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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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Glenhill Capital LP; Glenhill Capital Overseas :  
Master Fund LP; Glenhill Concentrated Fund LP; :  
Glenview Capital Partners, L.P.; Glenview :  
Institutional Partners, L.P.; Glenview Capital :  
Master Fund, Ltd.; GCM Little Arbor Partners, :  
L.P.; GCM Little Arbor Institutional Partners, L.P.; :  
GCM Little Arbor Master Fund, Ltd.; GCM :  
Opportunity Fund, L.P.; Glenview Capital :  
Opportunity Fund, L.P.; Glenview Offshore :  
Opportunity Master Fund, Ltd.; Greenlight Capital, :  
L.P.; Greenlight Capital Qualified, L.P.; Greenlight :  
Capital Offshore Partners; Greenlight Reinsurance, :  
Ltd.; Royal Capital Value Fund, LP; Royal Capital :  
Value Fund (QP), LP; RoyalCap Value Fund, Ltd.; :  
RoyalCap Value Fund II, Ltd.; Tiger Global, L.P.; :  
Tiger Global II, L.P.; Tiger Global, Ltd., :  
:

**Index No.** \_\_\_\_\_

**COMPLAINT**

Plaintiffs, :

-versus- :

Porsche Automobil Holding SE, f/k/a Dr. Ing. h.c. F. :  
Porsche AG :

Defendant. :

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percentage (both by number and by capital invested) of Plaintiffs' investors are located in New York.

3. Plaintiffs invest in companies around the world that operate in a wide range of industries, including the automotive industry. Sometimes, Plaintiffs take “short” positions in companies. Generally speaking, there are two ways to short sell securities. One way is to borrow the securities from a broker. This method creates an obligation to return the same number of borrowed shares at a later date. The short seller then sells the borrowed securities for the prevailing market price. At some later date, the short seller buys replacement securities in the market and returns them to the share lender. Another way to short sell securities is with a securities-based swap agreement. A “swap agreement,” in this context, is “a contract ... the material terms of which ... are subject to individual negotiation, and that ... provides ... for the exchange ... of one or more payments based on the value or level of one or more ... securities ... and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest[.]” 15 U.S.C. § 78c note. A “security-based swap agreement” is “a swap agreement ... of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.” 15 U.S.C. § 78c.

4. Whether a short seller borrows shares and sells them, or instead enters into the short side of a securities-based swap agreement referencing those

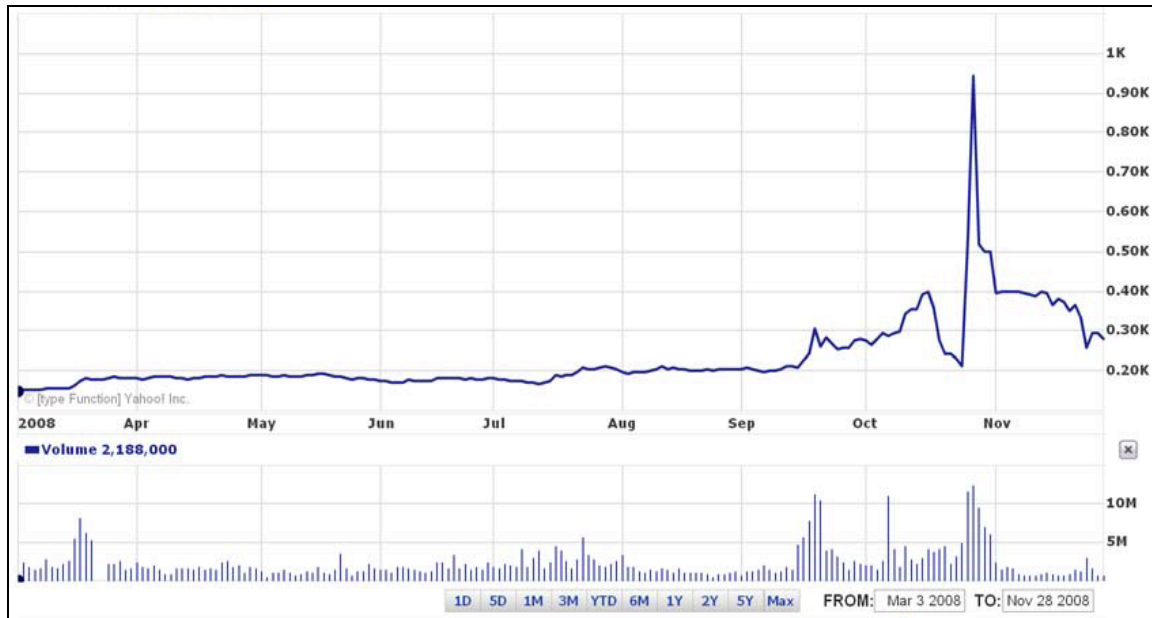
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shares, the short seller makes money if the security's price declines and loses money if the security's price increases.

5. During 2008, VW shares appeared increasingly overvalued relative to the shares of other publicly traded automobile companies. By late 2008, Plaintiffs had short positions in VW shares. Unknown to Plaintiffs, however, Porsche, at the direction of Porsche's former Chief Executive Officer Wendelin Wiedeking ("Wiedeking") and former Vice President of Finance Holger P. Haerter ("Haerter"), was cornering the market in VW shares. Porsche lured the Plaintiffs into a trap, making Plaintiffs believe VW shares were overvalued while hiding from Plaintiffs the risk of a massive short squeeze that would send the price skyrocketing several hundred percent.

6. Porsche sprung the trap on October 26, 2008. That day, Porsche revealed the vast extent of its holdings of VW shares and lifted the veil on its plan to take over VW. Porsche's intended consequence of its disclosure was a short squeeze in which the price of VW shares shot upwards. The price increase protected the value of Porsche's huge position in VW shares, the value of which, as described further below, had been slipping with prices in stock markets around the world as the financial crisis of 2008 picked up speed. As a result of Porsche's short squeeze, Porsche made massive profits at the expense of Plaintiffs, who lost tremendous amounts of money covering short positions at artificially high prices.

7. A chart representing the closing price of VW shares from March through November, 2008, demonstrates the short squeeze's dramatic effect (the 'dip' before the spike drove Porsche to trigger the short squeeze):



8. The story of Porsche's fraud and manipulation begins no later than early 2008. On February 25, 2008, Porsche representatives held a secret meeting in Berlin with a high-ranking officer of the German State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. (Lower Saxony owned slightly more than 20% of VW's shares at all relevant times.) At the meeting, according to German press accounts that surfaced more than a year later on May 8, 2009 in *WirtschaftsWoche*, a German weekly magazine, a Porsche representative with knowledge of Porsche's plans disclosed to Lower Saxony Porsche's intention to implement a "domination agreement" with VW.



statements were false, since Porsche had decided to take over VW at least as early as February 2008, and as early as mid-2008 had achieved control of nearly 75% of VW shares through outright positions and call options as alleged in more detail below. After the short squeeze, Gaube publicly admitted that Porsche had intentionally kept its true strategy secret: “We are a very small company buying into a very big company. That is not something you can afford if everybody is able to read your strategy in the newspaper.” In an interview published on May 12, 2009, “Demonstration of Power in Sardinia,” *Welt Online*, VW chairman and Porsche shareholder Ferdinand Piech conceded that Porsche had decided to increase its stake in VW up to 75% as early as mid-year 2008. Piech’s admission demonstrates that Porsche lied on September 18, 2008, when it told an online magazine that a domination agreement with VW was “totally unrealistic.”

12. The second way that Porsche hid its plan was by manipulating the market in VW shares. These manipulative actions, among other things, demonstrate Porsche’s culpable intent when issuing its false denials. Porsche concealed its plan by acquiring much of its position in VW shares through options contracts it entered into in 2007 and 2008. Porsche used these contracts to ambush the market. Two features of Porsche’s options trades made them manipulative. The first feature that made Porsche’s options trades manipulative was that Porsche disguised physical options contracts—contracts that it should have disclosed but did not—as cash-settled options contracts that did not have the same disclosure requirements. That Porsche did not really consider its options contracts to be cash

settled is clear from what Porsche said when it revealed the truth to the market on October 26, 2008. Porsche admitted that day that its options actually reflected part of its “74.1%” control and, lest anyone doubt Porsche’s control over the shares represented by the option contracts, minimized the cash settled nature of the contracts by calling them the “so called” cash-settled options. Porsche used the options as a means to acquire control over VW shares, not as a means to benefit, in cash, from a rise in the price of VW shares. Since Porsche had the ability and intention to convert these options into actual share ownership, it should have disclosed its position under applicable law, but it did not do so.

13. The second feature that made Porsche’s options trades manipulative was that Porsche methodically parceled out its option contracts to evade counterparty-disclosure requirements. Porsche knew that the counterparties to its options contracts would purchase VW shares to hedge the options. But if any one of Porsche’s counterparties acquired too high a percentage of VW shares as hedges, that counterparty would have its own legal obligation to disclose its ownership of those hedging shares, threatening indirectly to expose Porsche’s accumulation of control over VW shares. Any one counterparty’s disclosure would have alerted Plaintiffs that someone had entered into large derivatives positions with that counterparty. Plaintiffs then would have been able to infer that a takeover of VW was in progress, as it would be clear that someone was acquiring control of VW shares using options contracts purchased from the disclosing counterparty.



