

MAR 04 2019

Sherri R. Carter, Executive Officer/Clerk
By Shannon Sausfield, Deputy
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rel. the California Air Resources Board

EXEMPT FROM FILING FEES
[GOV. CODE, § 6103]

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

13 **THE PEOPLE OF THE STATE OF CALIFORNIA EX**
REL. THE CALIFORNIA AIR RESOURCES
14 **BOARD,**

Case No. **19STCV03053**

15 Plaintiff,

~~[PROPOSED]~~ **ORDER RE CALIFORNIA**
CODE OF CIVIL PROCEDURE SECTION
664.6

16 v.

17 **FIAT POWERTRAIN TECHNOLOGIES**
18 **INDUSTRIAL S.P.A.; AND DOES 1-20,**
19 **INCLUSIVE,**

Assigned:
Dept:
Action filed:
Trial date:

20 Defendants.

21
22 Having reviewed the settling parties' SETTLEMENT AGREEMENT AND RELEASE,
23 submitted concurrently herewith at Exhibit A, noting that in paragraph 32 the parties agreed and
24 requested as a condition to the settlement that the Court retain jurisdiction over the case and
25 parties for the purposes of California Code of Civil Procedure Section 664.6 as follows:
26

27 **32. Retention of Jurisdiction:** The Parties agree that this Agreement is
enforceable pursuant to section 664.6 of the California Code of Civil Procedure
and hereby request that the Court retain jurisdiction over this case and the Parties
28 for the purpose of resolving disputes arising under this Agreement or entering

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orders modifying this Agreement, pursuant to paragraph 17 (Dispute Resolution) or paragraph 26 (Amendment/Modification), or effectuating or enforcing compliance with the terms of this Agreement.

IT IS HEREBY ORDERED, finding good cause therefor, the Court will retain jurisdiction over this matter and all parties pursuant section 664.6 of the California Code of Civil Procedure for the purpose of enforcing the terms of the parties' SETTLEMENT AGREEMENT AND RELEASE.

IT IS SO ORDERED

Dated: MAR 04 2019



Judge of the Superior Court
Los Angeles County
Rupert A. Byrdsong

Prepared by:

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03/12/19

EXHIBIT A

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FOR THE COUNTY OF LOS ANGELES
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13 **THE PEOPLE OF THE STATE OF CALIFORNIA EX
REL. THE CALIFORNIA AIR RESOURCES
14 BOARD,**

Case No.

15 Plaintiff,

**SETTLEMENT AGREEMENT AND
RELEASE**

16 v.

17 **FIAT POWERTRAIN TECHNOLOGIES
18 INDUSTRIAL S.P.A.; AND DOES 1-20,
19 INCLUSIVE,**

20 Defendants.

21
22 **SETTLEMENT AGREEMENT AND RELEASE**

23
24 This Settlement Agreement and Release (“Agreement”) is entered into between the State
25 of California Air Resources Board (“CARB”), 1001 I Street, Sacramento, California 95814, and
26 Fiat Powertrain Technologies Industrial, S.p.A. (“FPT” or “Defendant(s)”), Via Puglia 15, 10156
27 Torino, Italy (collectively, the “Parties”).
28

1 **I. RECITALS**

2 WHEREAS, on or about January 18, 2019, the People of the State of California ex rel. CARB
3 filed an action in Los Angeles County against FPT, captioned *The People of the State of*
4 *California ex rel. The California Air Resources Board v. Fiat Powertrain Technologies*
5 *Industrial, S.p.A., et al.* The Complaint alleged violations of California Health and Safety Code
6 sections 43151, 43152, 43153, 43212, California Code of Regulations, title 13, sections 2144 and
7 1969, and Vehicle Code section 27156. The Complaint sought injunctive relief and statutory
8 penalties against FPT in connection with the alleged illegal importation, delivery, sale and
9 labeling of model years 2011-2014 F1C engines, and model years 2014-2016 NEF engines; and

10 WHEREAS, FPT's share of the United States market at all relevant times was small;

11 WHEREAS, some of the Subject Engines have been in customers' hands for extended
12 periods of time - some well past the anticipated useful life of the engines;

13 WHEREAS, FPT's non-compliance issues were disclosed to CARB voluntarily, and not
14 through a legally mandated auditing, monitoring, or sampling requirement prescribed by statute,
15 regulation, permit, variance, judicial or administrative order, or consent agreement;

16 WHEREAS, FPT identified the non-compliances and promptly reported them to CARB,
17 rather than reacting to knowledge of a pending enforcement action or third party complaint;

18 WHEREAS, FPT promptly developed a Remedial Action Plan to correct the non-
19 compliances;

20 WHEREAS, FPT has committed to promptly implement the Remedial Action Plan;

21 WHEREAS, FPT, as part of its Remedial Action Plan, will retrofit older engines with
22 state-of-the-art technology, including new, improved, and more costly selective catalytic
23 reduction systems and turbochargers;

24 WHEREAS, FPT's Remedial Action Plan will greatly improve the emissions compliance
25 of the vehicles – far beyond that which was required during the years those vehicles were actually
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1 produced;

2 WHEREAS, FPT's Remedial Action Plan will provide superior emissions performance
3 well beyond the useful life of the engines;

4 WHEREAS, FPT will provide each customer an extended warranty on these older engines
5 after the Remedial Action Plan has been implemented;

6
7 WHEREAS, FPT's costly and time consuming engineering and development efforts
8 demanded considerable work during the period 2014 through 2017 by FPT engineers in Turin,
9 Italy, Arbon, Switzerland, and Burr Ridge, Illinois, costing in excess of \$5,000,000;

10 WHEREAS, FPT's Remedial Action to repair the on-road engines will cost at least
11 \$10,000,000, including cost of labor, replacement components, and other technical activities, but
12 not including the cost of the extended warranties.

13 WHEREAS, FPT did not receive any economic benefit as a result of its non-compliance
14 issues. FPT's Remedial Action Plan, specifying new, improved, and more costly components,
15 will cost far more than the profit FPT might have received from the original sale of the engines to
16 its customers;

17 WHEREAS, in order to prevent recurrences, FPT conducted a systematic review of its
18 design, engineering, and certification practices and instituted several changes, including
19 management change, timely collection and analysis of warranty data, hiring skilled staffing in a
20 new independent emission compliance team with direct access to upper management,
21 development and implementation of a comprehensive compliance training program, and creation
22 of an independent emissions governance structure;

23
24 WHEREAS, FPT has cooperated fully with CARB in identifying the non-compliances
25 and the appropriate remedy for the alleged violations; and

26 WHEREAS, the Parties now desire to fully and finally settle the CARB Action, all
27 disputes and Released Claims (as defined below) between them, acknowledging that settlement is
28 in the best interests of the Parties.

1 NOW, THEREFORE, in order to resolve the violations alleged in the Complaint, FPT has
2 taken or agreed to take the actions enumerated below under "TERMS AND CONDITIONS."
3 FPT neither admits nor denies the allegations contained in the Complaint. Further, CARB agrees
4 to accept this Agreement in termination and settlement of this matter. The Parties agree as
5 follows:

6 **II. DEFINITIONS**

7 "AECD" or "Auxiliary Emission Control Device" has the meaning set forth in 40 C.F.R.
8 Section 86.1803-01.

9 "Agreement" means this Settlement Agreement, including the Exhibits attached hereto.

10 "BAAQMD" means the Bay Area Air Quality Management District.

