

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the State of California, acting by and through the California Air Resources Board ("CARB"), with its principal location at 1001 I Street, Sacramento, California 95814; and Hyundai America Technical Center, Inc. ("HATCI"), with its principal location at 6800 Geddes Road, Superior Township, Michigan 48198. As referenced in this Settlement Agreement, CARB and HATCI, the latter as defined in Paragraph 5 (Corporate Entity) below, are collectively the "Parties" and individually each a "Party."

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates implementation of emission standards for new motor vehicle and motor vehicle engines to control emissions; allows CARB to certify these vehicles; 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 certified. This includes attempts or assistance. (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) to reduce emissions of, inter alia, oxides of nitrogen, particulate matter, hydrocarbons, and greenhouse gases from new and used motor vehicles and motor vehicle engines in California.
- (3) Regulatory Provisions. Prior to vehicles or engines being sold, introduced into commerce, imported, delivered, purchased, rented, leased, acquired, or received into California, they must be certified based on reliable test data and procedures and obtain an Executive Order (EO) from CARB. The vehicles and engines must, inter alia, meet the emission standards (either through a direct standard or through a fleet wide phase-in requirement), cannot contain a defeat device, must have an Emission Control Label (ECL), and be equipped with an On-board Diagnostic (OBD) II System to inform the vehicle operator of an emission control system malfunction, and come with an emission control system warranty. (Cal. Code Regs., tit. 13, §§ 1900-2048.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties of up to forty thousand fifty dollars (\$40,050.00 USD) for each strict liability violation of the Vehicle Standards, respectively, for each vehicle or engine. (Health & Saf. Code, §§ 43016, 43154, 43211, 43212; Cal. Code Regs., tit. 13, § 1900 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Hyundai America Technical Center, Inc. was organized under the laws of the State of Michigan as a corporation and conducted business in the State of California. Hyundai America Technical Center, Inc. is entering into this Settlement Agreement on behalf of itself and its affiliates Hyundai Motor America (“HMA”) and Kia America, Inc. (“KUS”), formerly known as Kia Motors America, Inc. Hyundai America Technical Center, Inc., HMA and KUS are each and collectively referred to as “HATCI” in this Settlement Agreement. HMA is a California corporation with its principal address located at 10550 Talbert Avenue, Fountain Valley, California 92708; and KUS is a California corporation with its principal address located at 111 Peters Canyon Road, Irvine, California 92606.
- (6) Allegations. CARB alleges that HATCI violated the Vehicle Standards set out in the Code of Federal Regulations, title 40, Part 86, sections 86.1842-01 and 86.1848-10(c)(6), which are incorporated into California’s light-duty vehicle regulations as set out in California Code of Regulations, title 13, sections 1961(d) and 1961.2(d). CARB alleges that HATCI violated the Vehicle Standards by implementing unapproved running changes to multiple Test Groups in model years 2017 through 2021 covered by CARB Executive Orders, thereby affecting 28,945 vehicles. In December 2020 and December 2021, HATCI self-disclosed its acts or omissions relative to the Vehicle Standards, identified herein as the “Self-Disclosures.” CARB alleges that if the violations identified in the Self-Disclosures were proven, civil penalties could be imposed against HATCI for each and every vehicle involved in the violations and/or for each day of violation.
- (7) Acknowledgment. HATCI admits to the facts in paragraphs 1 through 6 above, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein and below, the Parties desire to settle and resolve all CARB civil claims for the violations identified in the Self-Disclosures and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve this matter, HATCI has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against HATCI for the violations identified in the Self-Disclosures, and HATCI’s agreement to complete and comply with all terms, provisions and conditions of this Settlement Agreement, CARB and HATCI agree to the foregoing and as follows:

- (9) Settlement Amount. HATCI shall pay a civil penalty of two million one hundred seventy thousand eight hundred seventy-five dollars (\$2,170,875.00 USD), and agrees to fund a Supplemental Environmental Project ("SEP") entitled "Community Based Monitoring and Assessment Program for Fresno Phase 2" in the amount of two million one hundred seventy thousand eight hundred seventy-five dollars (\$2,170,875.00 USD), consistent with CARB's SEP Policy, for a total settlement of four million three hundred forty-one thousand seven hundred fifty dollars (\$4,341,750.00 USD). HATCI shall make all payments within thirty (30) calendar days from the date CARB emails HATCI the fully executed Settlement Agreement and the Payment Transmittal Forms. If either the civil penalty or the SEP payment is more than ten (10) calendar days late (as solely determined by CARB), then HATCI will be deemed to be in material breach of this Settlement Agreement.
- (10) Civil Penalty Payment Method. HATCI shall pay the total civil penalty amount by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. HATCI is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time payment is made, HATCI shall provide CARB with proof of payment and a copy of the Payment Transmittal Form at the email address listed in Paragraph 15 (Notices). CARB shall deposit the civil penalty 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 HATCI in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). HATCI shall fund the total SEP amount identified in Paragraph 9 by wire transfer, credit card, or check, payable to the "Central California Environmental Justice Network" (the SEP Recipient/Administrator), using instructions provided separately by CARB in a SEP Payment Transmittal Form. HATCI is responsible for all payment processing fees. At the time payment is made, HATCI shall provide CARB with proof of payment and a copy of the SEP Payment Transmittal Form at the email address listed in Paragraph 15 (Notices). Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to HATCI in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. HATCI has agreed that by funding the SEP entitled "Community Based Monitoring and Assessment Program for Fresno Phase 2," HATCI will not receive any direct or indirect financial benefit, and that whenever HATCI publicizes or refers to the SEP or the results of the SEP, HATCI will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) 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 Recipient/Administrator, 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, HATCI assigns any and all rights in, to, and against the SEP funds and the SEP Recipient/Administrator to CARB.