Capital LP, Glenhill Capital Overseas Master Fund LP, and Glenhill Concentrated Fund LP decide what positions to take in the market. During the telephone call, Gaube told Goodman that Porsche wanted to get a majority ownership in VW and, toward that goal, had used options to lock up 20% of VW shares, in addition to the approximately 31% it already owned outright. Gaube told Goodman that Porsche had no intention of increasing its stake in VW to 75%.

- b. On October 20, 2008, Gaube spoke by telephone with David Einhorn, who was in New York. Upon information and belief, Gaube knew Einhorn was in New York at the time of the telephone call. Einhorn had final authority to make all trading decisions for Plaintiffs Greenlight Capital, L.P., Greenlight Capital Qualified, L.P., Greenlight Capital Offshore Partners, and Greenlight Reinsurance, Ltd. Gaube told Einhorn that Porsche was not going to 75%, that “going to 75% is not on the agenda,” and specifically denied controlling almost all the float of VW shares. Gaube also expressly disavowed the speculation of one analyst, Max Warburton of Alliance Bernstein, who, on October 17, 2008, had offered in the form of a Bernstein Research analyst report a seemingly speculative argument that Porsche might be accumulating additional control of VW shares. Gaube claimed to have “talked to a

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number of investors and analysts” to refute Warburton’s theory, which Gaube called “complete bulls\*\*t.” Gaube implied that Porsche viewed VW shares as overvalued at current prices, telling Einhorn that Porsche did not want “to pay ridiculous prices for VW shares.”

- c. On or about October 20, 2008, Gaube spoke by telephone with Neeraj Chandra, who was in New York. Upon information and belief, Gaube knew Chandra was in New York at the time of the telephone call. Chandra was an analyst responsible for helping Plaintiffs Tiger Global, L.P., Tiger Global II, L.P., and Tiger Global, Ltd. decide what positions to take in the market. Gaube told Chandra that Porsche had options that would allow it to take its stake in VW shares to 50–55%, but told Chandra that the accumulation would stop there.
- d. On October 22, 2008, Gaube spoke by telephone with Larry Robbins, who was in New York. Upon information and belief, Gaube knew that Robbins was in New York at the time of the telephone call. Robbins had final authority to make all trading decisions for Plaintiffs Glenview Capital Partners, L.P., Glenview Institutional Partners, L.P., Glenview Capital Master Fund, Ltd., GCM Little Arbor Partners, L.P., GCM Little Arbor Institutional Partners, L.P., GCM Little Arbor Master Fund, Ltd., GCM

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Opportunity Fund, L.P., Glenview Capital Opportunity Fund, L.P., and Glenview Offshore Opportunity Master Fund, Ltd. During the telephone call, Gaube told Robbins that Porsche did not intend to go much above 51% ownership in VW and did not intend to go to 75%.

- e. Gaube had additional conversations with U.S.-based investment managers that played a substantial role in facilitating Porsche's fraud and manipulation, including with Viking Global Equities LP, Viking Global Equities II LP, and VGE III Portfolio Ltd. *See* Complaint, Index No. 650435/2011.

16. Porsche's fraud had an effect on the price at which Plaintiffs entered into short positions in VW shares. By hiding both the true extent of Porsche's control over VW shares and its intention to acquire additional shares up until the October 26 announcement, Porsche led Plaintiffs and other investors to believe, incorrectly, that the natural interplay of supply and demand determined the then-current prices of VW shares. In fact, both the supply of and demand for VW shares were skewed by Porsche's fraud.

17. The demand for VW shares was in truth greater than market prices indicated, because Porsche wrongfully concealed its efforts to corner the market in VW shares during 2008. At the same time, the supply of VW shares was in truth less than market prices indicated, because Porsche's fraud hid the extent to which Porsche had cornered the market in the free float of VW shares. By hiding the extent to which Porsche had completely cornered the market in VW shares – an

effort Porsche began no later than March 2008 and accomplished as early as mid-2008 – Porsche induced Plaintiffs to take short positions from March 2008 to October 26, 2008. Based on the information available to them, Plaintiffs believed that the price of VW shares was too high, but Porsche’s carefully orchestrated fraud and manipulation had the effect of keeping the price of VW shares lower than would have existed had all of the facts been made public, and exposed Plaintiffs to the risk of a massive short squeeze, a risk that materialized in late October 2008. Had Plaintiffs been aware that Porsche intended to take over VW and that Porsche had cornered the market in VW shares to do so (*i.e.*, that actual demand for VW shares was higher than it appeared), the price of VW shares would have been much higher, the risk in shorting VW shares would have been fully apparent, and Plaintiffs would not have shorted VW shares.

18. On October 26, 2008, just days after Gaube had been giving assurances by telephone to New York-based investment managers that Porsche did not intend to go above a simple majority, Porsche set the short squeeze in motion by revealing the truth. Porsche said it had become “apparent that there were considerably more short positions in the market than expected.” This statement was a pretext. Porsche had long known (at least since the beginning of March 2008) that investors had been shorting VW shares because Porsche knew it could not have achieved control of 75% of VW’s shares without inducing Plaintiffs and other market participants to sell the stock short.

19. Porsche's secret plan was to control 75% of VW shares. But Porsche faced a mathematical problem: more than 25% of VW shares were controlled by shareholders who would not or, effectively, could not sell their VW shares to Porsche. The largest of the shareholders who would not sell their VW shares to Porsche was the State of Lower Saxony, which controlled 20% of VW shares. There were other investors, notably index funds, who were required to hold VW shares to track indices that included VW shares. Upon information and belief, based on investigation of publicly and privately available sources, those investors owned more than 5% of VW shares.

20. Thus, as a practical matter, it was impossible for Porsche to acquire control of 75% of VW shares without short sellers. Short sellers could increase the supply of VW shares by borrowing shares to sell. Porsche induced the Plaintiffs to borrow VW shares and short them, undertaking an obligation to repurchase the shares and return them at a future date. Porsche then bought call options from its counterparties, and Porsche's counterparties bought the shares that Plaintiffs' were selling short to hedge the call options they sold Porsche. The shares hedging all of the call options that Porsche's counterparties sold to Porsche sat available for delivery to Porsche on exercise. Put simply, Porsche targeted short sellers in order to amass a position in VW shares that it could not have amassed on the open market without the Plaintiffs' short selling.

21. As a result, by October 26, 2008, almost nobody owned VW shares except for Porsche, Lower Saxony, index-tracking funds that were required to hold



the value of VW shares, and the price of VW shares had begun to decline in the week before the massive short squeeze.

24. Porsche had acquired control over virtually the entire free float of VW shares by entering into derivatives contracts. On a conference call with Porsche investors on October 2, 2007, Gaube referred to Haerter as the “mastermind” behind all options strategies related to the VW ownership stake. Haerter, according to Gaube, was a specialist in the derivatives markets and in the mathematics of options and other derivatives.

25. Porsche used a strategy combining “call” options and “put” options. Call options increase in value as the price of the underlying stock – here, the price of VW shares – rises. Because Porsche’s counterparties would hedge the call options by buying VW shares, and would give those shares to Porsche at settlement of the call options, it was the call option part of Porsche’s strategy that led most directly to control of the VW shares. But call options cost money, and Porsche did not have the cash to buy all of the call options it needed to obtain control of VW. Instead, Porsche paid for its call options by selling put options. Put options obligated Porsche to pay its put option counterparties the difference between the “strike” price of the put option and the actual price of VW shares, if the put strike price was higher than the actual price. For example, if Porsche had previously sold a put option on VW shares to a counterparty with a strike price of \$220 and the price of VW shares was at \$270, Porsche would not owe the counterparty anything because the strike price of \$220 was below the share price of \$270. But if the price of VW shares fell below

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! 220, to, say, ! 210, then Porsche would owe the counterparty ! 10, the difference between ! 220 and ! 210. In general, if the price of VW shares dropped below the put strike price, then Porsche had a liability to its counterparties for that difference, and as the price of VW shares fell, that liability increased.

26. Selling put options was the only way that Porsche could afford to amass the huge position in call options that it announced on October 26, 2008. In essence, Porsche sold put options – which obligated it to pay money if the price of VW shares declined – in exchange for call options by which Porsche accumulated control of VW shares if the price increased. This strategy would work so long – and only so long – as the price of VW shares kept rising. A rising share price generated gains on the value of its call options (what counterparties owed Porsche) and reduced Porsche’s liabilities on the value of the put options (what Porsche owed counterparties).