11 "BVEXH03.0F1A" means the engine family group for which CARB issued Executive
12 Order A-396-0001 to Iveco S.p.A, including any superseding document.

13 "BVEXH03.0F1B" means the engine family group for which CARB issued Executive
14 Order A-396-0002 to Iveco S.p.A, including any superseding document.

15 "California" means the People of the State of California by and through CARB.

16 "CARB" means the California Air Resources Board, and any of its successors or assigns.

17 "CARB Action" means the Complaint filed by the Attorney General of the State of
18 California on behalf of CARB against FPT in Los Angeles County on or about January 18, 2019.

19 "CFPXH03.0F1A" means the engine family group for which CARB issued Executive
20 Order A-396-0003 to FPT, including any superseding document.

21 "CFPXH03.0F1B" means the engine family group for which CARB issued Executive
22 Order A-396-0004 to FPT, including any superseding document.

23 "Court" means the Superior Court of California for the County of Los Angeles.

24 "Day" means a calendar day unless expressly stated to be a business day. In computing
25

1 any period of time under this Agreement, if the last day would fall on a Saturday, Sunday, or
2 federal or California holiday, the period shall run until the close of business of the next business
3 day.

4 “DEF” means diesel exhaust fluid.

5 “Defeat Device” has the same meaning as is defined at 42 U.S.C. Section 7522(a)(3)(B)
6 and 40 C.F.R. Section 86.1803-01

7
8 “DFPXH03.0F1A” means the engine family group for which CARB issued Executive
9 Order A-396-0005 to FPT, including any superseding document.

10 “DFPXH03.0F1B” means the engine family group for which CARB issued Executive
11 Order A-396-0006 to FPT, including any superseding document.

12 “DOC” means the diesel oxidation catalyst.

13 “DPF” means the diesel particulate filter.

14
15 “Effective Date” means the date upon which the last signatory executes this Agreement.

16 “EFPXH03.0F1A” means the engine family group for which CARB issued Executive
17 Order A-396-0007 to FPT, including any superseding document.

18 “EFPXH03.0F1B” means the engine family group for which CARB issued Executive
19 Order A-396-0008 to FPT, including any superseding document.

20 “EFPXL06.7SDA” means the engine family group for which CARB issued Executive
21 Order U-R-015-0264 to FPT, including any superseding document.

22
23 “EFPXL06.7SDB” means the engine family group for which CARB issued Executive
24 Order U-R-015-0265 to FPT, including any superseding document.

25 “EGR” means exhaust gas recirculation.

26 “Engine family” means a grouping of engines assigned by the U.S. Environmental
27 Protection Agency using the criteria in the Code of Federal Regulations.
28

1 "FFPXL06.7CLA" means the engine family group for which CARB issued Executive
2 Order U-R-015-0286 to FPT, including any superseding document.

3 "FFPXL06.7SDA" means the engine family group for which CARB issued Executive
4 Order U-R-015-0290 to FPT, including any superseding document.

5 "FFPXL06.7SDB" means the engine family group for which CARB issued Executive
6 Order U-R-015-0291 to FPT, including any superseding document.

7
8 "Force majeure," for purposes of this Agreement, is defined as any event arising from
9 causes beyond the control of Defendants, of any entity controlled by Defendants, or of
10 Defendants' contractors that delays or prevents the performance of any obligation under this
11 Agreement despite Defendants' best efforts to fulfill the obligation. The requirement that
12 Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate
13 any potential force majeure event and best efforts to address the effects of any potential force
14 majeure event (a) as it is occurring, and (b) following the potential force majeure, such that the
15 delay and any adverse effects of the delay are minimized. "Force majeure" does not include
16 Defendants' financial inability to perform any obligation under this Agreement.

17 "FPT" or "Defendant(s)" means Fiat Powertrain Technologies Industrial, S.p.A, and its
18 present, past, and/or future predecessors, parent companies, subsidiaries, divisions, successors,
19 assigns, related entities and/or affiliates, and current and former officers, directors, shareholders,
20 employees, attorneys, agents, and representatives.

21 "F1C engines" means the on-road engines manufactured by FPT.

22 "GFPXL04.5LBH" means the engine family group for which CARB issued Executive
23 Order U-R-015-0301 to FPT, including any superseding document.

24 "GFPXL06.7CLA" means the engine family group for which CARB issued Executive
25 Order U-R-015-0309 to FPT, including any superseding document.

26 "GFPXL06.7SDA" means the engine family group for which CARB issued Executive
27 Order U-R-015-0324 to FPT, including any superseding document.
28

1 "GFPXL06.7SDB" means the engine family group for which CARB issued Executive
2 Order U-R-015-0322 to FPT, including any superseding document.

3 "HD engine" means heavy duty engine, as defined in California Code of Regulations, title
4 13, section 1900(b)(5).

5 "Inspection and Maintenance" means California's Smog Check Program.

6 "Manufacturer self-test" or "manufacturer self-testing" or "MST" means all of the
7 requirements in California Code of Regulations, title 13, section 1971.5(c)
8

9 "MIL" means the malfunction indicator light in the vehicle.

10 "Modified Vehicles" means those vehicles containing on-road engines that have been
11 remedied pursuant to this Agreement.

12 "MY" means model year.

13 "NEF" means the off-road engines manufactured by FPT.

14 "NOx" means oxides of nitrogen.

15 "OBD" means the on-board diagnostic system in the vehicle.

16 "OBD non-compliance" or "OBD non-compliances" means any aspect of the on-road
17 vehicle that is not compliant with CARB's OBD regulations.
18

19 "OBD non-compliances for engine family EFPXH03.0F1B" or "OBD non-compliance for
20 engine family EFPXH03.0F1B" means the allowed OBD non-compliance(s) listed in Appendix 3.
21 These OBD non-compliances shall also apply to engine families BVEXH03.0F1B,
22 CFPXH03.0F1B, and DFPXH03.0F1B. No further OBD non-compliances are allowed for the
23 on-road engines.
24

25 "Off-road engines" or "off-road engine" means the NEF engine(s) manufactured by FPT
26 in model years 2014, 2015, and 2016 pursuant to off-road diesel engine families
27 EFPXL06.7SDA, EFPXL06.7SDB, FFPXL06.7SDA, FFPXL06.7SDB, FFPXL06.7CLA,
28 GFPXL04.5LBH, GFPXL06.7SDA, GFPXL06.7SDB, and GFPXL06.7CLA (collectively, NEF

1 engines), sold or offered for sale in, or introduced or delivered for introduction into commerce in
2 California.

3 “On-road engines” or “on-road engine” means the engine(s) manufactured by FPT in
4 model years 2011, 2012, 2013, and 2014, pursuant to on-highway diesel engine families
5 BVEXH03.0F1A, BVEXH03.0F1B, CFPXH03.0F1A, CFPXH03.0F1B, DFPXH03.0F1A,
6 DFPXH03.0F1B, EFPXH03.0F1A, and EFPXH03.0F1B (collectively, F1C engines), sold or
7 offered for sale in, or introduced or delivered for introduction into commerce in California.

8 “Paragraph” means a portion of this Agreement, including any subparagraph thereunder.

9 “Party” means CARB or FPT, individually.

10 “Parties” means CARB and FPT, collectively.

11 “Recall” has the same meaning as in California Code of Regulations, title 13, section
12 1900(b)(19).
13

14 “Recall Period” means the period from the Effective Date through, and including, 24
15 months thereafter.

