercedes Defendants and their affiliates shall not engage in future
24 unfair or deceptive acts or practices under Arizona law in connection with their dealings
25 with consumers and state regulators, directly or indirectly, by advertising, marketing,
26 offering for sale, selling, offering for lease, leasing, or distributing in Arizona any Subject
27 Vehicle that contains a Defeat Device.

1 (b) The Mercedes Defendants shall not provide any materially misleading or
2 inaccurate disclosure or advertisement to an Arizona consumer concerning their rights or
3 available remedies under the Emission Modification Program, as determined by the
4 Department of Justice and U.S. EPA pursuant to the consent decree entered in *United*
5 *States v. Daimler AG, et. al.*, No. 1:20-cv-02564 (D.D.C).

6 **5. MUTUAL RELEASES**

7 5.1 Immediately upon the Mercedes Defendants making the Monetary
8 Payment in the manner specified herein, the State hereby shall and hereby does fully, finally,
9 irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit the Mercedes
10 Defendants, their affiliates and any of the Mercedes Defendants' or their affiliates' former,
11 present or future owners, shareholders, directors, officers, members of the management and
12 supervisory boards, employees, attorneys, parent companies, subsidiaries, predecessors,
13 successors, dealers, agents, assigns and representatives (collectively, "Released Defendant
14 Parties") from any and all claims arising out of or in any way related to the Covered Conduct
15 (including, without limitation, consumer-related claims and claims under the CFA; claims for
16 penalties, fines or other monetary payments, including attorney costs or fees; claims for
17 disgorgement of profits; claims for injunctive relief or restitution; claims brought in the State's
18 sovereign enforcement capacity; and claims brought as *parens patriae* on behalf of Arizona
19 citizens); and demands, actions, or causes of action, that it may have, purport to have, or may
20 hereafter have against any Released Defendant Party arising out of or in any way related to the
21 Covered Conduct (hereinafter, "Released State Claims"). This release includes, but is not limited
22 to:

- 23 (a) the State's request for restitution under A.R.S. § 44-1528(A)(2);
24 (b) the State's request for injunctive terms under A.R.S. § 44-1528(A)(1);
25 (c) the State's request for disgorgement under A.R.S. § 44-1528(A)(3);
26 (d) the State's request for penalties under A.R.S. § 44-1531; and
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1 (e) the State's request for costs, including reasonable attorney's fees, under A.R.S. § 44-
2 1534, which includes the work of the State's counsel incurred as a result of litigating this
3 Action since January 2019.

4 5.2 Upon the release in subsection 5.1 becoming effective, the Mercedes
5 Defendants shall and hereby do fully, finally, irrevocably, and forever release, waive, discharge,
6 relinquish, settle and acquit the State and its departments and former or current officers,
7 representatives, or employees (the "Released State Parties") from any and all claims, demands,
8 actions, or causes of action, that they may have, purport to have, or may hereafter have against
9 any Released State Party arising out of or in any way related to the Covered Conduct (hereinafter,
10 "Released Defendant Claims").

11 5.3 To ensure that the releases described in Section 5 are fully enforced in
12 accordance with their terms, with respect to any and all Released Claims, the Parties stipulate
13 and agree as follows: To the extent any applicable law might otherwise limit a general release to
14 claims that are known or suspected to exist at the time of executing the release, upon the Effective
15 Date, the Parties expressly waive, and each Released Person shall be deemed to have waived,
16 any and all provisions, rights and benefits conferred by any such law. The Parties acknowledge
17 that the inclusion of any and all claims, including unknown claims, within the scope of Released
18 State Claims and Released Defendant Claims was separately bargained for and was an essential
19 element of this Consent Judgment.

20 5.4 Notwithstanding the foregoing, the Released Parties do not include named
21 defendants Robert Bosch LLC, Robert Bosch GmbH, and their affiliates.

22 5.5 Notwithstanding any term of this Consent Judgment, the Released Claims
23 do not include actions to enforce this Consent Judgment.

24 **6. DISCOVERY**

25 6.1 The State acknowledges that the Mercedes Defendants have provided
26 sufficient discovery to resolve the Covered Conduct and the State agrees to not initiate or pursue
27 any additional discovery on the Mercedes Defendants in this action or related to the Covered
28 Conduct.