27. For months, Porsche remained both relatively unconcerned about its liability on its put contracts and assured of its control over VW shares because the price of VW shares kept increasing. For example, on March 3, 2008, VW shares closed at just under ! 150. On August 8, 2008, VW shares closed just over ! 200. On September 18, 2008, VW shares closed over ! 300 for the first time. The average closing price of VW shares from October 1, 2008 through October 17, 2008 (a Friday), was over ! 321. The viability of Porsche’s strategy depended on VW’s share price rising over time. The rising VW share price induced additional short selling and reduced Porsche’s liabilities on its put options. At the same time, Porsche could

not afford for the VW share price to jump so high that the price would accurately reflect Porsche's desire to acquire more shares and the risk of a short squeeze. In sum, Porsche's strategy involved a constant balancing act, an act that Porsche managed to pull off through mid-October 2008 by carefully feeding inaccurate information to the marketplace.

28. But on Monday, October 20, 2008, Porsche's strategy began to unravel. The price of VW shares finally began to fall with the rest of the world's stock markets. VW shares closed at !277 that day, more than 22% below its close the previous Friday. By Friday, October 24, 2008, the closing price of VW shares had fallen to just under !211, or 34% below the average closing price of !321 from October 1, 2008, through October 17, 2008, and more than 40% below the closing price of !358 on Friday, October 17, 2008. The decline in the price threatened to bankrupt Porsche, because Porsche's increasing liability on its put options would overwhelm the falling value of Porsche's call options. Porsche had to increase the price of VW and chose to do so by setting the short squeeze in motion.

29. On October 26, 2008, a Sunday, Porsche revealed its true control: it said that "[a]t the end of last week, Porsche SE held 42.6 percent of the Volkswagen ordinary shares and in addition 31.5 percent in so called cash settled options relating to Volkswagen ordinary shares to hedge against price risks, representing a total of 74.1%." Never before had Porsche disclosed the true extent of its options, or admitted that the options should be added to the shares it owned outright to calculate its "total" stake. Porsche's representation of a "total" of "74.1%" confirms

that Porsche viewed its options and its understandings with its counterparties as giving it control of the VW shares underlying the options. Porsche also admitted it aimed “to increase to 75% in 2009, paving the way to a domination agreement,” putting the lie to its statement just weeks earlier that domination was “totally unrealistic.”

30. The *Wall Street Journal* reported on events immediately following Porsche’s October 26, 2008 announcement:

When financial markets opened Monday, October 27, all hell broke loose. Funds that had borrowed VW shares and sold them, expecting no takeover offer and betting the stock would decline, raced to purchase shares to unwind the bets. There weren’t enough to go around. Part of the reason is that underwriters of cash-settled options typically hedge their risk by owning the shares of the company involved. The shares they owned, combined with those Porsche had acquired, added up to 74.1%, and Lower Saxony state owned 20.1%. The result was that while some 12.8% of VW shares were on loan, mostly to short sellers, those that for practical purposes were in circulation amounted to only 6% of VW shares. As hedge funds fought for the remaining VW shares, they drove the stock’s price ever higher—deepening their losses. At the height of the short squeeze on Oct. 28, VW stock briefly topped 1,000 Euros, nearly five times as high as on Oct. 24, making VW the biggest company by stock-market value for a few hours.

Mike Esterl and Edward Taylor, “As Giant Rivals Stall, Porsche Engineers a Financial Windfall,” *Wall Street Journal*, A1, November 8, 2008.

31. On Monday, October 27, 2008, VW shares opened at ! 350 per share, up 66% from the close on Friday, October 24, 2008. During the week of October 27-31, 2008, VW shares traded between a low of ! 324.99 (54% above the close on Friday,

October 24, 2008) to a high of ! 1,005.01 (477% above the close on Friday, October 24, 2008), and, for a time, Volkswagen was the most valuable corporation on the planet by market capitalization given the short squeeze prices prevailing in the market. Plaintiffs were forced to cover their short positions at prices that spiraled higher and higher. Porsche was no mere bystander while this happened. Porsche released billions of Euros worth of its VW shares into the short squeeze for its own profit. By releasing some of its own positions, Porsche was able to skim off outrageous and illegal profits while still maintaining the bulk of its position for the takeover of VW. Upon information and belief, Porsche also reduced its exposure to the put options it had sold.

32. As Plaintiffs weathered the short squeeze in the last days of October and into November 2008, a Porsche representative mocked them, saying, “A couple of gamblers on the market got their odds wrong. And now they are pointing a finger at us.” But Porsche stacked the deck and loaded the dice. No Plaintiff would have taken a short position in VW shares short had it known that Porsche was cornering the market in VW shares (1) with false denials of its intent to take over VW and (2) by engaging in a series of manipulative derivatives trades to hide the extent to which Porsche controlled VW shares.

## PARTIES

### **Plaintiffs**

33. Glenhill Capital LP is a Delaware limited partnership with its principal office at 156 West 56th Street, 17th Floor, New York, New York 10019. Glenhill Capital Management LLC in New York, New York, at all relevant times, managed Glenhill Capital LP, and made its VW-related investment decisions.

34. Glenhill Capital Overseas Master Fund LP is a Cayman Islands limited partnership with its principal address at Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands. Glenhill Capital Management LLC in New York, New York, at all relevant times, managed Glenhill Capital Overseas Master Fund LP, and made its VW-related investment decisions.

35. Glenhill Concentrated Fund L.P. is a Delaware limited partnership with its principal office at 156 West 56th Street, 17th Floor, New York, New York 10019. Glenhill Capital Management LLC in New York, New York, at all relevant times, managed Glenhill Concentrated Fund, L.P., and made its VW-related investment decisions.

36. Any one or more of Glenhill Capital LP, Glenhill Capital Overseas Master Fund LP, and Glenhill Concentrated Fund L.P. are sometimes referred to as the “Glenhill Plaintiffs.”

37. Glenview Capital Partners, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153.

Glenview Capital Management, LLC in New York, New York, at all relevant times, managed Glenview Capital Partners, L.P., and made its VW-related investment decisions.

38. Glenview Institutional Partners, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed Glenview Institutional Partners, L.P., and made its VW-related investment decisions.

39. Glenview Capital Master Fund, Ltd. is a Cayman Islands company with its principal address at Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed Glenview Capital Master Fund, Ltd., and made its VW-related investment decisions.

40. GCM Little Arbor Partners, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed GCM Little Arbor Partners, L.P., and made its VW-related investment decisions.

41. GCM Little Arbor Institutional Partners, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153. Glenview Capital Management, LLC in New York, New York, at all

relevant times, managed GCM Little Arbor Institutional Partners, L.P., and made its VW-related investment decisions.

42. GCM Little Arbor Master Fund, Ltd. is a Cayman Islands company with its principal address at Goldman Sachs (Cayman) Trust Limited, Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed GCM Little Arbor Master Fund, Ltd., and made its VW-related investment decisions.

43. GCM Opportunity Fund, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed GCM Opportunity Fund, L.P., and made its VW-related investment decisions.

44. Glenview Capital Opportunity Fund, L.P. is a Delaware limited partnership with its principal office at 767 Fifth Avenue, 44<sup>th</sup> Floor, New York, New York 10153. Glenview Capital Management, LLC in New York, New York, at all relevant times, managed Glenview Capital Opportunity Fund, L.P., and made its VW-related investment decisions.

45. Glenview Offshore Opportunity Master Fund, Ltd. is a Cayman Islands company with its principal address at Goldman Sachs (Cayman) Trust Limited, Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands.

Glenview Capital Management, LLC in New York, New York, at all relevant times, managed Glenview Offshore Opportunity Master Fund, Ltd., and made its VW-related investment decisions.

46. Any one or more of Glenview Capital Partners, L.P., Glenview Institutional Partners, L.P., Glenview Capital Master Fund, Ltd., GCM Little Arbor Partners, L.P., GCM Little Arbor Institutional Partners, L.P., GCM Little Arbor Master Fund, Ltd., GCM Opportunity Fund, L.P., Glenview Capital Opportunity Fund, L.P., and Glenview Offshore Opportunity Master Fund, Ltd. are sometimes referred to as the “Glenview Plaintiffs.”

47. Greenlight Capital, L.P. is a Delaware limited partnership with its principal office at 140 East 45<sup>th</sup> Street, 24<sup>th</sup> Floor, New York, New York 10017. Greenlight Capital, LLC, in New York, New York, at all relevant times managed Greenlight Capital, L.P., and made its VW-related investment decisions.

48. Greenlight Capital Qualified, L.P. is a Delaware limited partnership with its principal office at 140 East 45<sup>th</sup> Street, 24<sup>th</sup> Floor, New York, New York 10017. Greenlight Capital, LLC, in New York, New York, at all relevant times managed Greenlight Capital Qualified, L.P., and made its VW-related investment decisions.

49. Greenlight Capital Offshore Partners is a British Virgin Islands partnership with its principal address c/o Citco B.V.I. Limited, P.O. Box 662, Road Town, Tortola, British Virgin Islands. Greenlight Capital Offshore Partners is the successor in interest to Greenlight Capital Offshore, Ltd., a British Virgin Islands

company, that held the relevant VW-related investments. Greenlight Capital, Inc., in New York, New York, at all relevant times managed Greenlight Capital Offshore, Ltd., and made its VW-related investment decisions.

