

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California 95812 and FLAGSHIP, INC. (hereinafter "FLAGSHIP"), with its principal place of business at 2811 Tuscany Drive, Elkhart, IN 46514.

### RECITALS

- (1) California Health and Safety Code (H&SC) §43151 states, "No person who is a resident of, or who operates an established place of business within this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (2) H&SC §43152 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act."
- (3) H&SC §43153 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (4) H&SC §43154(a)(1) states, "A person who violates any provision of this article shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action."

- (5) H&SC §43211(a) states, “A new motor vehicle sold in California shall meet the emission standards adopted by the state board, and a manufacturer who sells, attempts to sell, or causes to be offered for sale a new motor vehicle that fails to meet the applicable emission standards shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action.”
- (6) H&SC §43212(a)(1) states, “A manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each vehicle that does not comply with the standards or procedures and that is first sold in this state. The payment of those penalties to the state board and making the vehicles compliant with applicable emission control laws and test procedures may be required by the executive officer of the state board as conditions for the further sale in this state of those motor vehicles.”
- (7) In March of 2017, through May of 2017, CARB inspected FLAGSHIP California dealers and issued Notices of Violation (NOVs) #3229, #3235, and #3314 for eight (8) new uncertified motor vehicles offered for sale in violation of H&SC §43151-43153.
- (8) During 2016 and 2017, FLAGSHIP dealers offered for sale and/or sold 50 new motor vehicles, model years 2016-2017, (“the subject vehicles”) for use or registration in California that were not certified for sale or use in California pursuant to Chapter 2 of Part 5 of Division 26 of the H&SC.
- (9) FLAGSHIP modified 50 new motor vehicles with an exempted aftermarket part prior to import, use, rental, registration, or introduction into commerce in California, in violation of H&SC §43151-43153. The exempted aftermarket part is for post-title use only.
- (10) The offers for sale, sales, and delivery of the subject vehicles were unlawful and in violation of H&SC §43151-43153, §43211, and §43212.
- (11) FLAGSHIP admits the facts in recital paragraphs 1 through 10, but denies any liability arising thereunder.
- (12) CARB alleges that if the facts described in recital paragraphs 1-10 were proven, civil penalties could be imposed against FLAGSHIP as provided in H&SC §43154, §43211, and §43212.
- (13) FLAGSHIP is willing to enter into this Agreement solely for the purpose of settlement and resolution of the allegations, claims, and violations identified herein. CARB accepts this Agreement in termination of the allegations, claims,

and violations identified herein. Accordingly, the parties agree to resolve the allegations, claims, and violations identified herein completely by means of this Agreement, without the need for formal litigation.

### **TERMS AND RELEASE**

In consideration of CARB not filing a legal action against FLAGSHIP for the allegations, claims, and violations referred to above in Recitals (1) through (12), and in consideration of the other terms set out below, CARB and FLAGSHIP agree as follows:

- (1) As a condition of this Agreement, FLAGSHIP shall pay the total sum of two hundred fifty thousand dollars (\$250,000), with one hundred twenty-five thousand (\$125,000) as a civil penalty to the **California Air Pollution Control Fund** and the other one hundred twenty-five thousand (\$125,000) going to Supplemental Environmental Projects (SEPs) as detailed below. Payment shall be made in five (5) payments as described below, beginning 30 days after execution of this Settlement Agreement.
- (2) As a further condition of this Agreement, Flagship has agreed to undertake the Supplemental Environmental Projects (SEPs) as described in ATTACHMENTS B and C – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT - Ecosystems Exhibition Wing-Community Teen Program and Fresno TREES (SEP Agreements) (individually and collectively referred to as SEPs) to offset a portion of the penalty, consistent with CARB's SEPs Policy. Pursuant to this Agreement, FLAGSHIP shall make payments according to the schedule below.
- (3) FLAGSHIP has agreed that by funding the Ecosystems Exhibition Wing-Community Teen Program and the Fresno TREES SEPs, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEPs, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
- (4) Upon agreeing to the terms set forth in the SEP Agreements, and funding the Ecosystems Exhibition Wing-Community Teen Program and the Fresno TREES SEPs, FLAGSHIP is released of all liabilities as they relate to the Ecosystems Exhibition Wing-Community Teen Program and the Fresno TREES SEPs as reflected in this underlying Settlement Agreement.
- (5) In the event the SEPs are not fully implemented in accordance with the terms of the SEPs Agreements, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEPs from the SEPs implementers, less any amount waived based on the timely and successful completion of any previous agreed upon interim milestone(s). CARB will deposit any such recovery into the California Air Pollution Control Fund. Accordingly, FLAGSHIP assigns any and all rights against the SEPs implementers to CARB.