16 “Released Claims” means any and all claims, counterclaims, cross-claims, defenses,
17 affirmative defenses, causes of action of any type (whether common law, statutory, regulatory,
18 administrative, in tort, contract, legal, equitable, or otherwise, and whether or not reduced to
19 judgment, liquidated, un-liquidated, fixed, contingent, matured, unmatured, disputed, or
20 undisputed), demands, disputes, damages, costs, losses, detriments, interest, expenses, penalties,
21 fines, fees, attorneys’ fees, actions, debts, controversies, suits and choses in action, whether
22 known or unknown, or stated or unstated, relating to, arising out of, in connection with, based
23 upon, or otherwise stemming from any of the facts, circumstances, acts, omissions, allegations, or
24 purported violations of law raised in, alleged in, referred to, or described in the CARB Action,
25 including the prosecution or defense of those actions.
26

27 “Remedial Action Plan” with regard to model years 2011-2012, means the Remedial
28 Action Plan submitted by FPT to CARB on December 17, 2018 and approved by CARB on

1 December 20, 2018; with regard to model years 2013-2014, means the Remedial Action Plan
2 submitted by FPT to CARB on December 17, 2018 and approved by CARB on December 20,
3 2018.

4 “SCR” means selective catalytic reduction.

5 “SEP” means Supplemental Environmental Project.

6 “Subject Engines” means the off-road engines and on-road engines, collectively.
7

8 **III. TERMS AND CONDITIONS**

9 1. **California Air Pollution Control Fund Payment:** Within thirty (30) Days after the
10 Effective Date of this Agreement, FPT shall pay, as a penalty, to the Air Pollution Control Fund
11 of the State of California the sum of four million, four hundred fifteen thousand dollars
12 (\$4,415,000). This sum shall be made payable by FPT to the Air Pollution Control Fund of the
13 State of California and transferred by bank wire.

14 At the time of payment, FPT shall provide a copy of the wire transfer documentation and the
15 attached “Settlement Agreement Payment Transmittal Form” (Attachment A in Appendix 1) to
16 the following address:

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

20 2. **Supplemental Environmental Project (SEP):** FPT has agreed to undertake a SEP as
21 described in Attachment B in Appendix 1 - SUPPLEMENTAL ENVIRONMENTAL PROJECT
22 AGREEMENT - Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay
23 Area Care Communities SEP (“SEP Agreement”) to offset a portion of the penalty, consistent
24 with CARB’s SEP Policy. Pursuant to this Agreement, FPT shall, within thirty (30) Days after
25 the Effective Date of this Agreement, pay the sum of two million dollars (\$2,000,000) according
26 to the schedule below.

- 27 a. FPT has agreed that by funding the Installation of Air Filtration Systems in
28 Sensitive Receptor Facilities in Bay Area Care Communities SEP, they will not

1 receive any direct or indirect financial benefit, and that whenever it publicizes a
2 SEP or the results of the SEP, it will state in a prominent manner that the project is
3 being undertaken as part of the settlement of a CARB enforcement action.

- 4 b. Upon agreeing to the terms set forth in the SEP Agreement, and funding the
5 Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area
6 Care Communities SEP, FPT is released of all liabilities as they relate to the
7 Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area
8 Care Communities SEP as reflected in this underlying Agreement.
- 9 c. In the event the SEP is not fully implemented in accordance with the terms of the
10 SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover
11 the full amount of the SEP from the SEP implementer, less any amount waived
12 based on the timely and successful completion of any previously agreed upon
13 interim milestone(s). CARB will deposit any such recovery into the Air Pollution
14 Control Fund. Accordingly, FPT assigns any and all rights against the SEP
15 implementer to CARB.

16 3. **Payment Schedule.** FPT shall pay a civil penalty and fund the Installation of Air
17 Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP in the
18 total amount of six million four hundred fifteen thousand dollars (\$6,415,000). Payments shall be
19 made in two (2) separate payments as described below.

20 Payment Due Date:	In the Amount of and Payable to:	
21 Within 30 days of the 22 Effective Date	\$4,415,000	Air Pollution Control Fund
23 Within 30 days of the 24 Effective Date	\$2,000,000	Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP

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

27 Mr. Dean Hermano
28 Staff Air Pollution Specialist
California Air Resources Board

1 Enforcement Division
2 9480 Telstar Avenue, Suite 4
3 El Monte, California 91731

4 **4. Payment Information.** For payments made to the Air Pollution Control Fund, please
5 send the payment along with the attached "Settlement Agreement Payment Transmittal Form"
6 (Attachment A in Appendix 1) to:

7 California Air Resources Board
8 Accounting Office
9 P.O. Box 1436
10 Sacramento, California 95812-1436

11 Air Pollution Control Fund payment by bank wire transfer shall use the following
12 information:

13 State of California Air Resources Board
14 c/o Bank of America, Inter Branch to 0148
15 Routing No. 0260-0959-3
16 Account No. 01482-80005
17 Notice of Transfer: Asha Sharma Fax: (916)322-9612
18 Reference: CARB Case # C00012

19 For payments made to the Installation of Air Filtration Systems in Sensitive Receptor
20 Facilities in Bay Area Care Communities SEP, please send the payment along with the attached
21 "Supplemental Environmental Project Payment Transmittal Form" (Attachment A-2 in Appendix
22 1) to:

23 Bay Area Air Quality Management District
24 ATTN: Dr. David Ralston
25 For: Installation of Air Filtration Systems in Sensitive Receptor Facilities
26 in Bay Area Care Communities SEP
27 375 Beale Street, 6th Floor
28 San Francisco, California 94105

SEP payment by bank wire transfer shall use the following information:

Bay Area Air Quality Management District
c/o Union Bank of California
ABA No. 122000496 Account No. 7020010139
Notice of Transfer: Marina Smotkina (msmotkina@baaqmd.gov)
Reference: CARB Case # C00012 (BAAQMD Air Filtration SEP)

Defendant is responsible for any bank charges incurred for processing wire transfers.

In addition, confirmation of the payment made to the Installation of Air Filtration Systems

1 in Sensitive Receptor Facilities in Bay Area Care Communities SEP shall be mailed to:

2 Mr. Dean Hermano
3 Staff Air Pollution Specialist
4 California Air Resources Board
5 Enforcement Division
6 9480 Telstar Avenue, Suite 4
7 El Monte, California 91731

8 5. **Effect of Untimely Payment.** If any payment is more than fifteen (15) days late, the
9 entire remaining balance becomes immediately due and payable. In addition, if the Attorney
10 General files a civil action to enforce this settlement agreement, FPT shall pay all costs of
11 investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and
12 costs.

13 6. **Permanent Injunction.** The parties agree to a permanent injunction enjoining
14 Defendants for engaging in, or performing any and all of the following acts:

- 15 a. Producing new motor vehicle engines for sale, offer for sale, introduction into
16 commerce, delivery, use, registration, or resale in California that are not identical
17 in all material respects to what was certified by CARB.
- 18 b. Producing new motor vehicle engines for sale, offer for sale, introduction into
19 commerce, delivery, use, registration, or resale in California that contain any OBD
20 deficiency that was not fully, truthfully, and accurately disclosed to CARB.
- 21 c. Producing new motor vehicle engines for sale, offer for sale, introduction into
22 commerce, delivery, use, registration, or resale in California that contain any
23 AECD that was not fully, truthfully, and accurately disclosed to CARB.
- 24 d. Violating Health and Safety Code section 43151, subdivision (a), including but not
25 limited to the types of acts and practices alleged in the First and Fourth Causes of
26 Action.
- 27 e. Violating Health and Safety Code section 43152, including but not limited to the
28 types of acts and practices alleged in the Second and Fifth Causes of Action.
- f. Violating Health and Safety Code section 43153, including but not limited to the
types of acts and practices alleged in the Third and Sixth Causes of Action.