50. Greenlight Reinsurance, Ltd. is a Cayman Islands company with its principal office at 65 Market Street, Suite 1207, Jasmine Court, Camana Bay, P.O. Box 31110, Grand Cayman KY1-1205, Cayman Islands. DME Advisors, LP, at 140 East 45<sup>th</sup> Street, 24<sup>th</sup> Floor, New York, New York 10017, at all relevant times managed Greenlight Reinsurance, Ltd.'s investments, and made its VW-related investment decisions.

51. Any one or more of Greenlight Capital, L.P., Greenlight Capital Qualified, L.P., Greenlight Capital Offshore Partners, and Greenlight Reinsurance, Ltd. are sometimes referred to as the "Greenlight Plaintiffs."

52. Royal Capital Value Fund, LP is a Delaware limited partnership with its principal office at 623 Fifth Ave., 24<sup>th</sup> Floor, New York, New York. Royal Capital Management LLC in New York, New York, an SEC-registered investment adviser, at all relevant times, managed Royal Capital Value Fund, LP and made its VW-related investment decisions.

53. Royal Capital Value Fund (QP), LP is a Delaware limited partnership with its principal office at 623 Fifth Ave., 24<sup>th</sup> Floor, New York, New York. Royal Capital Management LLC in New York, New York, an SEC-registered investment adviser, at all relevant times, managed Royal Capital Value Fund (QP), LP and made its VW-related investment decisions.

54. RoyalCap Value Fund, Ltd. is a Cayman Islands company with its principal address at Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands. Royal Capital Management LLC in New York, New York, an SEC-registered investment adviser, at all relevant times, managed RoyalCap Value Fund, Ltd. and made its VW-related investment decisions.

55. RoyalCap Value Fund II, Ltd. is a Cayman Islands exempted company with its principal address at Goldman Sachs (Cayman) Trust Limited, P.O. Box 896 KY1-1103, Gardenia Court, Suite 3307, 45 Market Street, Camana Bay, Cayman Islands. Royal Capital Management LLC in New York, New York, an SEC-registered investment adviser, at all relevant times, managed RoyalCap Value Fund II, Ltd. and made its VW-related investment decisions.

56. Any one or more of Royal Capital Value Fund, LP, Royal Capital Value Fund (QP), LP, RoyalCap Value Fund, Ltd., and RoyalCap Value Fund II, Ltd. are sometimes referred to as the “Royal Plaintiffs.”

57. Tiger Global, L.P. is a Delaware limited partnership with its principal office at 101 Park Avenue, 48<sup>th</sup> Floor, New York, New York 10178. Tiger Global Management, LLC, in New York, New York, at all relevant times, managed Tiger Global, L.P. and made its VW-related investment decisions.

58. Tiger Global II, L.P. is a Delaware limited partnership with its principal office at 101 Park Avenue, 48<sup>th</sup> Floor, New York, New York 10178. Tiger

Global Management, LLC, in New York, New York, at all relevant times, managed Tiger Global II, L.P. and made its VW-related investment decisions.

59. Tiger Global, Ltd. is a Cayman Islands company with its principal address at *c/o Citco Fund Services (Curacao) N.V., Kaya Flamboyan 9, P.O. Box 4774, Willemstad, Curacao, Netherlands Antilles*. Tiger Global Management, LLC, in New York, New York, at all relevant times, managed Tiger Global, Ltd. and made its VW-related investment decisions.

60. Any one or more of Tiger Global, L.P., Tiger Global II, L.P., and Tiger Global, Ltd. are sometimes referred to as the “Tiger Plaintiffs.”

**Defendant**

61. Until November 13, 2007, Porsche Automobil Holding SE was known as Dr. Ing. h.c. F. Porsche Aktiengesellschaft. On November 13, 2007, Dr. Ing. h.c. F. Porsche Aktiengesellschaft became a European stock corporation (*Societas Europaea*) and was renamed Porsche Automobil Holding SE.

## JURISDICTION

62. Porsche has waived personal jurisdiction in New York for Plaintiffs' claims for common law fraud. Porsche moved to dismiss Plaintiffs' common law claims when they were pending in federal court in the Southern District of New York, but Porsche did not contest personal jurisdiction. The District Court dismissed Plaintiffs' common law claims without prejudice, since the District Court held that Plaintiffs had no federal cause of action against Porsche.

63. This Court also has jurisdiction over Porsche pursuant to CPLR § 302.

64. Porsche is doing business in New York and is physically present in New York through its corporate affiliates. If a subsidiary is subject to general jurisdiction in New York, its parent is also subject to general jurisdiction in New York where the activities of the parent show a disregard for the separate corporate existence of the subsidiary. Porsche Cars North America, Inc. ("PCNA") is a Delaware corporation currently registered to do business in New York. According to Porsche's website, PCNA "is a wholly owned, indirect subsidiary of Dr. Ing. h.c. F. Porsche AG." The structure and culture of the Porsche corporate family renders PCNA a mere department and agent of Porsche. PCNA "provide[s] Porsche vehicles, parts, service, marketing and training for its 202 dealers," and has exclusive right to import Porsche manufactured vehicles for sale in the U.S. Porsche appoints the senior managers of PCNA, who rotate through other divisions of the corporate family. *See* Porsche press release, Detlev von Platen becomes new President and CEO of Porsche Cars North America, February 22, 2008. ("Dr. Ing. h.c. F. Porsche

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AG, Stuttgart, Germany, names two new executive managers in its two most important markets”).

65. Multiple members of the executive and supervisory boards of Porsche have served on the boards of the regional subsidiaries since at least 2004, according to published annual reports. Wiedeking, Chief Executive Officer of Porsche at all relevant times, is listed as Chairman of PCNA from 2004-2007 and a member of the PCNA board from 2004 through July 2009. Haerter, Chief Financial Officer of Porsche at all relevant times, served as a member of the PCNA board over the same period.

66. Porsche deliberately sought access to the American capital markets located in New York, and purposefully availed itself of the privilege of conducting activities in the New York securities market through its sponsorship of an American Depositary Share (“ADS”) program, which is backed by Citibank, N.A. and The Bank of New York Mellon. A registration for Porsche’s ADS is on file with the SEC, and under SEC rules Porsche is required to publish English-language versions of financial disclosures provided to its security holders.

67. As such, Porsche is subject to personal jurisdiction in New York under CPLR § 302(a)(1).

68. In addition, this Court may exercise personal jurisdiction over Porsche pursuant to CPLR § 302(a)(2). As alleged in detail below, Porsche made false statements to Plaintiffs’ representatives in New York. Therefore, Porsche committed a tortious act within the State of New York.

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69. Finally, personal jurisdiction is also proper under CPLR § 302(a)(3), which permits jurisdiction over a non-domiciliary when it commits a tortious act outside of New York if the *situs* of the injury from that tortious act is located within New York. Porsche transmitted fraudulent statements into New York, and Plaintiffs' investment analysts and managers, located in New York, relied upon those fraudulent statements and incurred loss as a direct result of these statements. These fraudulent statements are described in more detail below, but include false information communicated in 2008 by Gaube, Porsche's head of investor relations, directly to Plaintiffs' investment analysts and managers who were located in New York at the time of the false communications.

70. It was Porsche's practice to distribute press releases, announcements, and other significant company news or documents by email, in English, to an undisclosed distribution list. Names of the distribution list's recipients appeared, however, in an email on June 26, 2007. That email revealed at least 30 recipients in the United States, including recipients in New York. On March 10, 2008, Porsche emailed a press release in which Porsche stated that it would not seek to raise its stake in VW to 75%. As described further below, this press release is one of the fraudulent statements that Porsche made in connection with the broader scheme alleged here. On October 27, 2008, Gaube emailed the October 26, 2008, press release in which Porsche finally revealed its intention to go to 75% of VW shares and to seek a domination agreement with VW, which helped lead to the short squeeze in VW shares.

71. As set forth below, in October 2008, the Plaintiffs had a significant percentage of New York investors who were injured by Porsche's fraud:

- a. Approximately 47% of the investors in Glenhill Capital LP were located in New York. Those New York investors owned approximately 53% of Glenhill Capital LP.
- b. Approximately 26% of the investors in Glenhill Capital Overseas Master Fund LP were located in New York. Those New York investors owned approximately 19% of Glenhill Capital Overseas Master Fund LP.
- c. Approximately 33% of the investors in Glenhill Concentrated Fund LP were located in New York. Those New York investors owned approximately 9% of Glenhill Concentrated Fund LP.
- d. Approximately 59% of the investors in Glenview Capital Partners, L.P. were located in New York. Those New York investors owned approximately 79% of Glenview Capital Partners, L.P.
- e. Approximately 52% of the investors in Glenview Institutional Partners, L.P. were located in New York. Those New York investors owned approximately 61% of Glenview Institutional Partners, L.P.
- f. Glenview Capital Master Fund, Ltd. is wholly owned by Glenview Capital Partners (Cayman) Ltd. Approximately 8% of the investors in Glenview Capital Partners (Cayman), Ltd. were located in New

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York. Those New York investors owned approximately 4% of Glenview Capital Partners (Cayman) Fund, Ltd.