1 **7. MISCELLANEOUS**

2 7.1 This Consent Judgment contains the entire agreement of the Parties with
3 respect to its subject matter, and all prior oral or written agreements, contracts, negotiations,
4 representations and discussions, if any, pertaining to this matter are merged into this Consent
5 Judgment. No Party to this Consent Judgment has made any oral or written representation other
6 than those set forth in this Consent Judgment, and no Party has relied upon, or is entering into,
7 this Consent Judgment in reliance upon, any representation other than those set forth in this
8 Consent Judgment. This Consent Judgment may not be modified in any respect except by a
9 written stipulation signed by all Parties and entered by the Court.

10 7.2 This Consent Judgment shall bind and inure to the benefit of the Parties
11 hereto, the Released Persons and their predecessors, successors, assigns, agents and attorneys.
12 Each of the signatories of this Consent Judgment represents and warrants that it, he, or she is
13 authorized by it, his or her respective clients or principal to execute this Consent Judgment and
14 to bind the corresponding Party hereto. With respect to the State, the relevant signatories affirm
15 that they have authority to execute this Consent Judgment on behalf of the State and that this
16 Consent Judgment is a binding obligation enforceable against the State.

17 7.3 This Consent Judgment shall be construed and interpreted in accordance
18 with the substantive law of the State of Arizona without regard to its conflict of laws provision.

19 7.4 The Parties agree that, in the event that any dispute relating to this Consent
20 Judgment arises between the Parties, the Parties will first meet and confer in good faith in an
21 attempt to resolve the dispute prior to litigation. In the event that the Parties cannot informally
22 resolve the dispute, jurisdiction is retained by this Court for the purpose of entertaining an
23 application for the enforcement of this Consent Judgment.

24 7.5 Each Party acknowledges and agrees that this Consent Judgment was
25 negotiated at arms' length and shall not be construed against its drafter as each Party participated
26 equally in its drafting.

27 7.6 Any notice hereunder to or among the Parties shall be in writing and
28 delivered (i) by email or personal delivery, and (ii) confirmed by United States Certified Mail,

1 return receipt requested, or by Federal Express (or other overnight carrier) with recipient
2 signature. Any such notice shall be delivered as follows:

3
4 **For Arizona:**

5 Matthew du Mee
6 Joshua Whitaker
7 Consumer Protection & Advocacy Section
8 Office of the Arizona Attorney General
9 2005 N. Central Avenue, Suite 100
10 Phoenix, Arizona 85004
11 Email: Matthew.duMee@azag.gov
12 Email: Joshua.Whitaker@azag.gov
13 Email: consumer@azag.gov

14 Robert B. Carey
15 rob@hbsslaw.com
16 Leonard Aragon
17 leonarda@hbsslaw.com
18 Hagens Berman Sobol Shapiro LLP
19 11 West Jefferson Street, Suite 1000
20 Phoenix, AZ 85033

21 **For the Mercedes Defendants:**

22 Daniel W. Nelson
23 Gibson, Dunn & Crutcher LLP
24 1050 Connecticut Ave. NW
25 Washington, DC 20036
26 Email: dnelson@gibsondunn.com

27 Troy M. Yoshino
28 Squire Patton Boggs (US) LLP
475 Sansome Street, 16th Floor
San Francisco, California 94111
Email: troy.yoshino@squirepb.com

Any Party may change its address for such notices by notice given in accordance with this paragraph.

1 7.7 Except for the rights of the Released Persons with respect to the Released
2 Claims: (i) this Consent Judgment shall not be construed to create rights in, or grant any cause of
3 action to, any third party not party to this Consent Judgment, and (ii) no third party shall be
4 entitled to enforce any aspect of this Consent Judgment or claim any legal or equitable injury for
5 a violation of this Consent Judgment.

6 7.8 Paragraph and section headings contained herein are inserted solely as
7 reference aids for the ease and convenience of the reader. They shall not be deemed to define or
8 limit the scope or substance of the provisions they introduce, nor shall they be used in construing
9 the intent or effect of such provisions or any other aspect of this Consent Judgment.

10 7.9 The Parties agree that this Consent Judgment may be executed in identical
11 counterparts by the Parties, and when each Party has signed and delivered at least one (1) such
12 counterpart to the other Party, each counterpart shall be deemed an original and taken together
13 shall constitute one and the same agreement that shall be binding and effective as to all Parties.
14 A facsimile signature or signatures transmitted in PDF by electronic mail will be binding and
15 enforceable to the same extent as an original signature.