- (14) Documents. HATCI shall promptly email the signed and dated Settlement Agreement to CARB, at the email address for CARB provided in Paragraph 15 (Notices) below. CARB will email to HATCI, at the email address provided in Paragraph 15 (Notices) below for HATCI, the fully executed Settlement Agreement and the Payment Transmittal Forms that HATCI shall use for payment. Within thirty (30) days from the date CARB emails HATCI the fully executed Settlement Agreement and the Payment Transmittal Forms, HATCI will pay the civil penalty and SEP amount, and email CARB a copy of proof of payment for the civil penalty and SEP amount, and copies of the Payment Transmittal Forms to the email address in Paragraph 15 (Notices).
- (15) 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
Engine and Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to HATCI:

Richard Willard
Director, Regulation & Certification
Hyundai America Technical Center, Inc.
6800 Geddes Road
Superior Township, Michigan 48198
Rwillard@hatci.com

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

- (16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement in whole or in part, HATCI shall pay all of the State of

California's costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (17) Repeat Violations. HATCI agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the violations identified in the Self-Disclosures and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the violations identified in the Self-Disclosures. This Settlement Agreement consists of nine pages and 38 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds the Parties, and any 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.
- (20) Effective Date. The effective date shall be the last date upon which this Settlement Agreement is fully executed by all Parties.
- (21) 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 the Parties to this Settlement Agreement.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) Not Tax Deductible. For purposes of this Settlement Agreement, HATCI shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (26) 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.

- (27) 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.
- (28) Intent to be Bound. The Parties represent that: They each 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.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty amount, SEP amount, and all other undertakings above, CARB hereby releases HATCI and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any civil claims for violations identified in the Self-Disclosures.
- (32) Authority. The undersigned each represent that he or she has full authority to enter into this Settlement Agreement and bind the Party he or she represents.
- (33) Survival. Those terms, conditions, and provisions which by their nature should survive termination or expiration of this Settlement Agreement shall so survive, including but not limited to paragraphs 12, 13, 15 through 33, and 38, inclusive.

PENALTY BASIS

- (34) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand fifty dollars (\$40,050.00 USD) per action under Health and Safety Code section 43016 and 43154, for violations of the Vehicle Standards (Cal. Code Regs., tit.13, §§ 1900 et seq.). The per unit penalty assessed in this case is one hundred fifty dollars (\$150.00 USD) per unit for 28,945 noncompliant units. The

penalty was reduced based on the mitigating factors described below in Paragraph 36 (Aggravating and Mitigating Factors).

- (35) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles did not meet the regulatory requirements, all of the emissions were excess and illegal.
- (36) 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 to avoid the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of each case. Mitigating factors include the following specific examples:
- (a) HATCI thoroughly self-disclosed the alleged violations pursuant to CARB Mail-Out #ECC 2020-06 with the subject name, "Alert: Self-Disclosure of Non-Compliant Software and Other Violations by December 31, 2020;"
 - (b) HATCI asserts that, based on its good engineering judgment, the alleged violations have no impact on the affected vehicles' emissions;
 - (c) HATCI improved its running change processes to prevent future violation occurrences;
 - (d) The alleged violations were first-time occurrences of its type;
 - (e) HATCI mitigated the environmental and programmatic impacts of the alleged violations by promptly correcting the associated issues wherever possible; and
 - (f) HATCI was very cooperative during CARB's investigation of the Self-Disclosures and alleged violations, and met in person with CARB enforcement staff numerous times in order to provide all requested information and detailed explanations and question responses to great effect.
- (37) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by HATCI or confidential settlement communications.

(38) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations identified in the Self-Disclosures.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against HATCI with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against HATCI with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by HATCI to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, HATCI 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 by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of HATCI or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against HATCI, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

(e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. HATCI is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; HATCI's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that HATCI's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: November 17, 2023

**Hyundai America Technical Center, Inc., for and on behalf of itself,
and its affiliates Hyundai Motor America and Kia America, Inc., formerly known
as Kia Motors America, Inc.**

Signature: /S/

Name: Richard Willard

Title: Director, Regulation and Certification

Date: November 7, 2023