- g. Approximately 57% of the investors in GCM Little Arbor Partners, L.P. were located in New York. Those New York investors owned approximately 92% of GCM Little Arbor Partners, L.P.
- h. Approximately 39% of the investors in GCM Little Arbor Institutional Partners, L.P. were located in New York. Those New York investors owned approximately 41% of GCM Little Arbor Institutional Partners, L.P.
- i. GCM Little Arbor Master Fund, Ltd. is wholly owned by GCM Little Arbor Partners (Cayman), Ltd. Approximately 5% of the investors in GCM Little Arbor Partners (Cayman), Ltd. were located in New York. Those New York investors owned approximately 1% of GCM Little Arbor Partners (Cayman), Ltd.
- j. Approximately 43% of the investors in GCM Opportunity Fund, L.P. were located in New York. Those New York investors owned approximately 96% of GCM Opportunity Fund, L.P.
- k. Approximately 63% of the investors in Glenview Capital Opportunity Fund, L.P. were located in New York. Those New York investors owned approximately 73% of Glenview Capital Opportunity Fund, L.P.

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- l. Approximately 21% of investors in Glenview Offshore Opportunity Master Fund, Ltd. were located in the United States. Those U.S. investors owned approximately 48% of Glenview Offshore Opportunity Master Fund, Ltd.
- m. New York investors own approximately 47% of Greenlight Capital, LP.
- n. New York investors own approximately 42% of Greenlight Capital Qualified, LP.
- o. Greenlight Capital Offshore Partners is the successor in interest to Greenlight Capital Offshore, Ltd., a British Virgin Islands company, that held the relevant VW-related investments. New York investors own approximately 5% of Greenlight Capital Offshore, Ltd.
- p. Greenlight Reinsurance, Ltd. is a wholly owned subsidiary of Greenlight Capital Re, Ltd., a Cayman Islands company that is a publicly traded company registered in the United States. As of September 30, 2008, Greenlight Capital Re, Ltd. had a large number of New York-based investors, who held at least 46.5% of its shares.
- q. Approximately 43% of the investors in Royal Capital Value Fund, LP were located in New York. Those investors owned approximately 40% of Royal Capital Value Fund, LP.

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- r. Approximately 26% of the investors in Royal Capital Value Fund (QP), LP were located in New York. Those investors owned approximately 29% of Royal Capital Value Fund (QP), LP.
- s. Approximately 13% of the investors in RoyalCap Value Fund, Ltd. were located in New York. Those U.S. investors owned approximately 10% of RoyalCap Value Fund, Ltd.
- t. Approximately 30% of the investors in Tiger Global, L.P. were located in New York. Those New York investors owned approximately 41% of Tiger Global, L.P.
- u. Approximately 49% of the investors in Tiger Global II, L.P. were located in New York. Those New York investors owned approximately 64% of Tiger Global II, L.P.
- v. Approximately 15% of the investors in Tiger Global, Ltd. were located in New York. Those New York investors owned approximately 14% of Tiger Global, Ltd.

**VENUE**

72. Venue is proper in this Court pursuant to CPLR § 503. Plaintiffs have offices in New York County and designate New York County as the place for trial. In addition, as discussed herein, a substantial part of the events giving rise to Plaintiffs' claims occurred within New York County.



were sparked by speculation that the European Court of Justice would soon invalidate a previous version of the VW Law that limited any one VW shareholder's voting rights to 20%, regardless of the number of shares held. The European Commission already had taken the position that the VW Law violated European Union law, and Porsche believed a hostile takeover attempt might follow invalidation. According to Porsche, its planned investment was "the strategic answer to this risk," but in no case, Porsche said, would its stake "reach the level at which Porsche would have to make a public offer to take over VW[.]" *i.e.*, 30% under applicable German law. Merrill Lynch advised Porsche on the acquisition of VW shares.

75. Porsche continued with its acquisition of VW shares throughout 2005. On October 7, 2005, Porsche bought an additional 8.27% of VW shares from institutional investors and held 18.53% of the total. Porsche acquired shares from, among other investors, Brandes Investment Partners LLC in San Diego.

76. Because many of VW's shareholders were United States residents, Porsche sought to address American investors' concerns about the motive behind its acquisitions. On October 12, 2005, Porsche employees, including Haerter, met with investors in New York at a meeting sponsored by Merrill Lynch to discuss Porsche's acquisition of VW's shares. The *Financial Times* reported that Porsche recognized "the market's skepticism" about Porsche's acquisition of the VW shares. In response, Porsche wanted to "meet UK and US investors to try to convince them of the merits of its plan."

77. In its 2005 Annual Report, VW reported the continued importance of U.S. investors in VW shares:

As of December 31, 2005, the subscribed capital of Volkswagen AG comprised 321,929,800 ordinary shares and 105,238,280 preferred shares. As the largest single shareholder, Dr. Ing. h. c. F. Porsche Aktiengesellschaft held 18.5% of the voting shares at the balance sheet date. This corresponds to 14.0% of subscribed capital. The State of Lower Saxony held 18.1% of the ordinary shares or 13.6% of subscribed capital. As of December 31, 2005, Volkswagen AG held 41,719,353 ordinary treasury shares, corresponding to 13.0% of all ordinary shares or 9.8% of subscribed capital. A further tranche of shares is held by investment consultant Brandes Investment Partners, LCC [sic], San Diego, California, USA, which notified Volkswagen AG that the total proportion of ordinary shares held by its clients amounted to 8.58% of all ordinary shares on September 30, 2005. On October 11, 2005, investment management company The Capital Group Companies, Inc., Los Angeles, USA, held 3.504% of the voting capital of Volkswagen AG. The proportion of subscribed capital held by foreign institutional investors – including Brandes Investment Partners, LCC [sic] and The Capital Group Companies, Inc. – was 31.1% in total (previous year: 38.9%). German institutional investors held 7.0% (7.4%).

78. Throughout the next year, Porsche continually downplayed its acquisition of VW stock. On January 23, 2006, for example, Porsche's Manfred Ayasse stated: "We [Porsche] control 18.53 percent as well as an option for a further 3.4 percent[, but] there are currently no plans whatsoever of increasing the VW stake beyond this." On January 27, 2006, Haerter stressed that while Porsche intended to exercise its VW options at some indeterminate date, Porsche would not take its VW stake beyond the roughly 22% it would hold after exercise.

79. On February 24, 2006, VW retired a portion of its outstanding shares. This action increased Porsche's stake to 21% of the total VW shares (or a 25% stake if it exercised options it held to buy additional shares). Then, on November 13, 2006, Porsche raised its stake from 21% to 27.3% of total VW shares by purchasing shares and exercising options.

80. While continuing to increase its ownership interest in VW shares, Porsche announced on November 15, 2006, that it would raise its stake to just below 30%, the threshold at which German law would require it to launch a full tender for VW shares.

81. In its 2006 Annual Report, VW reported:

At the end of 2006, the subscribed capital of Volkswagen AG comprised 286,980,067 ordinary shares and 105,238,280 preferred shares. Dr. Ing. h.c. F. Porsche Aktiengesellschaft notified us that its share of voting rights in Volkswagen AG on November 13, 2006 was 27.40%, corresponding to 20.0% of subscribed capital. This means that Dr. Ing. h.c. F. Porsche Aktiengesellschaft is the largest single shareholder. The State of Lower Saxony held 20.26% of the ordinary shares on January 20, 2007, corresponding to 14.8% of subscribed capital. In 2006, the proportion of Volkswagen shares held by foreign institutional investors decreased to 23.9% (previous year: 31.1%). German institutional investors held 5.8% (7.0%).

82. Porsche continued its acquisition of VW shares in 2007. On, January 10, 2007, *Business Week* reported an interview between its Detroit correspondent David Kiley and Wiedeking that took place at the auto show in Detroit. During this interview, Wiedeking discredited the idea that Porsche was seeking to obtain control of VW. Kiley asked Wiedeking why Porsche was not paying a premium for

control of VW. “Why should I pay a premium?” Wiedeking asked in response. “No. I don’t see any reason for this; 29% is enough for Porsche. We won’t acquire more than 50%.”

83. Porsche repeated the refrain on March 24, 2007, announcing that it planned to boost its stake to up to 31% but noting “[w]e don’t want a majority.” Porsche said the decision to cross 30% followed the February 13, 2007, recommendation by an adviser to Europe’s high court that the judges should invalidate the VW Law. “We expect that law will be repealed entirely,” the Porsche spokesman said.

