

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB) on the one hand, with its principal location at 1001 I Street, Sacramento, California 95814; and FCA US LLC on the other hand, with its principal location at 1000 Chrysler Drive, Auburn Hills, Michigan 48326 (collectively, the “Parties,” or individually, “Party”).

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code (a) mandates emission standards for tailpipe emissions of certain compounds from new motor vehicles and motor vehicle engines; (b) allows CARB to issue Executive Orders as evidence of emission certification of such vehicles and engines sold in California; and (c) prohibits any person from selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or new motor vehicle engine for use, registration, or resale unless CARB has issued an applicable Executive Order. (Health & Saf. Code §§ 43100, 43101, 43151, 43153, 43211, and 43212).
- (2) Regulation. CARB adopted “*Motor Vehicle Pollution Control Devices*” (*Vehicle Standards*) (Cal. Code Regs., tit. 13, §§ 1900-2048) that establish emission standards applicable to, among other compounds, oxides of nitrogen (NOx) from new and in-use motor vehicles and motor vehicle engines in California.
- (3) Statutory and Regulatory Provisions. The California Health and Safety Code also mandates that CARB promulgate regulations to issue Executive Orders (EO) as evidence of emission certification of such vehicles and engines registered in California; and prohibits any person from selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or new motor vehicle engine for use, registration, or resale unless it is so certified. In order to obtain such an EO, such vehicles or engines must, *inter alia*, (i) be described in an application for certification; (ii) meet the applicable evaporative and tailpipe emission standards; (iii) have an Emission Control Label (ECL) affixed thereto; and (iv) be equipped with an on-board diagnostic (OBD) system, through the use of an onboard computer(s), which shall be capable of detecting malfunctions of the vehicle’s monitored emission systems, illuminating a malfunction indicator light to inform the vehicle operator of detected malfunctions, and of storing fault codes that identify the detected malfunctions. In addition, the manufacturer of such vehicle or engine must provide the ultimate owner a warranty covering the emission control system as set forth in such regulations. (Cal. Code Regs., tit. 13, §§ 1900-2048.)

Title 13, California Code of Regulations (CCR), section 1968.2(e)(1.1) requires the OBD II system to monitor the catalyst system for proper conversion capability and section 1968.2(e)(1.2) requires the OBD II system to detect a catalyst system malfunction when the catalyst system’s conversion capability decreases to the point that emissions exceed the

applicable OBD emissions thresholds (e.g., Oxides of Nitrogen (NOx) emissions exceed 2.5 times the Federal Test Procedure Bin 4 NOx standard).

Title 13, CCR, section 1968.2(e)(1.3) requires manufacturers to define the monitoring conditions for malfunctions identified in section (e)(1.2) in accordance with sections (d)(3.1) and (d)(3.2). Furthermore, Title 13, CCR, section 1968.2(d)(3.1.1) requires manufacturers to define monitoring conditions, subject to Executive Officer approval, that are determined (based on manufacturer submitted data and/or other engineering documentation) to be: technically necessary to ensure robust detection of malfunctions (e.g., avoid false passes and false indications of malfunctions), designed to ensure monitoring will occur under conditions which may reasonably be expected to be encountered in normal urban vehicle operation and use, and designed to ensure monitoring will occur during the FTP cycle or Unified cycle.

- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that can result in penalties up to forty-two thousand four hundred fifty dollars (\$42,450) for each strict liability violation of the Vehicle Standards, respectively. (Health & Saf. Code, §§43016 and 43154; Cal. Code Regs., tit.13, § 1900 et seq.)

#### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, FCA was organized under the laws of Delaware and conducted business in the State of California.
- (6) Allegations. As reflected in Notice of Violation (NOV) VES-2021-C00519, which was issued on May 6, 2021, CARB alleges FCA violated the Vehicle Standards, as follows:
- a. FCA sold, introduced into commerce, imported, delivered, purchased, rented, leased, acquired, or received vehicles into California, some of which do not meet the in-use emission standards. The Parties agree that the number of such vehicles is 30,601, and the amount of NOx emissions throughout the full useful life of such vehicles for which the penalty under this Settlement Agreement as set forth below is assessed, is 68.3 tons.
  - b. Based on CARB's in-use emission and other OBD compliance testing of FCA's 2013 model year (MY) 5.7L RAM 1500 vehicles, test group DCRXT05.7VP0:
    - i. CARB granted OBD II system certifications for FCA's 2012MY through 2018MY FCA 5.7L RAM 1500 vehicles, which have the same or similar OBD catalyst conversion efficiency system monitoring logic.
    - ii. Subsequent CARB in-use emission and other OBD compliance testing of FCA's 2013MY 5.7L RAM 1500 vehicles revealed that the tested vehicle's OBD catalyst monitoring system falsely passed a missing bank 2 catalyst during on-road testing, was not robust enough during normal urban vehicle operation to detect all relevant

malfunctions, and, therefore, did not comply with the requirements of title 13, CCR sections 1968.2(d)(3.1.1) and 1968.2(e)(1).