16 7.10 The Mercedes Defendants have no financial obligations under this Consent
17 Judgment other than the Monetary Payment identified in Section 3.1.

18 7.11 The Parties agree that no Party shall bear responsibility for any other
19 Party's costs or expenses, including without limitation all attorneys' fees, except as specified in
20 this Consent Judgment.

21 7.12 The representations and warranties made throughout the Consent Judgment
22 shall survive the execution of the Consent Judgment and shall be binding upon the respective
23 heirs, representatives, successors, and assigns of the Parties.

24 7.13 If any provision of this Consent Judgment or portion thereof is held by a
25 court of competent jurisdiction to be invalid, void, or unenforceable for any reason, the remaining
26 provisions and portions thereof shall remain valid and enforceable notwithstanding, unless the
27 provision or portion found to be unenforceable is of such material effect that this Consent
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1 Judgment cannot be performed in accordance with the intent of the Parties in the absence of any
2 such provision.

3 7.14 Nothing in this Consent Judgment will be construed as an approval by the
4 Attorney General, the Court, the State, or any agency thereof of the Mercedes Defendants' past,
5 present, or future conduct.

6 7.15 Nothing in this Consent Judgment shall constitute an admission or finding
7 that the Mercedes Defendants have engaged in or are engaged in a violation of law.

8 7.16 This Consent Judgment resolves all claims identified in the Complaint and
9 First Amended Complaint as to the Mercedes Defendants. Finding no just reason for delay, the
10 Court enters this final judgment as to the Mercedes Defendants pursuant to Ariz. R. Civ. P. 54(b).

11 DATED this ____ day of November, 2022.
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JUDGE OF THE SUPERIOR COURT
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1 APPROVED:

2 COUNSEL FOR PLAINTIFF STATE OF ARIZONA, ex rel. MARK BRNOVICH,
3 ATTORNEY GENERAL

4
5 Dated: November 7th 2022

6 By: 

7 Robert B. Carey

8 rob@hbsslaw.com

9 Leonard Aragon

10 leonarda@hbsslaw.com

11 Hagens Berman Sobol Shapiro LLP

12 11 West Jefferson Street, Suite 1000

13 Phoenix, AZ 85033

14 Dated: November 4 2022

15 MARK BRNOVICH
16 Attorney General

17 By: 

18 Matthew du Mee (AZ Bar No. 028468)

19 Joshua Whitaker (AZ Bar No. 032724)

20 Assistant Attorneys General

21 Consumer Protection & Advocacy Section

22 Office of the Arizona Attorney General

23 2005 N. Central Avenue, Suite 100

24 Phoenix, Arizona 85004

1 COUNSEL FOR DEFENDANTS MERCEDES-BENZ USA, LLC, and DAIMLER
2 AKTIENGESELLSCHAFT

3 Dated: November 4, 2022

4 By: 

5 Troy M. Yoshino (*Pro Hac Vice*)

6 troy.yoshino@squirepb.com

7 **SQUIRE PATTON BOGGS (US) LLP**

8 275 Battery Street, Suite 2600

9 San Francisco, CA 94111

Telephone: (415) 743-2441

Facsimile: (415) 989-0932

10 Brian A. Cabianca (AZ Bar No. 016410)

11 brian.cabianca@squirepb.com

12 David S. Norris (AZ Bar No. 034309)

13 david.norris@squirepb.com

14 **SQUIRE PATTON BOGGS (US) LLP**

15 1 E. Washington Street, Suite 2700

16 Phoenix, AZ 85004

Telephone: (602) 528-4000

Facsimile: (602) 253-8129

17
18
19 By: 

20 Daniel W. Nelson (*Pro Hac Vice*)

21 David Fotouhi (*Pro Hac Vice*)

22 dfotouhi@gibsondunn.com

23 **GIBSON, DUNN & CRUTCHER LLP**

24 1050 Connecticut Avenue, N.W.