- 1 g. Submitting incomplete or inaccurate information as part of any application for
2 certification to CARB.
- 3 h. Violating Health and Safety Code section 43212, including but not limited to the
4 types of acts and practices alleged in the Seventh, Eighth, Twelfth, and Thirteenth
5 Causes of Action.
- 6 i. Violating California Code of Regulations, title 13, section 2144, including but not
7 limited to the types of acts and practices alleged in the Ninth Cause of Action.
- 8 j. Violating Vehicle Code section 27156, including but not limited to the types of
9 acts and practices alleged in the Tenth Cause of Action.
- 10 k. Implementing any running change or field fix without prior CARB approval.
- 11 l. Violating California Code of Regulations, title 13, section 1971.5(c), including but
12 not limited to the types of acts and practices alleged in the Eleventh Cause of
13 Action.
- 14 m. Violating California Code of Regulations, title 13, section 1969, including but not
15 limited to the types of acts and practices alleged in the Fourteenth Cause of Action.

16

17 7. **Recall of Subject Engines:** No later than the end of the Recall Period, FPT must conduct
18 a recall of the on-road engines according to the Remedial Action Plan for model years 2011 and
19 2012, and the Remedial Action Plan for model years 2013 and 2014.

20 8. For any OBD non-compliance in any of the on-road engines, either disclosed by
21 Defendants to CARB after the Effective Date or that CARB otherwise discovers after the
22 Effective Date, which has not been identified as an OBD non-compliance in Appendix 3, for the
23 applicable engine family, Defendants shall pay a Stipulated Penalty as set forth in Paragraph 15
24 (Stipulated Penalties) and provide additional time to the Extended Warranty as set forth in
25 Paragraph 12 (Extended Warranty). Additionally, for any OBD non-compliance that could cause
26 a consumer's vehicle to fail or not complete the Inspection and Maintenance program ("Smog
27 Check") testing (in accordance with California Code of Regulations, title 13, sections
28 1968.5(b)(6)(C)(ii) 1971.5(b)(6)(C)(ii)), Defendants shall submit to CARB for review and

1 approval a Remedial Action Plan in accordance with California Code of Regulations, title 13,
2 sections 1968.5(d) and 1971.5(d) to address the OBD non-compliance(s) that caused the vehicle
3 to fail or not complete the Inspection and Maintenance program. FPT shall implement the
4 approved Remedial Action Plan.

5 9. CARB shall coordinate the recall with the California Department of Motor Vehicles tie-in
6 program to ensure all trucks equipped with the on-road engines registered in California are
7 recalled.

8 **10. Recall Reporting:**

- 9 a. FPT shall report the progress made under the Remedial Action Plans within 25
10 days of the end of each quarter for six (6) quarters, in compliance with California
11 Code of Regulations, title 13, section 2119;
- 12 b. Within thirty (30) days of completion of each Remedial Action Plan, FPT shall
13 provide a final report on the execution of the Remedial Action Plan. The final
14 reports shall include the information required in California Code of Regulations,
15 title 13, Section 2119.

16 **11. Defeat Devices:** FPT shall remove all Defeat Devices, if any exist, from each of the on-
17 road and off-road engines.

18 **12. Extended Warranty:**

- 19 a. Defendants must provide an Emission Control System Warranty and a Recall
20 Workmanship Warranty (collectively, the "Extended Emissions Warranty") for
21 each on-road engine receiving the recall. The Extended Emissions Warranty shall
22 cover all parts and labor. Defendants must not impose on vehicle owners any fees
23 or charges, and must pay any fees or charges imposed by its dealers related to the
24 warranty service. The Extended Emissions Warranty shall provide warranty
25 coverage as follows.
- 26 b. The Emission Control System Warranty must cover (1) all components that are
27 replaced, repaired, installed, upgraded, or otherwise modified as part of the Recall
28 and (2) the engine valve train assembly.

- 1 c. The Recall Workmanship Warranty must ensure the Recall has been properly
2 carried out, and must cover all components in subparagraphs (i) through (iv),
3 below, and any other component that can reasonably be affected by the Recall. The
4 Recall Workmanship Warranty must cover, at a minimum, the following parts and
5 systems, and their associated hardware:
- 6 i. The DOC, the DPF, the SCR catalyst assembly, other DEF system
7 components, including but not limited to the dosing control system, DEF
8 doser, DEF level sensor, DEF tank heater, DEF tank pump module,
9 automatic DEF tank heater sub harness, automatic heated DEF tank pad,
10 DEF tank upper and lower covers, dosing unit hose bracket, and DEF tank
11 bracket, NOx sensor(s), ammonia sensor (where present), and all related
12 sensors and actuators;
 - 13 ii. Exhaust brake assembly, air flow sensor air duct, air flow sensor 2nd mesh,
14 humidity sensor, positive crankcase ventilation (PCV) system, automatic
15 PCV heated sub harness, air duct positive temperature coefficient heater
16 assembly, oil level gauge and guide, the turbocharger system and
17 turbocharger vacuum modulator including all related hoses and pipes,
18 sensors and actuators, Electronic Engine Controller and Signal Detection
19 and Actuation Module software update;
 - 20 iii. The OBD System and any malfunctions detected by the OBD systems and
21 associated hardware including malfunctions associated with hardware
22 connections; and
 - 23 iv. Any other component that was replaced, repaired, installed, upgraded, or
24 otherwise modified as part of the Recall.
- 25 d. The warranty period for the Emission Control System Warranty in paragraph 12.b.
26 shall be one (1) year, regardless of miles, from the date any part is replaced,
27 repaired, installed, upgraded, or otherwise modified as part of the Recall.
28

- 1 i. For engines that are no longer under the original regulatory warranty due to
2 having surpassed the time or mileage requirements, FPT shall provide the
3 Emission Control System Warranty of one (1) year from the date of the
4 Recall, regardless of miles.
- 5 ii. For engines that are still covered by the original regulatory emission
6 warranty with less than 12 months remaining, FPT shall provide the
7 Emission Control System Warranty of one (1) year from the date of the
8 Recall, regardless of miles.
- 9 iii. For engines that are still covered by the original regulatory emission
10 warranty with greater than 12 months remaining, FPT shall honor the
11 remaining warranty timeframe, regardless of miles.
- 12 e. Regardless of the status of the vehicle's original emission warranty, the warranty
13 period for the Recall Workmanship Warranty shall be twelve (12) weeks or 9,000
14 miles, whichever comes first, from the date any part listed in paragraph 12.c. is
15 replaced, repaired, installed, upgraded, or otherwise modified as part of the
16 Recall.
- 17 f. The Extended Emissions Warranty is associated with the vehicle, and remains
18 available to any and all subsequent owners and operators.
- 19 g. The Extended Emissions Warranty shall not supersede or void any outstanding
20 warranty. To the extent there is a conflict in any provision(s) of this warranty and
21 any outstanding warranty, that conflict shall be resolved to the benefit of the
22 consumer.
- 23 h. The Extended Emissions Warranty shall not modify, limit, or affect any state, local
24 or federal legal rights available to the owners.
- 25 i. Any waiver of any provision of the Extended Emissions Warranty by an owner is
26 null and void.
- 27 j. The Extended Emissions Warranty will not cover:
28

- 1 i. Any damage or malfunctions caused by installation of non-CARB certified
2 emissions related parts, including such damage or malfunction to parts
3 needed for proper diagnosis of a covered part.
4 ii. Damage or malfunctions caused by outside influence, such as damage due
5 to an accident, or vehicle misuse or neglect, but only if the damage or
6 malfunction is causally related to the accident or vehicle misuse.

