

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 95814, and FOREST RIVER INC. (hereinafter "FOREST RIVER"), with its principal place of business at PO BOX 3030 Elkhart, Indiana 46515-3030.

RECITALS

- (1) California Health and Safety Code (H&SC) Section 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 section 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 section 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) At the time the vehicles that are the subject of this Agreement were certified and sold in California, H&SC section 43154(a) as in effect prior to January 1, 2017, stated, "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle."

- (5) At the time the vehicles that are the subject of this Agreement were certified and sold in California, H&SC section 43212(a)(1) as in effect prior to January 1, 2017, stated, "Any 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 of fifty dollars (\$50) for each vehicle which does not comply with the standards or procedures and which is first sold in this state."
- (6) On July 22, 2015, a joint letter from counsels representing FCA US LLC (hereinafter "FCA") as responsible certification filing agent for CHRYSLER GROUP LLC, with its principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan 48326, FOREST RIVER, and WINNEBAGO INDUSTRIES, INC. (hereinafter "WINNEBAGO"), with its principal place of business at 605 West Crystal Lake Road, Forest City, Iowa 50436, was sent to Ms. Annette Hebert, Chief of ECARS division, to disclose a compliance matter relating to model years (MY) 2014 (MY14) and MY 2015 (MY15) Ram ProMaster 3500 gasoline- and diesel-powered cab chassis vehicles that were sold in California. A total of 13 FOREST RIVER vehicles containing these chassis were sold into California ("Subject Vehicles").
- (7) FCA, FOREST RIVER, and WINNEBAGO stated in the joint letter that the MY14 and MY15 Ram ProMaster 3500 gasoline- and diesel-powered cab chassis vehicles were manufactured by FCA and reconfigured ("up-fitted") into recreational vehicle (RV) configurations by FOREST RIVER and WINNEBAGO above the certified weight limit. CARB alleges these over-weight vehicles are not covered by CARB's Executive Orders for the MY14 and MY15 Ram ProMaster 3500 gasoline- and diesel-powered vehicles, since the Subject Vehicles are not substantially identical in all material respects to the vehicles for which certification was granted, and that all emissions attributable to the Subject Vehicles would be illegal and excess. CARB alleges FOREST RIVER's sales of the Subject Vehicles violated H&SC sections 43151 – 43153.
- (8) FCA, FOREST RIVER, and WINNEBAGO stated in the joint letter that emission testing data, from subsequent internal testing, for these non-certified gasoline-powered Ram ProMaster 3500 vehicles did not exceed the emissions standards even though the certified weight limit was exceeded.
- (9) FCA, FOREST RIVER, and WINNEBAGO also disclosed that Vehicle Emission Control Information (VECI) labels affixed to the Subject Vehicles specified an incorrect maximum curb weight limit. CARB alleges this violated H&SC section 43212(a)(1).
- (10) CARB alleges that if the facts described in recital paragraphs 4 – 9 were proven, FOREST RIVER would be liable for the stated violations of California law for its sales of the Subject Vehicles in California, and subject to civil penalties as provided in H&SC sections 43154 and 43212.

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- (11) FOREST RIVER 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 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 FOREST RIVER for the allegations, claims, and violations referred to above, CARB and FOREST RIVER agree as follows:

- (1) Within thirty (30) days after execution of this Agreement by all parties, FOREST RIVER shall make full payment of penalties in the total sum of thirty thousand four hundred sixty-eight dollars and seventy-five cents (\$30,468.75) as follows:
- \$30,468.75 payable to the **California Air Pollution Control Fund**
- (2) This Agreement is limited to the parties, 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, or any claims against, or violations committed by, any non-party to this Agreement.

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

**Duong Trinh, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Ave. No.4
El Monte, CA 91731**

Please submit payment with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and send to:

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: Asha Sharma Fax: (916) 322-9612
Reference: CARB Case # MSES-15-087**

Wire Transfer Fee: The party making payment is responsible for any bank charges incurred for processing wire transfers.

Notification of each wire transfer shall be provided to:

**Duong Trinh
California Air Resources Board
Enforcement Division
duong.trinh@arb.ca.gov
(626) 350-6560**

- (3) Effect of Untimely Payment. If payment is not made within ten (10) business days of the date specified above without first obtaining written permission from CARB Enforcement, the entire remaining balance of the total penalty, 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 by FOREST RIVER without notice or demand.
- (4) If the Attorney General files a civil action to enforce this Agreement, FOREST RIVER shall be liable to pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (5) It is agreed that if at any time prior to the payment in full of the penalties required under this Agreement FOREST RIVER becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving FOREST RIVER, 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 FOREST RIVER, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of FOREST RIVER's properties, or if any deposit account or other property of FOREST RIVER be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or FOREST RIVER takes any action to authorize any of the foregoing, the entire remaining balance of the total penalty becomes immediately due and payable by FOREST RIVER without notice or demand.

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- (6) This Agreement shall apply to and be binding upon FOREST RIVER 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.
- (7) Now therefore, in consideration of the payment by FOREST RIVER in the amount of thirty thousand four hundred sixty-eight dollars and seventy-five cents (\$30,468.75) to the California Air Pollution Control Fund, CARB hereby releases FOREST RIVER and its principals, officers, directors, agents, dealers, receivers, trustees, employees, successors and assignees, predecessors, subsidiary and parent corporations from any and all claims and violations CARB may have based upon the events described in recital paragraphs 4 – 9 above. The undersigned represent that they have the authority to enter this Agreement.
- (8) This Agreement constitutes the entire agreement and understanding between CARB and FOREST RIVER 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 FOREST RIVER concerning these claims and violations.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.

(15) 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.

(16) **SB 1402 Statement**

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 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 section 43024. The per-vehicle penalty in this case under the applicable statute in effect before January 1, 2017, was a maximum of \$5,000.00 per vehicle per strict liability violation. The penalty obtained in this case is \$2,343.75 per vehicle for 13 vehicles, for a total of \$30,468.75. The penalty was significantly reduced from the statutory maximum because FOREST RIVER self-disclosed the violations and cooperated with the investigation.

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 FOREST RIVER brought into commerce uncertified medium-duty vehicles into California, in violation of H&SC § 43151-43153 because they sold, offered for sale, acquired, delivered, or imported uncertified vehicles 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. CARB alleges all emissions attributable to the Subject Vehicles would be illegal and excess, but quantifying them is not practicable because usage and other information required to do so is unavailable.


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- (17) FOREST RIVER 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.
- (18) 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.
- (19) The penalty was also based on confidential business information provided by FOREST RIVER that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and FOREST RIVER 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 FOREST RIVER and reflects CARB's assessment of the relative strength of its case against FOREST RIVER, 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 FOREST RIVER may have secured from its actions.
- (20) FOREST RIVER represents that it understands the legal requirements applicable to introducing new vehicles into California.

California Air Resources Board

By: 

Name: Ellen M. Peter

Title: Chief Counsel

Date: 4/9/2019

FOREST RIVER, INC.

By: 

Name: PETER J. LIEGL

Title: CEO

Date: 3-22-19