25 Washington, D.C. 20036-5306

26 Telephone: (202) 955-8500

27 Facsimile: (202) 530-4254

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APPENDIX A

Retention and Operation of Claims Administrator and Claims Process

1.1. The State shall take steps to procure a Claims Administrator. The Claims Administrator so procured shall be responsible for the following administration activities:

(a) Taking possession and custodial control of the restitution amount that is set aside for payments to consumers pursuant to Section 3.1(a) of the Consent Judgment;

(b) Obtaining a list of Eligible Consumers from the appropriate state agencies or departments and other relevant third parties, as well as current address information for Eligible Consumers.

(c) Sending out notifications to Eligible Consumers, explaining that Eligible Consumers are eligible to receive up to \$625 in connection with the resolution of this matter, in addition to any sums such consumers already may have received or may be entitled to receive in connection with the Subject Vehicles as a result of other legal actions or resolution of claims;

(d) Compiling and verifying claim forms returned by Eligible Consumers;

(e) Sending a check, consistent with Section 3.1(a) of the Consent Judgment, along with a payment letter, to each Eligible Consumer who has properly returned a timely submitted claim form;

(f) After the pertinent time for cashing all issued checks has expired (pursuant to the instructions in each payment letter), or upon notification by the State, through the Office of the Arizona Attorney General, that its reasonable efforts to reach all Eligible Consumers have been completed, whichever comes later, the Claims Administrator will send any remaining custodial funds to the State pursuant to Section 3.1(c) of the Consent Judgment.

1.2. The State retains the right to investigate whether any returned claim forms were not in fact from Eligible Consumers and to deny consumer payments accordingly if it concludes, in its exercise of good faith based upon the facts presented, that a claim form is not from an Eligible Consumer.

1.3. As to any claim made by, or on behalf of, an Eligible Consumer against the Mercedes Defendants concerning the Covered Conduct, the Mercedes Defendants shall be entitled to assert a damages offset in the amount of any payment provided to that Eligible Consumer pursuant to this Consent Judgment. This provision in no way limits payments made or anticipated as part of the separate and additional consumer claims process in *In re Mercedes-Benz Emissions Litigation*, Case No. 2:16-cv-881 (D.N.J.).

1.4. Upon reasonable request, the Claims Administrator shall provide the Mercedes Defendants with (a) the names of Eligible Consumers to whom a notification was sent, (b) evidence of Eligible Consumers who received payment pursuant to this Consent Judgment (e.g., as may be necessary to prove offsets), and (c) the names of persons whose claim forms were denied pursuant to Section 1.2 of this Appendix.

1 1.5. It is the intention of the Parties that the State will assume full control of the claims process
2 described in this Consent Judgment, including the obligation to pay the Claims Administrator, and that
3 the Mercedes Defendants shall have no obligations with respect to the Claims Administrator or claims
4 process. Neither the State nor any third party shall be entitled to assert claims against the Mercedes
5 Defendants arising out of the claims process described in this Consent Judgment.
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1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 MATTHEW DU MEE (BAR No. 028468)
4 CONSUMER LITIGATION UNIT CHIEF COUNSEL
JOSHUA WHITAKER (BAR No. 032724)
5 SENIOR LITIGATION COUNSEL
6 OFFICE OF THE ATTORNEY GENERAL
2005 North Central Avenue
7 Phoenix, AZ 85004-1592
8 Telephone: (602) 542-3725
Facsimile: (602) 542-4377
9 Email: consumer@azag.gov

10 [Additional Counsel on Signature Page]

11 *Attorneys for Plaintiff State of Arizona*

13 **SUPERIOR COURT OF ARIZONA**
14 **IN MARICOPA COUNTY**

16 STATE OF ARIZONA, *ex rel.* MARK
17 BRNOVICH, Attorney General,

18 Plaintiff,

19 v.

20
21 MERCEDES-BENZ USA, LLC, a Delaware
22 limited liability company; DAIMLER
AKTIENGESELLSCHAFT, a foreign
23 corporation; ROBERT BOSCH GMBH, a
24 corporation organized under the laws of
Germany; and ROBERT BOSCH LLC, a
25 Delaware limited liability company,

26 Defendants.

Case No.: CV2019-000792

**CONSENT JUDGMENT AS TO BOSCH
DEFENDANTS**

(Assigned to the Hon. Daniel Martin)

1 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a
2 Complaint and a First Amended Complaint alleging violations of the Arizona Consumer Fraud
3 Act, A.R.S. §§ 44-1521 to -1534 (the “CFA”). The defendants named in the First Amended
4 Complaint are Mercedes-Benz USA, LLC and Daimler Aktiengesellschaft (collectively the
5 “Mercedes Defendants”) and Robert Bosch GmbH (“Bosch GmbH”) and Robert Bosch LLC
6 (“Bosch LLC” and collectively with Bosch GmbH, the “Bosch Defendants”). This Consent
7 Judgment pertains to Bosch LLC only.