7 **13. Testing of Modified Vehicles.**

- 8 a. Except as otherwise expressly stated herein, the applicable regulatory calculation
9 methods, test procedures, protocols, processes, or procedures shall apply unless an
10 alternative approach is approved by CARB.
11 b. Manufacturer Self-Test:
12 i. Within 24 months of the Effective Date of this Agreement, FPT shall
13 conduct a Manufacturer Self-Test (MST) on one (1) MY2014 HD engine in
14 engine family EFPXH03.0F1B. The test shall be conducted consistent
15 with the regulations at California Code of Regulations, title 13, section
16 1971.5(c)(4), as modified by the Test Plan found at Appendix 2.
17 ii. If the results of the OBD emission tests conducted under California Code
18 of Regulations, title 13, section 1971.5(c)(3) indicate that the OBD system
19 does not properly illuminate the MIL for one (1) or more of the
20 component/system monitors before emissions exceed the malfunction
21 criteria defined in California Code of Regulations, title 13, sections
22 1971.1(e) through (g), FPT shall conduct further testing on an additional
23 four (4) engines from engine family DFPXH03.0F1B or EFPXH03.0F1B
24 as modified by the Test Plan found at Appendix 4. If the further testing
25 results in two of the four additional engines exceeding the malfunction
26 criteria, FPT shall submit to CARB a recall plan in accordance with
27 California Code of Regulations, title 13 sections 1971.5(d). FPT shall
28 implement the approved recall plan.

1 iii. Identified OBD Non-compliances: The Parties agree that OBD Non-
2 compliances listed in Appendix 3 (Allowable OBD Non-compliances) are
3 allowed for the respective engine families after the respective Remedial
4 Action Plan is implemented. For any failure of the OBD system not
5 identified in Appendix 3, in any on-road engine, FPT shall conduct a recall
6 of the failed engines to remedy these failures.

7 c. Heavy-Duty In-Use Testing: Within 30 months of the Effective Date of this
8 Agreement, FPT shall complete in-use testing, and reporting to CARB, on a total
9 of eight (8) on-road engines after these have been recalled. The tests shall be
10 conducted consistent with the regulations at 40 CFR Section 86.1901 *et seq* as
11 modified by the Test Plan found at Appendix 4. The engines to be tested shall be
12 selected as follows:

- 13 i. five (5) engines from engine family CFPXH03.0F1B;
- 14 ii. one (1) engine from engine family BVEXH03.0F1A or CFPXH03.0F1A;
- 15 iii. one (1) engine from engine family DFPXH03.0F1B or EFPXH03.0F1B;
- 16 and
- 17 iv. one (1) engine from engine family DFPXH03.0F1A or EFPXH03.0F1A.

18 14. **Release of Claims Against Defendants:** In consideration of the payment on behalf of
19 FPT to the California Air Pollution Control Fund and the Bay Area Air Quality Management
20 District, and the recall and testing of the Subject Engines set forth above, CARB hereby releases
21 and forever discharges Defendants and their respective customers, ultimate purchasers, dealers
22 and distributors of the Subject Engines, from any and all Claims made in the Complaint filed on
23 or about January 18, 2019.

24 15. **Stipulated Penalties.** Defendants shall be liable for stipulated penalties to the Air
25 Pollution Control Fund for violations of this Agreement as specified in this paragraph, unless
26 excused under paragraph 16 (Force Majeure). Stipulated payments under this paragraph shall
27 begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever
28 is applicable, and shall continue to accrue until performance is satisfactorily completed or until

1 the violation ceases. Stipulated payments shall accrue simultaneously for separate violations of
2 this Agreement.

- 3 a. Late Payment. For each Day that any payment is late, Defendants shall be liable
4 for interest on such payments at the rate provided for in California Code of Civil
5 Procedures section 685.010, accruing as of the date payment became due and
6 continuing until payment has been made in full.
- 7 b. Reporting Violations. The following stipulated penalties shall accrue per violation
8 per Day for each violation of the requirements of paragraphs 10 (Recall Reporting)
9 and 13 (Testing of Modified Vehicles).
- | | | |
|----|---------|---|
| 10 | \$1,000 | 1 st through 14 th Day |
| 11 | \$2,500 | 15 th through 30 th Day |
| 12 | \$5,000 | 31 st Day and beyond |
- 13 c. Failure to Disclose AECDs. If, after approving Defendants' Remedial Action
14 Plan, CARB determines that Defendants failed to provide a complete list of any
15 AECD in the Remedial Action Plan that CARB approved, Defendants must pay to
16 CARB a stipulated penalty of \$75,000 for each AECD not included in the list.
- 17 d. Failure to Implement the Remedial Action Plans. If Defendants fail to completely
18 implement all aspects of the applicable Remedial Action Plan on any vehicle
19 containing an on-road engine that is registered in California, excepting those that
20 are not registered in California at the end of the Recall Period, Defendants shall
21 pay to CARB a stipulated penalty of \$25,000 per vehicle. After the Recall Period,
22 if Defendants fail to completely implement all aspects of the applicable Remedial
23 Action Plan on any vehicle containing an on-road engine that subsequently
24 becomes registered in California and for which the owner requests the Remedial
25 Action Plan, Defendants shall pay to CARB a stipulated penalty of \$25,000 per
26 vehicle.
- 27 e. Failure to Comply with the Applicable Emissions Standard or Limitation. If any
28 test required under this Agreement or any test conducted by CARB on any engine

1 family demonstrates that any Modified Vehicle exceeds the applicable emissions
2 standard, Defendants shall pay to CARB a stipulated penalty of \$200,000 for each
3 such engine family.

4 f. Failure to Remove Defeat Devices. If, after CARB approves the applicable
5 Remedial Action Plan, CARB discovers a defeat device in any Subject Engine or
6 vehicle containing a Subject Engine, Defendants must offer to buy back each and
7 every such Subject Engine in the engine family that has been determined to
8 contain a defeat device, and Defendants must also pay to CARB a stipulated
9 penalty of \$12,500,000 for each Defeat Device (but not for each vehicle that
10 contains such Defeat Device).

11 g. Failure to Complete MST. If Defendants fail to complete the MST by the dates
12 required under paragraph 13b, Defendants must pay to CARB the following
13 stipulated penalty for each Day that Defendants fail to complete such testing:

14	\$2,500	1 st through 14 th Day
15	\$10,000	15 th through 30 th Day
16	\$37,500	31 st Day and beyond

17 h. Failure to Honor Warranty. If Defendants fail to honor the Extended Emissions
18 Warranty under Paragraph 12 (Extended Warranty) of this Agreement, including
19 by failing to cover all costs of parts and labor, Defendants must pay to CARB a
20 stipulated penalty of \$20,000 per failure.

