

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and New Flyer of America Inc. (NFA), with its principal location at 6200 Glenn Carlson Drive, Saint Cloud, Minnesota 56301, and Motor Coach Industries, Inc. (MCI) with its principal location at 200 East Oakton Street, Des Plaines, Illinois 60018 (collectively, the "Parties," or individually, "Party"). NFA and MCI are independent transit bus and coach manufacturers, respectively, and are affiliated entities wholly owned by NFI Group Inc.

### **LEGAL BACKGROUND**

- (1) Purpose - Vehicle Standards. 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 in California unless it is certified. This includes attempts or assistance. (Health & Saf. Code §§ 43100, 43101, 43151, 43152, 43153, 43211, and 43212.)
- (2) Purpose - Vehicle Idling. The California Health and Safety Code mandates adoption of airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources. (Health & Saf. Code § 39666(a).) Diesel particulate matter, or diesel "soot," was identified as a toxic air contaminant in 1998.
- (3) Regulation - Vehicle Standards. CARB adopted the "Motor Vehicle Pollution Control Devices" Regulation (Vehicle Standards) (Cal. Code Regs., tit. 13, §§ 1900-2048) to reduce emissions of, inter alia, oxides of nitrogen (NOx) and hydrocarbons (HC) from new and used motor vehicles and motor vehicle engines in California. 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 a computer-sensed emission-related component to inform the vehicle operator of a malfunction (On-board Diagnostic System (OBD)), and come with an emission control system warranty. (Cal. Code Regs., tit. 13, §§ 1900-2048.) In addition, each new motor vehicle or engine requiring certification shall be, in all material respects, substantially the same in construction as the test motor vehicle or engine, as the case may be, which has been certified by the state board. (Health & Saf. Code § 43106.)

- (4) Regulation - Vehicle Idling. CARB adopted the "Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling" (ATCM) (Cal. Code Regs., tit. 13, § 2458) to reduce emissions of, inter alia, diesel particulate matter from new and used motor vehicles in California. Effective January 1, 2015, any person owning or operating any vehicle equipped with an alternative technology subject to the requirements of section 2485 shall comply with the specified requirements, one of which is a prohibition against installing a fuel-fired heater on a vehicle equipped with 2007 or later model year certified primary diesel-fueled engine, unless the fuel-fired heater meets the emission standards and test procedures of California Code of Regulations, title 13, section 1961, subsections (a)(15) and (d), or in Part I.E.1.13 of the "California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." (Cal. Code Regs., tit. 13, § 2485(c)(2)(D)(2).)
- (5) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty-seven thousand three hundred sixty-three dollars (\$47,363.00 USD) for each strict liability violation of the Vehicle Standards (Health & Saf. Code, §§ 43016, 43154, 43211, 43212; Cal. Code Regs., tit. 13, § 1900 et seq.) and not to exceed one thousand dollars (\$1,000) for each day in which violation of an ATCM occurs (Health & Saf. Code § 39674).

### **CASE BACKGROUND**

- (6) Corporate Entity. At all relevant times, NFA was organized under the laws of North Dakota and based in Minnesota as a corporation; and MCI was organized under the laws of Delaware as a corporation and based in Illinois, conducting business in the State of California.
- (7) Allegations. NFA and MCI self-disclosed the combined sales of 388 buses and motorcoaches (386 from MCI, and 2 from NFA) in California between 2016 and 2020 containing noncompliant diesel fuel-fired heaters. CARB alleges that NFA and MCI violated the Vehicle Standards by introducing into commerce new motor vehicles into California not meeting the certification requirements and containing noncompliant diesel fuel-fired heaters, resulting in 388 combined violations. CARB alleges that if paragraphs 1 through 7 were proven, civil penalties could be imposed against NFA and MCI for each of the 388 noncompliant vehicles.
- (8) Acknowledgment. NFA and MCI admit to the facts in paragraphs 1 through 7, but deny any liability resulting from said allegations.

- (9) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. To resolve the violations described herein, NFA and MCI have taken, or agree 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 NFA and MCI for the alleged violations referred to above in the Legal Background and Case Background, and NFA's and MCI's agreement to complete all terms and conditions set forth below, CARB and NFA and MCI agree as follows:

- (10) Settlement Amount. NFA and MCI shall pay a combined civil penalty of nine hundred seventy thousand dollars (\$970,000.00 USD). NFA and MCI shall make all payments in accordance with the payment schedule in Paragraph 11 (Payment Plan and Schedule).
- (11) Payment Plan and Schedule. Pursuant to this Settlement Agreement, NFA and MCI shall make payments according to the following table. As used in the table, the Notification Date is the date CARB notifies NFA and MCI according to Paragraph 15 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to NFA and MCI as provided in Paragraph 15 (Notices).