8 Bosch LLC agrees to the jurisdiction of this Court over the subject matter and parties for
9 the limited purposes of entering and enforcing this Consent Judgment only. Robert Bosch LLC
10 has waived service of the First Amended Complaint. Bosch LLC waives any right to trial in
11 this matter for the limited purposes of entering and enforcing this Consent Judgment only.

12 Bosch LLC has consented and stipulated to entry of this Consent Judgment to
13 compromise and settle claims, and without admission by Bosch LLC of any wrongdoing or
14 admission of any violation of law, including those alleged in the First Amended Complaint.

15 **PARTIES**

- 16 1. The State is authorized to bring this action under the CFA.
- 17 2. Robert Bosch LLC is a Delaware limited liability company.
- 18 3. This Court has jurisdiction over the First Amended Complaint and the parties for
19 the limited purposes of entering this Consent Judgment and any orders hereafter appropriate
20 pursuant to A.R.S. § 44-1528 and this Consent Judgment only.
- 21 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401 for the purposes
22 of this Consent Judgment only.

23 **STATE’S ALLEGATIONS**

- 24 5. The State alleges that the Bosch Defendants knowingly participated in a scheme
25 to violate the CFA. More detail is in the First Amended Complaint.
- 26 6. The State alleges that the Bosch Defendants developed, manufactured, marketed,
27 tested, and sold an electronic diesel control (“EDC”) that allowed the Mercedes Defendants to
28

1 manipulate emissions controls in real world driving. More detail is in the State's First
2 Amended Complaint.

3 7. The State alleges that the Bosch Defendants violated the CFA by engaging in or
4 directing others to engage in the actions described above and in the First Amended Complaint.

5 8. The State alleges that the Bosch Defendants acted in the manner described in
6 A.R.S. § 44-1531(B), while engaging in the acts, practices and conduct described above and in
7 the First Amended Complaint.

8 9. The State alleges that, pursuant to the CFA, the Bosch Defendants' violations
9 entitle the State to relief necessary to prevent the unlawful acts and practices described in this
10 Consent Judgment and to remedy the consequences of past unlawful practices.

11 **NON-ADMISSION**

12 10. Bosch LLC's agreement to entry of this Consent Judgment is not an admission of
13 liability or of any facts alleged in the Consent Judgment or in the First Amended Complaint.
14 Bosch LLC is entering into this Consent Judgment solely for the purpose of settlement, and
15 nothing contained herein may be taken as or construed to be an admission, concession, finding,
16 or conclusion of any violation of law, rule, or regulation, or of any other matter of fact or law,
17 or of any liability or wrongdoing, all of which Bosch LLC expressly denies.

18 **ORDER**

19 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

20 **Definitions**

21 11. For the purposes of this Consent Judgment, the following terms shall have the
22 meanings set forth below or in the portion of the Consent Judgment in which the term is first
23 defined:

- 24 a. "Affected Mercedes Vehicles" has the same meaning as that term in the
25 Complaint and the First Amended Complaint in this action.
- 26 b. "Released Defendant Party" shall mean the Bosch Defendants, their affiliates, and
27 any of the Bosch Defendants' or their affiliates' former, present or future owners,
28 shareholders, members, directors, officers, members of the management and

1 supervisory boards, employees, attorneys, parent companies, subsidiaries,
2 predecessors, successors, dealers, agents, assigns and representatives.

3 c. “Covered Conduct” shall mean any and all acts or omissions with respect to the
4 Affected Mercedes Vehicles and BlueTEC diesel technology, including all
5 communications, advertisements, or promotions that occurred up to and including
6 the Effective Date of this Consent Judgment, relating to the marketing,
7 advertising, distribution, selling, updating, maintaining, or leasing of any
8 Affected Mercedes Vehicle or BlueTEC diesel technology, including as clean
9 diesel, clean, low emissions, green, environmentally friendly (or similar such
10 terms), and/or compliant with state or federal law (including any applicable
11 emissions standards), or without disclosing the design, installation or presence of
12 a Defeat Device¹, and also including any involvement by any Released Defendant
13 Party in providing, modifying, developing, calibrating, and/or engineering the
14 emission control systems for the Affected Mercedes Vehicles.