21 i. Failure to Comply with an Applicable Remedial Action Plan. Except as otherwise
22 provided herein, if a Remedial Action Plan performed by or on behalf of
23 Defendants fails to conform to any of the requirements of the applicable Remedial
24 Action Plan, Defendants must pay to CARB a stipulated penalty of \$2,500 for each
25 nonconformance with the Remedial Action Plan and for each Modified Vehicle
26 that contains a nonconformance.

27 j. Failure to Comply with Heavy-Duty In-Use Testing. If Defendants fail to conduct
28 the tests or fail to comply with the heavy-duty in-use testing requirements in

1 paragraph 13c, defendants must pay to CARB the following stipulated penalties
2 for each Day of such failure:

3 \$25,000 1st through 14th Day

4 \$50,000 15th through 30th Day

5 \$250,000 31st Day and beyond

6 **16. Force Majeure.**

- 7 a. If any event occurs or has occurred that may delay the performance of any
8 obligation under this Agreement, for which Defendant intends or may intend to
9 assert a claim of force majeure, whether or not caused by a force majeure event,
10 Defendant shall provide notice by email to CARB, within 7 Days of when
11 Defendant first knew that the event might cause a delay. Within 14 Days
12 thereafter, Defendant shall provide in writing to CARB an explanation and
13 description of the reasons for the delay; the anticipated duration of the delay; all
14 actions taken or to be taken to prevent or minimize the delay or the effect of the
15 delay; a schedule for implementation of any such measures; Defendant's rationale
16 for attributing such delay to a force majeure event if it intends to assert such a
17 claim; and a statement as to whether, in the opinion of Defendant, such event may
18 cause or contribute to an endangerment to public health, welfare or the
19 environment. Defendant shall include with any notice all available documentation
20 supporting the claim that the delay was attributable to a force majeure event.
21 Failure to comply with the above requirements shall preclude Defendant from
22 asserting any claim of force majeure for that event for the period of time of such
23 failure to comply, and for any additional delay caused by such failure. Defendant
24 shall be deemed to know of any circumstance of which Defendant, any entity
25 controlled by Defendant, or Defendant's contractors knew or should have known.
- 26 b. If CARB agrees that the delay or anticipated delay is attributable to a force
27 majeure event, the time for performance of the obligations under this Agreement
28 that are affected by the force majeure event will be extended by CARB for such

1 time as is necessary to complete those obligations. An extension of the time for
2 performance of the obligations affected by the force majeure event shall not, of
3 itself, extend the time for performance of any other obligation. CARB will notify
4 Defendant in writing of the length of the extension, if any, for performance of the
5 obligations affected by the force majeure event.

- 6 c. If CARB does not agree that the delay or anticipated delay has been or will be
7 caused by a force majeure event, CARB will notify Defendant in writing of its
8 decision.
- 9 d. If Defendant elects to invoke the dispute resolution procedures set forth in
10 paragraph 17 (Dispute Resolution), it shall do so no later than 15 Days after receipt
11 of CARB's notice. In any such proceeding, Defendant shall have the burden of
12 demonstrating by a preponderance of the evidence that the delay or anticipated
13 delay has been or will be caused by a force majeure event, that the duration of the
14 delay or the extension sought was or will be warranted under the circumstances,
15 that best efforts were exercised to avoid and mitigate the effects of the delay, and
16 that Defendant complied with the requirements of the definition of Force Majeure
17 and paragraph 16a. If Defendant carries this burden, the delay at issue shall be
18 deemed not to be a violation by Defendant of the affected obligation of this
19 Agreement identified to CARB and the Court.

20 **17. Dispute Resolution.**

- 21 a. Unless otherwise expressly provided for in this Agreement, the dispute resolution
22 procedures of this paragraph shall be the exclusive mechanism to resolve disputes
23 arising under or with respect to this Agreement. Failure by the Defendant to seek
24 resolution of a dispute under this paragraph shall preclude Defendant from raising
25 any such issue as a defense to an action by CARB to enforce any obligation of
26 Defendant arising under this Agreement.
- 27 b. Informal Dispute Resolution. Any dispute subject to dispute resolution under this
28 Agreement shall first be the subject of informal negotiations. The dispute shall be

1 considered to have arisen when Defendant sends CARB by mail a written Notice
2 of Dispute. Such Notice of Dispute shall state clearly the matter in dispute,
3 including, where applicable, whether the dispute arises from a decision made by
4 CARB. The period of informal negotiations shall not exceed 30 Days after the date
5 the dispute arises, unless that period is modified by written agreement of the
6 Parties. If the Parties cannot resolve a dispute by informal negotiations, then the
7 position advanced by the CARB shall be considered binding unless, within 30
8 Days after the conclusion of the informal negotiation period, Defendant invokes
9 formal dispute resolution procedures as set forth below.

- 10 c. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution
11 procedures, within the time period provided in the preceding Paragraph, by serving
12 on CARB a written Statement of Position regarding the matter in dispute. The
13 Statement of Position shall include, but need not be limited to, any factual data,
14 analysis, or opinion supporting Defendant's position and any supporting
15 documentation relied upon by Defendant.
- 16 d. CARB will serve its Statement of Position within 45 Days after receipt of
17 Defendant's Statement of Position. CARB's Statement of Position will include,
18 but need not be limited to, any factual data, analysis, or opinion supporting that
19 position and any supporting documentation relied upon by California. CARB's
20 Statement of Position shall be binding on Defendant, unless Defendant files a
21 motion for judicial review of the dispute in accordance with Paragraph 17e.
- 22 e. Defendant may seek judicial review of the dispute by filing with the Court and
23 serving on CARB in compliance with the time frames set forth in Code of Civil
24 Procedure section 1005, and in accordance with paragraph 31 (Notice), a motion
25 requesting judicial resolution of the dispute. The motion must be filed within 20
26 Days after receipt of CARB's Statement of Position pursuant to the preceding
27 Paragraph. The motion shall contain a written statement of Defendant's position
28 on the matter in dispute, including any supporting factual data, analysis, opinion,

1 or documentation, and shall set forth the relief requested and any schedule within
2 which the dispute must be resolved for orderly implementation of the Agreement.

3 f. CARB will respond to Defendant's motion within the time period allowed by
4 Code of Civil Procedure section 1005 and the Local Rules of the Court. Defendant
5 may file a reply memorandum, to the extent permitted by Code of Civil Procedure
6 section 1005 and the Local Rules.

7 g. Standard of Review for Judicial Disputes

8 i. Disputes Concerning Matters Accorded Record Review. In any dispute
9 arising under this Agreement and brought pursuant to Paragraph 17e,
10 Defendant shall have the burden of demonstrating that CARB's action or
11 determination or position is arbitrary and capricious or otherwise not in
12 accordance with law based on the administrative record. For purposes of
13 this paragraph, CARB will maintain an administrative record of the
14 dispute, which will contain all statements of position, including supporting
15 documentation, submitted pursuant to this paragraph. Prior to the filing of
16 any motion, the Parties may submit additional materials to be part of the
17 administrative record pursuant to applicable principles of administrative
18 law.

19 ii. Other Disputes. Except as otherwise provided in this Agreement, in any
20 other dispute brought pursuant to Paragraph 17e, Defendant shall bear the
21 burden of demonstrating by a preponderance of the evidence that its actions
22 were in compliance with this Agreement.