<b>Days After the Notification Date</b>	<b>In the Amount of and Payable To:</b>
15 Days	\$291,000 to the California Air Resources Board
365 Days	\$339,500 to the California Air Resources Board
730 Days	\$339,500 to the California Air Resources Board

- (12) Civil Penalty Payment Method. NFA and MCI shall pay the civil penalty 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. NFA and MCI are responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. 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 NFA and MCI in accordance with Paragraph 15 (Notices).

- (13) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (14) Documents. NFA and MCI shall promptly email or mail the signed and dated Settlement Agreement to the CARB address or email 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  
Vehicle, Parts, and Consumer Products Enforcement Branch / Vehicle  
Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to NFA:

Legal Department  
New Flyer of America Inc.  
6200 Glenn Carlson Drive  
Saint Cloud, Minnesota 56301  
[legal@nfigroup.com](mailto:legal@nfigroup.com)

As to MCI:

Legal Department  
Motor Coach Industries, Inc.  
200 East Oakton Street  
Des Plaines, Illinois 60018  
[legal@nfigroup.com](mailto:legal@nfigroup.com)

As to NFA and MCI Legal Representation:

Michael Vergara  
Somach, Simmons, and Dunn  
500 Capitol Mall, Suite 1000  
Sacramento, California 95814  
[mvergara@somachlaw.com](mailto:mvergara@somachlaw.com)

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above in Paragraph 15 (Notices).

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, NFA and MCI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (17) Repeat Violations. NFA and MCI agree to comply with all regulatory requirements and acknowledge 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 Case Background and supersedes and replaces all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 10 pages and 36 numbered paragraphs.
- (19) Binding Effect. This Settlement Agreement binds NFA and MCI, 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 date upon which this Settlement Agreement is fully executed.
- (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 Parties to this Settlement Agreement.
- (22) Severability. Each provision of this Settlement Agreement is severable, and should 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) 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.
- (26) 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.
- (27) 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.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of full payment of the of civil penalty and all other undertakings above, CARB hereby releases NFA and MCI and its directors, principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 7 (Allegations) above.
- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (32) Per Unit Penalty. The potential per unit or per vehicle penalty in this case is a maximum of forty-seven thousand three hundred sixty-three dollars (\$47,363.00

USD) per vehicle under Health and Safety Code section 43154(a)(2) for violations of the Vehicle Standards (Cal. Code Regs., tit. 13, §§ 1900 et seq.), and one thousand dollars (\$1,000.00 USD) per day in which a violation occurs. In recognition of MCI's and NFA's self-disclosure and cooperation with CARB's investigation in this matter, CARB will not assess the maximum penalty and instead will assess a negotiated penalty of nine hundred seventy thousand dollars (\$970,000.00 USD) over an unspecified number of days of violation for the combined 388 noncompliant vehicles. The per unit penalty in this case is approximately two thousand five hundred dollars (\$2,500.00 USD) per noncompliant unit.

- (33) 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, for purposes of this settlement the Parties assume all of the subject emissions were excess and illegal.
- (34) 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, if any, in future cases might be smaller or larger depending on the unique circumstances of the case.
- (35) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by NFA or MCI or confidential settlement communications.
- (36) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
  - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against NFA and MCI 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 NFA and MCI with respect to:

- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by NFA or MCI 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, NFA and MCI 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 NFA and MCI 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 NFA or MCI, 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. NFA and MCI are responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; NFA's or MCI'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 NFA's or MCI'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: Ellen M. Peter

Title: Chief Counsel

Date: June 6, 2024

**New Flyer of America** (1 of 2 NFA signatories)

Signature: /S/

Name: Paul Soubry

Title: Chief Executive Officer

Date: May 24, 2024

**New Flyer of America** (2 of 2 NFA signatories)

Signature: /S/

Name: Chris Stoddart

Title: President, NA Bus and Coach

Date: May 24, 2024

**Motor Coach Industries, Inc.** (1 of 2 MCI signatories)

Signature: /S/

Name: Paul Soubry

Title: Chief Executive Officer

Date: May 24, 2024

**Motor Coach Industries, Inc.** (2 of 2 MCI signatories)

Signature: /S/

Name: Chris Stoddart

Title: President, NA Bus and Coach

Date: May 24, 2024