<b>Payment Due Date:</b>	<b>In the Amount of and Payable to:</b>	
<b>Thirty Days from Settlement Execution</b>	<b>\$62,500</b>	<b>Air Pollution Control Fund</b>
<b>Within Twelve (12) Months of Settlement Execution</b>	<b>\$62,500</b>	<b>Air Pollution Control Fund</b>
<b>Thirty Days from Settlement Execution</b>	<b>\$62,500</b>	<b>California Science Center Foundation</b>
<b>Within Twelve (12) Months of Settlement Execution</b>	<b>\$45,500</b>	<b>California Science Center Foundation</b>
<b>Within Twelve (12) Months of Settlement Execution</b>	<b>\$17,000</b>	<b>Fresno TREES</b>

The signed Agreement and any future mailings or documents per the terms of this Agreement shall be mailed to:

Mrs. Erin Blanton  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812

For payments made to the Air Pollution Control Fund, please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436

**Certified or Cashier's Checks:**

California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436

**Wire Transfers:**

State of California Air Resources Board  
C/O Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Edna Murphy Fax: (916) 322-9612

**Reference: CARB Case # MSES-016-043**

*Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.*

**Notification of each wire transfer shall be provided to:**

**Erin Blanton  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
Erin.Blanton@arb.ca.gov  
(916) 229-0552**

**For payments made to the California Science Center Foundation, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:**

**California Science Center Foundation  
For: Ecosystems Exhibition Wing-Community Teen Program SEP  
700 Exposition Park Drive  
Los Angeles, CA 90037**

**For payments made to Fresno TREES please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 3) to:**

**Fresno TREES  
3150 E. Barstow Avenue  
Fresno, CA 93740**

**In addition, a copy of each payment check made to the California Science Center Foundation and Fresno TREES and shall be mailed to:**

**Mrs. Erin Blanton  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
P.O. Box 2815  
Sacramento, California 95812**

- (6) Effect of Untimely Payment. If any payment is more than fifteen (15) days late, the entire remaining balance, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.

- (7) If the Attorney General files a civil action to enforce this settlement agreement, FLAGSHIP shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (8) This Agreement is limited to the allegations, claims, and violations described above. This Agreement does not release liability for any alleged claims or violations not identified herein, or any claims or violations based on allegations other than those identified herein.
- (9) It is agreed that if FLAGSHIP at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving FLAGSHIP, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against FLAGSHIP, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of FLAGSHIP's properties, or if any deposit account or other property of FLAGSHIP be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or FLAGSHIP takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (10) FLAGSHIP shall not import, acquire, use, register, sell, offer for sale, lease, offer for lease, rent, offer for rent, or introduce into commerce in California any motor vehicle or engine in violation of California Code of Regulations, Title 13, Division 3; Vehicle Code §27156 or §38391; or Part 5, Division 26 of H&SC.
- (11) This Agreement shall apply to and be binding upon FLAGSHIP and its principals, officers, directors, agents, dealers, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (12) Now therefore, in consideration of the payment by FLAGSHIP in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) to the California Air Pollution Control Fund, the Ecosystems Exhibition Wing-Community Teen Program and the Fresno TREES SEPs, CARB hereby releases FLAGSHIP and its principals, officers, directors, agents, dealers, receivers, trustees, employees, subsidiaries, parents, predecessors, successors, assignees, and affiliates from the claims CARB may have based upon the events described in Recital paragraphs 7-11 above.
- (13) The undersigned represent that they have the authority to enter this Agreement.

- (14) This Agreement constitutes the entire agreement and understanding between CARB and FLAGSHIP concerning the claims, violations, and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and FLAGSHIP concerning these claims and violations.
- (15) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (16) Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (17) This 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.
- (18) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (19) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (20) Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
- (21) This Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
- (22) Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (see H&SC section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

**The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in H&SC §43024. The per-vehicle penalty in this case is a maximum of \$37,500 per vehicle per strict liability violation. The penalty obtained in this case is \$5,000 per vehicle for 50 vehicles, for a total penalty of \$250,000. The penalty per vehicle in this case has been reduced because FLAGSHIP submitted requested documentation, fully cooperated with the investigation, and put together a compliance plan to avoid future violations.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is H&SC §43154 because FLAGSHIP brought into commerce uncertified vehicles into California, in violation of H&SC §43151-43153 and imported, acquired, delivered, used, registered, sold, offered for sale, leased, offered for lease, rented, offered for rent, or registered an uncertified vehicle as described above.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The provisions cited above do not prohibit emissions above a specified level. However, since the vehicles were not certified by CARB, CARB considers all emissions attributable to them to be illegal and excess, but quantifying them is not practicable because the information required to do so is unavailable.

- (23) FLAGSHIP acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC §43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (24) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.



- (25) The penalty was also based on confidential business information provided by FLAGSHIP that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and FLAGSHIP that CARB does not retain in the ordinary course of business either. The penalty is the product of an arm's-length negotiation between CARB and FLAGSHIP and reflects CARB's assessment of the relative strength of its case against FLAGSHIP, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the law, and to remove any unfair advantage that FLAGSHIP may have secured from its actions.
- (26) FLAGSHIP represents that it understands the legal requirements applicable to introducing uncertified vehicles into California.

**California Air Resources Board**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Richard W. Corey

Title: Executive Officer

Date: \_\_\_\_\_ 7/5/2020 \_\_\_\_\_

**FLAGSHIP INC.**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Michael T. Graber

Title: FLAGSHIP OFFICER

Date: \_\_\_\_\_ 3/4/2020 \_\_\_\_\_