23 h. In any disputes brought under paragraph 17 (Dispute Resolution), it is hereby
24 expressly acknowledged and agreed that this Agreement was jointly drafted in
25 good faith by CARB and Defendant. Accordingly, the Parties hereby agree that
26 any and all rules of construction to the effect that ambiguity is construed against
27 the drafting party shall be inapplicable in any dispute concerning the terms,
28 meaning, or interpretation of this Agreement.

1 i. The invocation of dispute resolution procedures under paragraph 17 (Dispute
2 Resolution) shall not, by itself, extend, postpone, or affect in any way any
3 obligation of Defendant under this Agreement, unless and until final resolution of
4 the dispute so provides. Stipulated penalties with respect to the disputed matter
5 shall continue to accrue from the first Day of non-compliance, but payment shall
6 be stayed pending resolution of the dispute. If Defendant does not prevail on the
7 disputed issue, stipulated payments shall be assessed and paid as provided in
8 paragraph 15 (Stipulated Penalties).

9 18. **Applicability**: Notwithstanding anything in this Agreement to the contrary, nothing in
10 this Agreement releases any claims, rights, duties and powers of CARB to enforce any statute or
11 regulation, or to seek any fines, penalties, damages, costs, fees or injunctive or declaratory relief,
12 with respect to any engine, vehicle or motor vehicular product manufactured, imported, sold or
13 distributed by Defendants other than the claims made in the Complaint filed on or about January
14 18, 2019. CARB reserves, and this Agreement is without prejudice to, all claims, rights, and
15 remedies against Defendants with respect to all matters not expressly stated in the Complaint filed
16 on or about January 18, 2019. Notwithstanding any other provision of this Agreement, CARB
17 reserves all claims, rights, and remedies against Defendants with respect to:

- 18 a. An order requiring Defendants to take all actions necessary to enjoin, prevent, and
19 deter future violations of the Health and Safety Code and related regulations of the
20 types alleged in the CARB Action related to the Subject Engines;
- 21 b. Further injunctive relief, including prohibitory and mandatory injunctive
22 provisions intended to enjoin, prevent, and deter future misconduct, and/or
23 incentivize its detection, disclosure, and/or prosecution; or to enjoin false
24 advertising, violation of environmental laws, the making of false statements, or the
25 use or employment of any practice that constitutes unfair competition; and
- 26 c. All rights to address non-compliance with this Agreement.

27 19. **Non-Admission**: The settlement of the CARB Action is voluntary and does not constitute
28 an admission of any violation of any law, constitution or regulation, or of any negligence, tort,

1 breach of contract of any other basis for liability by Defendants, or of any admission of the
2 existence of any facts upon which any such liability could be based. All Parties hereto
3 acknowledge and agree that this Agreement does not constitute an admission of liability or
4 wrongdoing of any nature whatsoever by any Party. Further, this Agreement shall not be used for
5 any purpose whatsoever except as may be necessary to enforce the terms and conditions of this
6 Agreement. This Agreement was negotiated at arm's length with the assistance of counsel, and
7 represents a fair, reasonable, and good faith compromise of disputed claims, disputed liabilities,
8 and disputed issues.

9 20. **Advice of Counsel**: Each Party to this Agreement has reviewed the Agreement
10 independently, has had the opportunity to consult with counsel, is fully informed of the terms and
11 effect of this Agreement, and has not relied in any way on any inducement, representation, or
12 advice of any other Party in deciding to enter into this Agreement.

13 21. **Governing Law**: This Agreement and the rights and obligations hereunder shall be
14 governed by and construed in accordance with the laws of the State of California, without regard
15 to the principles of the conflicts of laws thereof. Any action to enforce the terms of this
16 Agreement shall be brought before a Court of competent jurisdiction.

17 22. **Entire Agreement**: The Parties acknowledge that this Agreement, including, without
18 limitation, the attached Appendices and Attachments, contains the entire understanding between
19 the parties and contains all terms and conditions pertaining to the compromise and settlement of
20 the disputes referenced herein. No express or implied warranties, covenants or representations
21 have been made concerning the subject matter of this Agreement unless expressly stated herein.
22 Any prior written or oral negotiations and drafts not contained in this Agreement have no force or
23 effect whatsoever. The Parties each acknowledge that in executing this Agreement, the Parties
24 have not, and do not, rely on any statements, inducements, promises, or representations made by
25 any other Party or their agents, representatives, or attorneys with regard to the subject matter,
26 basis, or effect of this Agreement, except those specifically set forth in this Agreement.

27 23. **Severability**: If any non-material provision of this Agreement is held to be illegal or
28 invalid by any court of competent jurisdiction, then such provision shall be severed and deleted,

1 and neither such provision nor its severance and deletion shall affect the validity of the remaining
2 provisions.

3 24. **Counterparts:** This Agreement may be executed in separate counterparts, and/or by
4 facsimile or email, each of which, when executed, shall be an original, and all of which together
5 shall constitute one and the same Agreement, notwithstanding that both Parties may not have
6 executed the same counterpart. Each Party may execute a separate signature page, which may be
7 appended to form one or more duplicate originals of this Agreement.

8 25. **Authority:** Each of the signatories hereto represents and warrants that he, she, or it is
9 fully authorized to enter into this Agreement on behalf of the person or entity for which they
10 execute the Agreement, and has obtained all of the necessary approvals and authorities to do so.

11 26. **Amendment/Modification:** This Agreement may not be superseded, modified or
12 amended orally; and no modification, waiver or amendment shall be valid unless in writing and
13 signed by the Party against whom the same is sought to be enforced.

14 27. **No Construction Against Drafter:** This Agreement and the provisions contained herein
15 shall not be construed or interpreted for or against any Party (including, without limitation, under
16 California Civil Code Section 1654 or otherwise) because the Party drafted or caused the Party's
17 legal representative to draft any of these provisions. This Agreement shall be construed without
18 reference to the identity of the Party or Parties preparing the same, it being expressly understood
19 and agreed that the Parties participated equally, or had equal opportunity to participate, in the
20 drafting thereof.

21 28. **Costs/Fees:** Each Party shall bear its own costs and fees, including without limitation all
22 attorneys' fees, associated with the CARB Action and the drafting of this Agreement.

23 29. **Captions:** The captions by which the paragraphs of this Agreement are identified are for
24 convenience only, and shall have no effect whatsoever upon their interpretation.

25 30. **No Precedential Value:** The Parties to this Agreement agree and acknowledge that this
26 agreement carries no precedential value and should not be relied upon by any Party or person for
27 any purpose whatsoever except as may be necessary to enforce the terms and conditions of this
28 Agreement.