84. On March 25, 2007, Porsche increased its stake in VW again, moving to 31% from 27.3%. Porsche reported that the purchase was to prevent hedge funds from taking over and breaking up VW. “If hedge funds were to break up Volkswagen and publicly list [the company’s individual brands] we would risk losing our most important partner. We cannot let such a breakup happen. That’s why we acted,” Wiedeking said. The very next day, March 26, Porsche exercised share options to raise its voting stake in VW to 30.9%. “We can now react even more quickly should hedge funds want to take a stake in VW,” Wiedeking told a newspaper.

85. By March 28, 2007, Porsche held 30.9% of VW’s shares. On account of the 30% ownership, German law required Porsche to submit a full tender bid on the remaining VW shares. While Porsche made the mandatory bid, it did so at the lowest possible price—a price no rational investor would accept since it was below

the then-prevailing market price—and publicly disclaimed any interest in taking over VW outright.

86. Not surprisingly, VW's board determined that the mandatory offer was too low. VW's board announced that it could not recommend to shareholders that they accept Porsche's tender, as the fundamental valuation of VW shares was higher than Porsche's offer price.

87. As of December 31, 2007, Porsche was VW's largest shareholder, with approximately 31% of VW's shares. The State of Lower Saxony held 20.1%. In the reporting period ending December 31, 2007, VW reported that the proportion of VW shares held by foreign institutional investors had increased to 25.6% (previous year: 23.9%). German institutional investors held 6.2% (previous year: 5.8%). On information and belief, a substantial portion of the shares held by foreign institutional investors was held to hedge Porsche's options on VW's shares.

## **B. Porsche Misrepresents Its Actual Control over VW Shares**

88. In an effort to ensure that its increasing stake in VW was hidden from view and to induce the Plaintiffs into taking short positions in VW shares, Porsche made affirmative misrepresentations that it was neither purchasing nor intending to purchase a quantity of VW shares that could generate a squeeze.

### *The False and Misleading Statements:*

Porsche's statement on March 10, 2008, that it would not raise its stake in VW to 75% and that the probability of obtaining 75% from the free float of VW shares was "extremely low"

89. In a corporate statement from Stuttgart, Germany, on March 10, 2008, which upon information and belief Porsche translated into English and emailed into the United States, Porsche denied that it would seek to raise its stake to 75% and said talk of such a move "does not consider the realities of VW's shareholder structure ... In view of the fact that the German Federal State of Lower Saxony, as the second major shareholder, holds a stake of more than 20% in [VW], the probability of acquiring the necessary shares from the free float is very small indeed. The background of the current media reports is obviously provided by rumors on the Stock Exchange which can be traced back to the speculative mind games of analysts and investors."

90. Porsche's statement that it would not raise its stake in VW to 75% was false. In fact, Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower

Saxony participating on behalf of Prime Minister Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership.

91. Porsche's statement that "the probability of acquiring the necessary shares from the free float is very small" was false. The probability of acquiring the requisite shares for domination from the free float was, for Porsche, extremely high due to its carefully orchestrated fraud and deception. Porsche had already entered into options contracts for many of the VW shares it needed to achieve domination. Porsche's counterparties had hedged those options by buying shares. Porsche told analysts at the Frankfurt Auto Show in September 2007, more than six months before its March 4, 2008, half-yearly report, that Porsche could take delivery in physical stock after it exercised its options.

92. Glenhill Plaintiffs sold VW shares short in reliance on this statement on April 10, July 17, August 8, September 2, September 12, September 16, September 18, October 1, October 3, October 6, and October 16. Glenview Plaintiffs entered securities-based swap agreements in reliance on this statement on July 2, July 7, July 8, July 9, July 23, July 31, August 1, August 21, September 5, September 18, September 23, September 29, September 30, October 1, October 2, October 3, October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs sold VW shares short in reliance on this statement on April 18, April 21, April 22, April 23, June 23, July 11, September 17, and September 18. Royal

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Plaintiffs sold VW shares short in reliance on this statement on June 25, July 7, July 16, August 4, September 16, October 3, October 20, October 21, and October 24. Tiger Plaintiffs sold VW shares short in reliance on this statement on July 17, July 18, July 29, September 17, September 23, September 30, October 2, October 7, October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on May 5, 2008, that Porsche wanted to obtain more than 50% ownership in VW, that Porsche had locked up the ability to do so using options, and that it did not intend to increase its stake to 75%

93. On May 5, 2008, Gaube told Keith Goodman of Glenhill that Porsche had no intention of increasing its stake in VW to 75%. Upon information and belief, Gaube knew Goodman was in New York at the time of the telephone call. On information and belief, Gaube was in Stuttgart, Germany when he made the statement.

94. Porsche's statement was false. Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both

of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options.

95. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on July 17, August 8, September 2, September 12, September 16, September 18, October 1, October 3, October 6, and October 16. The Glenhill Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on May 29, 2008, about the extent of its planned increase in ownership of VW shares

96. On May 29, 2008, in a corporate statement from Stuttgart, Germany, Porsche announced that it would raise its stake in VW to more than 50% in 2008: "During the course of this year, [the] share will be increased to over 50%."

97. Porsche's statement was misleading. Against the backdrop of Porsche's repeated public and private assurances that it did not intend to take over VW, the statement "the share will be increased to over 50%" tells a reasonable investor that Porsche intended to increase its share to slightly more than the 50% required for clear majority voting. In fact, Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. As

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the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options.

98. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on July 17, August 8, September 2, September 12, September 16, September 18, October 1, October 3, October 6, and October 16. Glenview Plaintiffs continued to hold earlier acquired positions and entered securities-based swap agreements in reliance on this statement on July 2, July 7, July 8, July 9, July 23, July 31, August 1, August 21, September 2, September 5, September 18, September 23, September 29, September 30, October 1, October 2, October 3, October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on June 23, July 11, September 17, and September 18. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on June 25, July 7, July 16, August 4, September 16, October 3, October 20, October 21, and October 24. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on July 17, July 18, July 29, September 17, September 23, September 30, October 2, October 7, October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a

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particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on July 28, 2008, about the extent of its planned increase in ownership of VW shares

99. On July 28, 2008, Haerter told the German newspaper the *Frankfurter Allgemeine Zeitung*: “We’re determined to cross the 51% threshold this year.” Reuters reported that Haerter told the paper that Porsche owns some 31% in VW, and has secured binding contracts over the purchase of another 5%. Haerter said Porsche had already secured the purchase price for additional VW shares through financial instruments. On information and belief, Haerter was in Stuttgart, Germany when he made this statement.

100. Porsche’s statement was misleading. Against the backdrop of Porsche’s repeated public and private assurances that it did not intend to take over VW, referring to the “51% threshold” tells a reasonable investor that Porsche intended to increase to a share slightly more than the 50% required for clear majority voting. In fact, Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options.

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101. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on August 8, September 2, September 12, September 16, September 18, October 1, October 3, October 6, and October 16. Glenview Plaintiffs continued to hold earlier acquired positions and entered securities-based swap agreements in reliance on this statement on July 31, August 1, August 21, September 5, September 18, September 23, September 29, September 30, October 1, October 2, October 3, October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on September 17, and September 18. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on August 4, September 16, October 3, October 20, October 21, and October 24. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on July 29, September 17, September 23, September 30, October 2, October 7, October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on September 16, 2008, about the extent of its planned increase in ownership of VW shares

102. On September 16, 2008, Gaube spoke with Vicente Vento, an analyst for the Royal Plaintiffs. Gaube told Vento that Porsche had set a November deadline for reaching the 50% ownership level. On information and belief, Gaube was in Stuttgart, Germany when he made the statement.

103. Porsche's statement was misleading. Against the backdrop of Porsche's repeated public and private assurances that it did not intend to take over VW, the statement that Porsche had set a November deadline for reaching the 50% ownership level tells a reasonable investor that Porsche intended to increase its share to slightly more than the 50% by that time. In fact, Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options.

104. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on September 16, October 3, October 20, October 21, and October 24. Royal Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the

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factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on September 18, 2008, that a domination agreement was "totally unrealistic"

105. On September 18, 2008, in a corporate statement that, upon information and belief, Porsche made from Stuttgart, Germany, Porsche told an online magazine that a domination agreement with VW was "totally unrealistic."

106. Porsche's statement was false. Porsche already had decided to seek domination of VW. Ferdinand Piech, who resigned as a member of the Executive Committee of Porsche's Advisory Board because "vital information" about Porsche's options in VW shares was concealed from him, admitted in a May 2009 interview that even he knew of Porsche's plan to increase its stake in VW up to 75% as early as mid-year 2008.

107. Porsche also had the ability to obtain sufficient shares to achieve domination. Porsche had entered into options contracts for virtually all of the VW shares it needed to achieve domination. Porsche knew that its counterparties had hedged those options by buying shares. Porsche knew that the hedge shares were available from its counterparties whenever it chose to settle its options. Porsche told analysts at the Frankfurt Auto Show in September 2007 that it could take delivery in physical stock when it exercised these types of options.

108. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 1, October 3, October 6, and October 16. Glenview Plaintiffs continued to hold earlier acquired positions and

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entered securities-based swap agreements in reliance on this statement on September 23, September 29, September 30, October 1, October 2, October 3, October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs continued to hold earlier acquired positions. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 3, October 20, October 21, and October 24. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on September 23, September 30, October 2, October 7, October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on October 2, 2008, that domination was only a "theoretical option"

109. On October 2, 2008, Wiedeking announced at the Paris Motor Show that Porsche planned to increase its stake in VW to more than 50% before the end of the year. As to domination, Wiedeking said, "We do not want to rule out this possibility at the end of the day, some point in the future," but for now, he continued, domination is a "purely theoretical option."

110. Wiedeking's statement that Porsche planned to increase its stake in VW to more than 50% before the end of 2008 was misleading for the same reasons

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described above for nearly identical statements. Wiedeking’s statement that, as to domination, “We do not want to rule out this possibility at the end of the day, some point in the future” and his statement that domination was a “purely theoretical option” were false. Porsche already had decided to seek domination of VW.

111. Porsche also had the ability to obtain sufficient shares to achieve domination. Porsche had entered into options contracts for virtually all of the VW shares it needed to achieve domination. Porsche knew that its counterparties had hedged those options by buying shares. Porsche knew that the hedge shares were available from its counterparties whenever it chose to settle its options. Porsche told analysts at the Frankfurt Auto Show in September 2007 that it could take delivery in physical stock when it exercised these types of options.

112. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 3, October 6, and October 16. Glenview Plaintiffs continued to hold earlier acquired positions and entered securities-based swap agreements in reliance on this statement on October 3, October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs continued to hold earlier acquired positions. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 3, October 20, October 21, and October 24. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 7, October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche

revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on October 5, 2008, that 75% ownership was "out of the question at present"

113. On October 5, 2008, Wiedeking told *Manager Magazine* online that that a domination agreement was "a long term possibility...." The 75%, he said, "is out of the question at present." Upon information and belief, Wiedeking was in Stuttgart, Germany when he made these statements.

114. Porsche's statement on October 5, 2008, that a domination agreement was "a long term possibility" but that "[t]he 75 percent is out of the question at present" was false because Porsche had the intention to take domination of VW in the very near future.

115. Glenhill Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 6, and October 16. Glenview Plaintiffs continued to hold earlier acquired positions and entered securities-based swap agreements in reliance on this statement on October 6, October 7, October 8, October 9, and October 10. Greenlight Plaintiffs continued to hold earlier acquired positions. Royal Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 20, October 21, and October 24. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 7,

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October 10, October 13, October 14, October 15, October 22, October 23, and October 24. The Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on October 20, 2008, that it did not intend to increase its stake to 75%, that it did not control almost all the float of VW shares, and disavowing the Max Warburton analysis as "complete bullshit"

116. On October 20, 2008, Gaube told David Einhorn and Plaintiffs Greenlight Capital, L.P., Greenlight Capital Qualified, L.P., Greenlight Capital Offshore Partners, and Greenlight Reinsurance, Ltd. that Porsche was not going to 75%, that "going to 75% is not on the agenda," and specifically denied controlling almost all of the float of VW shares. Gaube also expressly disavowed the speculation of one analyst, Max Warburton of Alliance Bernstein, who, on October 17, 2008, had offered in the form of a Bernstein Research analyst report a seemingly speculative argument that Porsche might be accumulating additional control of VW shares. Gaube claimed to have "talked to a number of investors and analysts" to refute Warburton's theory, which Gaube called "complete bullshit." On information and belief, Gaube was in Stuttgart, Germany when he made the statement.

117. Porsche's statement was false. Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister

Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options, and this constituted control of almost all the float of VW shares.

118. Porsche's statements also were false because Max Warburton's analysis had been correct: Porsche was accumulating control of additional VW shares.

119. Greenlight Plaintiffs continued to hold their positions in reliance on Porsche's statements to Einhorn. The Greenlight Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008.

Porsche's statement on or about October 20, 2008, that it would stop accumulating shares above 50-55%

120. On or about October 20, 2008, Gaube told Neeraj Chandra and Plaintiffs Tiger Global, L.P.; Tiger Global II, L.P.; and Tiger Global, Ltd. that Porsche had options that would allow it to go take its stake in VW shares to 50-55%, but told Chandra that the accumulation would stop there. Gaube told Chandra that Porsche had no intention of increasing its stake in VW to 75%. On information and belief, Gaube was in Stuttgart, Germany when he made the statement.

121. Porsche's statement was false. Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister

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Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership. Furthermore, as early as mid-2008, Porsche had achieved control over nearly 75% of VW shares through outright positions and options.

122. Tiger Plaintiffs continued to hold earlier acquired positions and sold VW shares short in reliance on this statement on October 22, October 23, and October 24. The Tiger Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008. Each such transaction involved a particular quantity of VW shares at a particular time, and, to determine damages, the factfinder will need to determine only the effect of an accurate disclosure on the price of the security at the particular time the transaction actually occurred.

Porsche's statement on October 22, 2008, that Porsche had no intention of increasing its stake in VW to much beyond 51% of VW shares and did not intend to increase its stake in VW to 75% of VW shares

123. On October 22, 2008, Gaube participated in a telephone call with Glenview's Larry Robbins. Upon information and belief, Gaube knew that Robbins was in New York at the time of the telephone call. On the call, Gaube told Robbins that Porsche had no intention of increasing its stake in VW too much beyond 51% of VW shares and that it did not intend to increase its stake to 75% of VW shares. On information and belief, Gaube was in Stuttgart, Germany when he made the statement.

124. Porsche's statement was false because Porsche had the intention to take domination of VW in the very near future.

125. Glenview Plaintiffs continued to hold their positions in reliance on Porsche's statements to Robbins. The Glenview Plaintiffs covered transactions after Porsche revealed the truth on October 26, 2008.

### **C. Porsche Intentionally Targets New York-based Hedge Funds**

126. Porsche targeted short sellers to acquire control of the shares it desired. As a practical matter, it would have been impossible for Porsche to acquire control of 75% without short sellers. Short sellers could increase the supply of VW shares. Porsche induced the Plaintiffs to borrow VW shares and sell them, undertaking an obligation to purchase replacement shares in the market and return them to the share lender at a future date. Porsche then bought call options from its counterparties, and Porsche's counterparties bought shares from Plaintiffs to hedge the call options they sold Porsche. The VW shares hedging all of the call options that Porsche's counterparties sold to Porsche sat available for delivery to Porsche on exercise. Put simply, Porsche targeted short sellers in order to amass a position in VW shares that it could not have amassed on the open market without the Plaintiffs' short selling.

127. On October 26, 2008, just days after Gaube had been giving assurances by telephone to New York-based investment managers that Porsche did not intend to go above a simple majority, Porsche set the short squeeze in motion by revealing the truth. Porsche said it had become "apparent that there were considerably more

short positions in the market than expected.” Porsche knew that the primary victims of its scheme would be hedge funds that took short positions in VW shares, since its strategy deliberately targeted hedge funds that would enter into short positions. In order to secretly obtain 75 percent ownership in VW, Porsche needed short sellers to borrow stock from current owners who would not or could not sell the stock themselves and then to sell it to Porsche or Porsche’s call option counterparties. Without the additional supply created by short sellers, Porsche could never have achieved 75 percent ownership in VW shares.

128. Upon information and belief, Porsche knew that hedge funds and the managers who make their investment decisions are concentrated in a small number of locations, with the large majority of investment managers based in and around New York, New York. Therefore, upon information and belief, Porsche (a) needed to affect investment decisions in New York to pull off their plan and (b) knew that New York-based investment managers would rely, in the United States, on Porsche’s fraudulent misstatements—and that the hedge funds they advised would be the primary victims of Porsche’s fraud and manipulation.

#### **D. The Materiality of Porsche’s False and Misleading Statements**

129. Porsche’s false and misleading statements were material to a reasonable investor. No reasonable investor would have sold VW shares short (or, equivalently, entered into the short side of security-based swaps) had it known of Porsche’s plans to acquire 75% of VW, because—combined with Porsche’s control of

VW shares through options—Porsche’s purchases guaranteed that short sellers would suffer a short squeeze in VW shares.

130. Porsche’s false and misleading statements were material to Plaintiffs. Plaintiffs are professional investors and at all times relevant here took into account statements that Porsche made, privately and publicly, about its plans with respect to VW and its ownership of VW shares. Plaintiffs would not have sold VW shares short (or, equivalently, entered into the short side of security-based swaps) had they known of Porsche’s plans to acquire 75% of VW, because—combined with Porsche’s control of VW shares through options—Porsche’s purchases guaranteed that short sellers would suffer a short squeeze in VW shares.

**E. Porsche’s Intention that Its False and Misleading Statements Would Deceive Market Participants Such as Plaintiffs**

131. The following facts show that Porsche intended to deceive Plaintiffs and other investors about Porsche’s intentions with respect to acquiring VW’s shares:

- a. Porsche planned to take domination of VW at least as early as February 2008. Porsche representatives held a secret meeting in Berlin on February 25, 2008, with a high-ranking officer of the Government of the State of Lower Saxony participating on behalf of Prime Minister Christian Wulff. As the German press first reported in May 2009, Porsche there stated its intention to implement a domination and profit transfer agreement, both of which require at least 75% ownership.