- (7) CARB alleges that if the allegations described in paragraphs (1) through (6) were proven, civil penalties could be imposed against FCA for each and every vehicle involved in the violations.
- (8) Acknowledgment. FCA admits to the facts in paragraphs (1) through (6), but denies any liability resulting from said allegations.
- (9) Consideration. In full and mutual consideration of the terms and conditions in this Settlement Agreement, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed allegations, and voluntarily agree to resolve these matters by means of this Settlement Agreement. In order to resolve the allegations described herein, FCA and CARB agree that FCA will take the actions enumerated below within the Terms and Conditions, and upon completion of such actions that CARB agrees that its allegations in connection of these matters are fully resolved and settled, and that this Settlement Agreement and the matters herein are terminated and fully resolved and settled.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against FCA for the alleged violations referred to above in the Legal Background and Case Background, and FCA's agreement to complete all terms and conditions set forth below, CARB and FCA agree as follows. Except as otherwise expressly stated herein, the applicable regulatory calculation methods, test procedures, protocols, processes, or procedures shall apply unless an alternative approach is approved by CARB.

- (10) Settlement Amount. FCA shall pay a civil penalty of two million, eight hundred thousand, five hundred and forty-five dollars, (\$2,800,545.00 USD), and agrees to fund a Supplemental Environmental Project entitled Cleaner Air for Kids-Zero Emission School Bus Funding in South Coast Air Basin (SEP) in the amount of two million, eight hundred thousand, five hundred and forty-five dollars, (\$2,800,545.00 USD), consistent with CARB's SEP Policy, for a total settlement of five million, six hundred one thousand, and ninety dollars, (\$5,601,090.00 USD). FCA shall make all payments within 60 calendar days from the date CARB notifies FCA of the full execution of the Settlement Agreement.
- (11) Civil Penalty and Mitigation Payment Method. FCA shall pay the civil penalty and mitigation, as well as any applicable payment processing fees, by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty and mitigation amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to

ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to FCA in accordance with Paragraph (16) (Notices).

- (12) SEP Payment Method. FCA shall fund the SEP by check payment, payable to the SEP implementer/recipient, South Coast Air Quality Management District using instructions provided separately by CARB in a Payment Transmittal Form. FCA is responsible for all payment processing fees. Payment shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to FCA in accordance with Paragraph 16 (Notices).
- (13) Prohibition Against Financial Benefit. FCA has agreed that by funding the SEP entitled Cleaner Air for Kids-Zero Emission School Bus Funding in South Coast Air Basin, FCA will not receive any direct or indirect financial benefit, and that whenever FCA publicizes or refers to the SEP or the results of the SEP, FCA will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, FCA assigns any and all rights against the SEP implementer to CARB.
- (15) Documents. FCA shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and SEP, and a copy of the Payment Transmittal Forms to the address or email in Paragraph (16) (Notices).
- (16) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Vehicle, Parts, Consumer Products Enforcement Branch / Vehicle Enforcement  
Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to FCA:

Christopher J. Pardi General Counsel  
FCA US LLC  
1000 Chrysler Dr  
CMIS 485-14-96  
Auburn Hills, Michigan 48326  
christopher.pardi@stellantis.com

and Cheryl Stark  
Technical Safety and Regulatory Compliance  
Director of Vehicle Environmental Compliance FCA US LLC  
800 Chrysler Drive  
CIMS 482-00-71  
Auburn Hills, Michigan 48326  
cheryl.stark@stellantis.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (17) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, FCA shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (18) Repeat Violations. FCA agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) Effect of Settlement/Reservation of Rights.
- a. Satisfaction of all the requirements of this Settlement Agreement shall resolve and settle all of CARB's civil and/or administrative claims against FCA that arise out of or relate to the allegations described in Paragraph (6).
  - b. This Settlement Agreement does not resolve or settle any claims, rights or remedies against FCA including without limitation those that may arise out of or relate to the allegations described in Paragraph (6) that may be held by or asserted by the State of California, by any California government agency other than CARB.
  - c. In the event of a subsequent judicial proceeding brought by the State of California or a government agency other than CARB for injunctive relief, civil penalties, or other relief, FCA shall not assert, and may not maintain, any defense or claim based upon the principles of

waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically released by CARB in this Settlement Agreement.

- d. This Settlement Agreement does not limit or affect the rights of FCA or of CARB against any third parties that are not a party to this Settlement Agreement (“Third Parties”), nor does it limit the rights of Third Parties against FCA or against CARB, except as otherwise provided by law.
  - e. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any Third Party. No Third Party shall be entitled to enforce any aspect of this Settlement Agreement or claim any legal or equitable injury for a violation of this Settlement Agreement.
- (20) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties, concerning the circumstances and facts described in all paragraphs contained in the Legal Background and the Case Background sections of this Settlement Agreement.
- (21) Binding Effect. This Settlement Agreement binds FCA, and any of its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (24) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (25) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California’s choice-of-law rules.
- (26) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (27) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (28) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (29) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of the full payment of the civil penalty, mitigation and all other undertakings above, CARB hereby releases FCA and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances and facts described in all paragraphs contained in the Legal Background and the Case Background sections of this Settlement Agreement.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (34) Per Unit Penalty. Pursuant to California's Health and Safety Code sections 43016 and 43154 and for violations of the Vehicle Standards (Cal. Code Regs., tit.13, §§ 1900 et seq.), the per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450). The per unit penalty in this case is approximately \$183 per unit.

- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

The subject vehicles are not emissions compliant when using certification fuel, which is the fuel required for certification and in-use testing purposes. However, they do not fail in-use standards using commercially available fuel.

- (36) Confidential Business Information. CARB based this penalty in part on confidential business information provided by FCA and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.



ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel / Acting Executive Director

Date: August 31, 2022

**Fiat Chrysler Automobiles N.V., FCA US LLC**

Signature: /S/

Name: Thomas McCarthy

Title: Sr. Vice President and Head of Technical Safety and Regulatory Compliance

Date: July 21, 2022