15 d. The “Effective Date” of this Consent Judgment is the date it is entered by the
16 Court.
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20 ¹ The term “Defeat Device” means (a) “an auxiliary emission control device
21 (AECD) that reduces the effectiveness of the emission control system under conditions which
22 may reasonably be expected to be encountered in normal vehicle operation and use, unless: (1)
23 Such conditions are substantially included in the Federal emission test procedure; (2) The need
24 for the AECD is justified in terms of protecting the vehicle against damage or accident; (3) The
25 AECD does not go beyond the requirements of engine starting; or (4) The AECD applies only
26 for emergency vehicles[.]” 40 C.F.R. § 86.1803-01, or (b) “any part or component intended for
27 use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of
28 the part or component is to bypass, defeat, or render inoperative any device or element of
design installed on or in a motor vehicle or motor vehicle engine in compliance with [the
Emission Standards for Moving Sources section of the Clean Air Act], and where the person
knows or should know that such part or component is being offered for sale or installed for
such use or put to such use,” 42 U.S.C. § 7522(a)(3)(B).

1 **Payment Provisions**

2 12. Pursuant to A.R.S. § 44-1531(A), Bosch LLC, itself or from another Bosch Entity
3 on Bosch LLC's behalf, shall pay to the Attorney General the amount of \$525,000 in civil
4 penalties to be deposited into the Consumer Protection-Consumer Fraud Revolving Fund
5 pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein (the "Monetary
6 Payment").

7 13. Bosch LLC shall make the Monetary Payment via an electronic funds transfer as
8 directed by the State within thirty (30) calendar days of the later of (1) the State providing any
9 information requested by Bosch LLC to effectuate such payment (e.g. wiring details); or (2) the
10 Effective Date.

11 14. The State agrees that the Bosch Defendants shall have no responsibility
12 whatsoever regarding the distribution of the Monetary Payment among the State's Counsel, the
13 State, and/or to any other expert, consultant, or other individual or entity.

14 **Consequences of Material Breach**

15 15. In the event of a material breach of this Consent Judgment by Bosch LLC, in
16 addition to all other remedies available under Arizona law and the penalties specifically
17 provided under A.R.S. § 44-1532, the State may, in its sole discretion, reopen proceedings and
18 continue with this case as though this Consent Judgment had not been entered, provided that the
19 State shall return the Monetary Payment to Bosch LLC.

20 **Release and Waiver**

21 16. Immediately upon Bosch LLC making the Monetary Payment in the manner
22 specified herein, the State hereby shall and hereby does fully, finally, irrevocably, and forever
23 release, waive, discharge, relinquish, settle, and acquit the Released Defendant Parties from any
24 and all claims arising out of or in any way related to the Covered Conduct (including, without
25 limitation, consumer-related claims and claims under the CFA; claims for penalties, fines or
26 other monetary payments, including attorney costs or fees; claims for disgorgement of profits;
27 claims for injunctive relief or restitution; claims brought in the State's sovereign enforcement
28 capacity; and claims brought as *parens patriae* on behalf of Arizona citizens); and demands,

1 actions, or causes of action, that it may have, purport to have, or may hereafter have against any
2 Released Defendant Party arising out of or in any way related to the Covered Conduct
3 (hereinafter, "Released State Claims"). In addition, within seven (7) days of Bosch LLC
4 making the Monetary Payment in the manner specified herein, the State shall file a stipulation
5 of dismissal with prejudice of its claims against Bosch GmbH in this action.

6 17. Upon the release in the preceding paragraph becoming effective, the Bosch
7 Defendants shall and hereby do fully, finally, irrevocably, and forever release, waive,
8 discharge, relinquish, settle and acquit the State from any and all claims, demands, actions, or
9 causes of action, that they may have, purport to have, or may hereafter have against the State
10 arising out of or in any way related to the Covered Conduct (hereinafter, "Released Defendant
11 Claims").