- b. Porsche had a plan to keep its takeover strategy secret. Porsche's head of investor relations admitted on October 30, 2008, that Porsche took pains to keep its true strategy secret: "We are a very small company buying into a very big company. That is not something you can afford if everybody is able to read your strategy in the newspaper." Gaube also admitted, as described above, that Porsche did not want to "put all eggs in one basket" because that made it "easier for us [i.e., Porsche] to not be visible, not be too visible in the market."
- c. VW's chairman, Ferdinand Piech, who was on Porsche's supervisory board before resigning, has admitted publicly that Porsche had decided to increase its stake up to 75% even when it was telling the market otherwise. In an interview published on May 12, 2009, Piech revealed that as early as mid-year 2008, Porsche had decided to increase its stake in Volkswagen up to 75%.

### **E. Porsche Executes the Short Squeeze**

132. With the price of VW shares falling, Porsche could no longer afford to wait. A further fall in the price of VW might bankrupt Porsche. Therefore, on October 26, 2008, after reaching agreement with VW's chairman Piech on the terms of Porsche's takeover of VW, Porsche revealed the truth to Plaintiffs and the public markets in order to set the short squeeze in motion to save its own skin.

133. On that date, Porsche revealed for the first time that it already controlled almost 75% of VW shares. In an October 26, 2008 press release, which upon information and belief Gaube emailed into the United States, Porsche said: “At the end of last week, Porsche SE held 42.6 percent of the Volkswagen ordinary shares and in addition 31.5 percent in so called cash settled options relating to Volkswagen ordinary shares to hedge against price risks, representing a total of 74.1%.”

134. By referring to the cash settled options as “so called,” Porsche communicated that those options entitled it to more than just cash upon exercise. Porsche underlined this point by adding the percentage of VW shares underlying its options to the percentage of VW shares it held outright. This was something Porsche had *never* done in any of its previous announcements. On September 16, for example, a Porsche press release had described the VW shares it owned outright as its “total stake.” The sudden change in characterization, coupled with Porsche’s use of the words “so called,” signaled that Porsche believed it controlled the VW shares underlying its cash settled options, just as it controlled the VW shares it owned outright.

135. Porsche’s new and surprising message was received loud and clear by multiple press outlets on October 27, 2008, and October 28, 2008, including two of the most prestigious business publications in the United States:

Porsche Automobil Holding SE on Sunday said it had a near-75% stake in Volkswagen AG a much larger stake than the market expected, and said it wanted to tighten its grip on Volkswagen with a so-called domination

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agreement that would give it access to Volkswagen's cash flows.

Porsche announced it had control of 31.5% of Volkswagen through cash-settled options in addition to the 42.6% of shares it currently holds, leaving it just 0.9% short of the 75% level needed to log Volkswagen's revenues and assets in its own books.

Previously, Porsche's Volkswagen stake was known to be 35.14% plus an undisclosed number of options.

Christoph Rauwald, "Porsche Gains Nearly 75% of VW, Tightening Grip," B3, *Wall Street Journal*, October 27, 2008.

The automakers jumped after Porsche reported Sunday its cash-settlement options equal almost a 32% ownership stake in the company, as well as a 43% stake in the company's common shares.

That increased Porsche's known holdings of its compatriot automaker to just below the 75% threshold needed for majority control under German law. Previous information showed Porsche holding a one-third share.

Alan R. Elliott, "Porsche Stake Boosts Ailing Automakers," B03, *Investor's Business Daily*, October 28, 2008. (emphasis added)

Porsche said it had increased its effective holding of ordinary VW shares to 74.1 percent of the total. That is up from mid-September, when Porsche said its stake was 35.14 percent. VW is a heavily shorted stock, so when Porsche's announcement came out, implying that an already-small public float had shrunk further, the short bet immediately became riskier. That likely persuaded short-sellers to snap up VW shares to reduce or close their bets, leading to the rip-roaring rally.

Peter Eavis, "Porsche's New Spin on VW," Heard on the Street, C12, *Wall Street Journal*, October 28, 2008.

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136. Porsche also went on to admit, contrary to its earlier statements, that it sought to acquire 75% of VW's shares and "dominate" VW. "Assuming the economic framework conditions are suitable," Porsche said in the same October 26, 2008, press release, "the aim is to increase to 75% in 2009, paving the way to a domination agreement." Far from being "totally unrealistic," as Porsche had claimed just weeks earlier, domination of VW was well within Porsche's grasp, as it had been when Porsche made its earlier false statements.

137. At the time of Porsche's announcement of the true extent of its control of VW shares and its true intentions with respect to VW, the short interest in VW was about 13%. Porsche's acquisition of control over 74.1% of VW's shares, combined with Lower Saxony's well-known ownership of approximately 20%, meant that the free float available to short sellers to cover their positions was less than 5.9% of VW's shares, since some significant part of the 5.9% was held by index funds and other investors that could not and would not sell shares no matter what the price. Porsche's corner meant that the short interest was more than twice the free float, virtually guaranteeing a short squeeze.

**CAUSES OF ACTION**

**COUNT I  
(COMMON-LAW FRAUD)**

138. Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1–137 of this Complaint.

139. As described above, Porsche made intentional misrepresentations to Plaintiffs regarding its stake in VW and its intentions to control 75% of VW shares. In addition, Porsche failed to disclose its intentions and the true facts of its stake in VW despite having superior knowledge of these essential facts, which rendered its non-disclosure inherently unfair. Porsche possessed superior knowledge to that of Plaintiffs and possessed information not readily available to Plaintiffs and Porsche knew that Plaintiffs were acting on the basis of mistaken knowledge. In addition, to the extent Porsche’s statements were ambiguous or partial disclosures of its intentions or its present control of VW shares, it was obligated to disclose its true intentions and control to Plaintiffs and the investing public. It failed to do so.

140. Porsche made material misrepresentations and material omissions of fact for the purpose of inducing Plaintiffs to rely upon them.

141. Plaintiffs justifiably and reasonably relied on the material misrepresentations and material omissions of fact.

142. Plaintiffs were injured by their justifiable and reasonable reliance on Porsche’s material misrepresentations and material omissions of fact.

143. Porsche’s conduct demonstrates a high degree of moral turpitude and wanton dishonesty. Porsche’s conduct consists of intentional and deliberate

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wrongdoing with a fraudulent and evil motive and which consciously disregarded the rights of others. Moreover, Porsche's misconduct was aimed both at the public generally and to Plaintiffs specifically. As such, an award of punitive damages is appropriate.

**COUNT II  
(UNJUST ENRICHMENT)**

144. Plaintiffs repeat and reallege each and every allegation contained in ¶¶ 1–143 of this Complaint.

145. Plaintiffs plead this Count II in the alternative to Count I.

146. Through fraud, market manipulation, and other unlawful and improper conduct, Porsche implemented a scheme whereby Porsche extracted billions of dollars in trading profits in less than one week at the expense of investors, including Plaintiffs. In addition to Porsche's motive to achieve domination of VW, Porsche's motive in implementing the scheme was to obtain those trading profits. Porsche's unlawful and improper conduct has resulted in Porsche's being unfairly and unjustly enriched and obtaining a pecuniary advantage, in each case at Plaintiffs' expense.

147. As a direct and proximate result, and as an indirect result, of Porsche's unlawful and improper conduct, as set forth above, Porsche has been and will continue to be unjustly enriched at Plaintiffs' expense, and Plaintiffs have suffered and will continue to suffer damages in an amount to be proven at trial. Equity and good conscience demand an award of damages equivalent to the damages that Plaintiffs have suffered and will continue to suffer as a result of Porsche's unjust

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enrichment at Plaintiffs' expense, so that Plaintiffs are restored to their former position absent Porsche's fraud, market manipulation, and other unlawful and improper conduct. In addition, Porsche should be required to disgorge all its profits realized by virtue of the short squeeze it triggered.

148. Porsche's conduct reflects a pattern of misrepresentation directed at the public and Porsche has committed a public wrong. Porsche's conduct is egregious and tortious and part of similar conduct directed at the public generally and at Plaintiffs. Punitive damages are appropriate in order to vindicate public rights and remedy a public wrong.

WHEREFORE, Plaintiffs each demand judgment against Porsche as follows:

- (i) on Count I for damages in an amount to be proven at trial;
- (ii) on Count II for damages and/or disgorgement in an amount to be proven at trial;
- (iii) an award of punitive damages;
- (iv) an award of all costs incurred in connection with the prosecution of this action;
- (v) prejudgment and post-judgment interest as allowed by law;
- (vi) an award of attorneys' fees incurred in the prosecution of this action; and
- (vii) for such further relief as the Court may deem just and proper.

DATED: March 15, 2011

Respectfully submitted,

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- and -

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