12 18. To ensure that the releases in this section are fully enforced in accordance with
13 their terms, with respect to any and all Released State Claims or Released Defendant Claims,
14 the Parties stipulate and agree as follows: To the extent any applicable law might otherwise
15 limit a general release to claims that are known or suspected to exist at the time of executing the
16 release, upon the Effective Date, the Parties expressly waive, and each Released Defendant
17 Party and the State shall be deemed to have waived, any and all provisions, rights and benefits
18 conferred by any such law. The Parties acknowledge that the inclusion of any and all claims,
19 including unknown claims, within the scope of Released State Claims and Released Defendant
20 Claims was separately bargained for and was an essential element of this Consent Judgment.

21 19. Notwithstanding the foregoing, neither the Released Defendant Parties nor the
22 State include the Mercedes Defendants and their affiliates.

23 20. Notwithstanding any term of this Consent Judgment, neither the Released State
24 Claims nor the Released Defendant Claims include actions to enforce this Consent Judgment.

25 **General Provisions**

26 21. Nothing in this Consent Judgment will be construed as an approval by the
27 Attorney General, the Court, the State of Arizona, or any agency thereof of the Bosch
28 Defendants' past, present, or future conduct. The Bosch Defendants must not represent or

1 imply that the Attorney General, the Court, the State of Arizona, or any agency thereof has
2 approved or approves of any of the Bosch Defendants' actions or any of the Bosch Defendants'
3 past, present or future business practices relating to the Covered Conduct.

4 22. This Consent Judgment represents the entire agreement between the parties, and
5 there are no representations, agreements, arrangements, or understandings, oral or written,
6 between the parties relating to the subject matter of this Consent Judgment which are not fully
7 expressed herein or attached hereto. Notwithstanding the foregoing, the truthfulness, accuracy,
8 and completeness of representations in a September 27, 2022 email from the State's outside
9 counsel to Bosch LLC's counsel was a material inducement for Bosch LLC to enter into this
10 Consent Judgment.

11 23. If any portion of this Consent Judgment is held invalid by operation of law, the
12 remaining terms thereof will not be affected and will remain in full force and effect.

13 24. Jurisdiction is retained by this Court for the purpose of entertaining an application
14 for the enforcement of this Consent Judgment.

15 25. This Consent Judgment is the result of a compromise between the parties. Only
16 the State and the Released Defendant Parties may seek enforcement of this Consent Judgment.
17 Nothing herein shall create or give rise to a private right of action of any kind or create any
18 right in a non-party to enforce any aspect of this Consent Judgment or claim any legal or
19 equitable injury for a violation of this Consent Judgment or use this Consent Judgment as
20 evidence against Bosch Entities in any proceeding.

21 26. This Consent Judgment does not limit the rights of any private party to pursue
22 any remedies allowed by law.

23 27. This Consent Judgment may be executed by the parties in counterparts and be
24 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an
25 original counterpart hereof, all of which together will constitute one and the same document.
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28. This Consent Judgment resolves all outstanding claims expressly identified in the First Amended Complaint as to the Bosch Defendants. Finding no just reason for delay, the Court enters this final judgment as to the Bosch Defendants pursuant to Ariz. R. Civ. P. 54(b).

DATED this _____ day of November, 2022.

JUDGE OF THE SUPERIOR COURT

EXECUTED on 11/14, 2022
Robert Bosch LLC



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I, Mike.Mansuetti Date: 2022.11.15 08:05:19 -05'00'

[Name], [Title]



Erik Dyhrkopp

APPROVED AS TO FORM AND CONTENT:

MARK BRNOVICH
Attorney General

Cleary Gottlieb Steen &
Hamilton LLP

By:



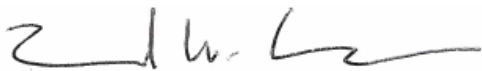
Matthew du Mee
Josh Whitaker
Assistant Attorneys General
Attorneys for the State of Arizona



Jennifer Kennedy Park
Abena Mainoo
Charity E. Lee
Attorneys for Robert Bosch LLC

Hagens Berman Sobol Shapiro LLP

By:



Steve W. Berman (*Pro Hac Vice*)
Robert B. Carey (SBA #011186)
Leonard W. Aragon (SBA #020977)
Rachel E. Fitzpatrick (SBA #029125)
Attorneys for the State of Arizona