1 31. **Notice:** To the extent that it is required under this Agreement or otherwise, except as
2 otherwise specified, notice shall be (a) given in writing, (b) sent electronically or via U.S. mail or
3 similarly reliable commercial carrier (such as Federal Express or UPS), and (c) directed to the
4 following:

5 For California Air Resources Board:

6 California Air Resources Board
7 Attn: Ms. Diane Kiyota, Senior Attorney
8 1001 I Street
9 P.O. Box 2815
10 Sacramento, CA 95814
11 Email: diane.kiyota@arb.ca.gov

12 For the California Attorney General's Office:

13 California Department of Justice
14 Attn: Mr. Ross Hirsch
15 300 South Spring Street, Suite 1702
16 Los Angeles, CA 90013
17 Email: Ross.Hirsch@doj.ca.gov

18 For FPT Industrial S.p.A:

19 Mr. Carlo Bondone, VP General Counsel
20 FPT Industrial S.p.A.
21 Via Puglia, 15 - 10156 TORINO (TO) Italia
22 Email: Carlo.Bondone@cnhind.com

23 Mr. Philip Gronberg, Head of Engine Engineering, Global and Head of Product
24 Development, NAFTA
25 FPT Industrial S.p.A.
26 6900 Veterans Blvd. Burr Ridge, IL 60527
27 Email: Phillip.Gronberg@cnhind.com

- 28 a. Any Party may, by written notice to the other Parties, change its designated notice
recipient or notice address provided above.
- b. Communications submitted pursuant to this paragraph shall be deemed submitted
upon mailing (or emailing if that is an option), except as provided elsewhere in this
Agreement or by mutual agreement of the Parties in writing.

 32. **Retention of Jurisdiction:** The Parties agree that this Agreement is enforceable pursuant
to section 664.6 of the California Code of Civil Procedure and hereby request that the Court retain
jurisdiction over this case and the Parties for the purpose of resolving disputes arising under this
Agreement or entering orders modifying this Agreement, pursuant to paragraph 17 (Dispute

1 Resolution) or paragraph 26 (Amendment/Modification), or effectuating or enforcing compliance
2 with the terms of this Agreement.

3 33. **Appendices:** The following Appendices (and any attachments thereto) are attached to and
4 part of this Agreement:

5 "Appendix 1" is the Supplemental Environmental Project Documents and Other Payment
6 Documents:

7 "Attachment A" is the Settlement Agreement Payment Transmittal Form

8 "Attachment A-2" is the Supplemental Environmental Project Payment
9 Transmittal Form

10 "Attachment B" is the Supplemental Environmental Project Agreement

11 "Appendix 2" is the Test Plan For Manufacturer Self-Test

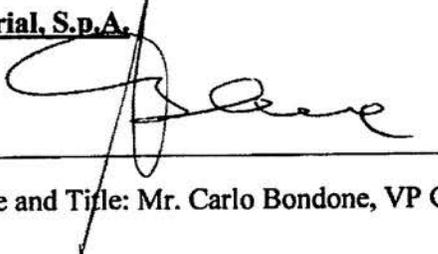
12 "Appendix 3" is the lists of Allowable OBD Non-Compliances for Model Years 11-12
13 and Model Years 13-14

14 "Appendix 4" is the Test Plan For Heavy Duty In-Use Testing

15 IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have
16 executed this Agreement as of the day and year written below.

17 THE UNDERSIGNED HAVE READ THE TERMS OF THE FOREGOING SETTLEMENT
18 AGREEMENT AND RELEASE, AND FULLY UNDERSTAND AND AGREE TO ALL OF
19 THE TERMS.

20 **FPT Industrial, S.p.A.**

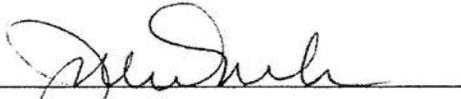
21 By: 

22 Name and Title: Mr. Carlo Bondone, VP General Counsel

23 Date: January 15, 2019

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Approved as to Form:

By: 

Name and Title: Ms. Julie R. Domike, Counsel to FPT Industrial S.p.A.

Date: January 12, 2019

California Air Resources Board

By: _____

Name and Title: Mr. Richard W. Corey, Executive Officer

Date: _____

Approved as to Form:

By: _____

Name and Title: Ms. Ellen M. Peter, Chief Counsel

Date: _____

03/12/19

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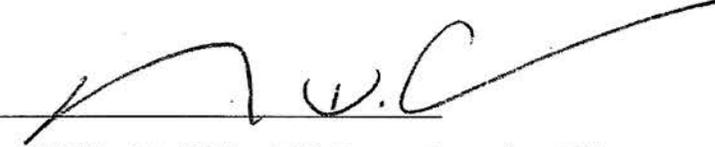
Approved as to Form:

By: _____

Name and Title: Ms. Julie R. Domike, Counsel to FPT Industrial S.p.A.

Date: _____

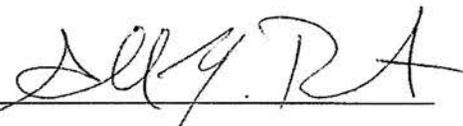
California Air Resources Board

By:  _____

Name and Title: Mr. Richard W. Corey, Executive Officer

Date: 1/18/2019

Approved as to Form:

By:  _____

Name and Title: Ms. Ellen M. Peter, Chief Counsel

Date: 1/17/2019

03/12/19

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APPENDIX 1

Supplemental Environmental Project Documents and Other Payment Documents

03/12/19

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ATTACHMENT A

Settlement Agreement Payment Transmittal Form

03/12/19

ATTACHMENT A

Settlement Agreement Payment Transmittal Form
Due Date: [Within 30 days of the Effective Date]

Date: January 18, 2019	CARB Case #: C00012	ARB Program Category: #60 – DIESEL
Company: Fiat Powertrain Technologies Industrial S.p.A.		
Settlement Total Amount: \$ 6,415,000	Accounting Return Copy to: Dean Hermano, CARB Enforcement Division	

Within 30 days of the Effective Date, the sum of six million four hundred fifteen thousand dollars (\$6,415,000) shall be paid on behalf of Fiat Powertrain Technologies Industrial S.p.A. as follows:

- \$4,415,000 payable to the **Air Pollution Control Fund**
- \$2,000,000 payable to the **Bay Area Air Quality Management District**, with the following notation in the memo line of the check: **“For the Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP”**

Attach Check Here

- Or if paying by credit card, please check this box and also complete the attached Credit Card Payment Form (also located at www.arb.ca.gov/enf/edforms/creditcard_english.pdf)
- Or if paying by wire transfer, please check this box and use the following wire transfer information:

For the Air Pollution Control Fund:

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 # C00012

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

For the Bay Area Air Quality Management District:

Bay Area Air Quality Management District
c/o Union Bank of California
ABA No. 122000496 Account No. 7020010139
Notice of Transfer: Marina Smotkina (m-smotkina@baaqmd.gov)
Reference: CARB Case # C00012 (For the BAAQMD Air Filtration SEP)

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

03/12/19

Please submit this form to:

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

For Overnight Shipping (i.e. FedEx):

California Air Resources Board
 Accounting Office
 1001 "I" Street
 Floor 20, Room 20-25
 Sacramento, California 95814

Credit Card Authorization Form

Please charge my: Visa Master Card American Express Discover

Credit Card No.		
Expiration Date	Payment Amount Authorized \$	
Authorized Signature		Today's Date
Program or Violation Type (PERP, Cargo Tank, RMP, Enforcement Citations, Settlements, etc.) Air Pollution Control Fund Reference Number (Application/Invoice/Citation/Account): C00012 Air Resources Board - Enforcement Division, Settlement Agreement		
First Name	Middle Initial	Last Name
Company Name		
Address		
City	State	Zip
Phone Number (with area code)	Special Instructions Security Code:	

Please direct credit card related questions to the ASD Accounting Office: Phone: (916) 322-6149
 Fax: (916) 322-9612

Credit Card Authorization Form

Please charge my: Visa Master Card American Express Discover

Credit Card No.		
Expiration Date	Payment Amount Authorized \$	
Authorized Signature		Today's Date
Program or Violation Type (PERP, Cargo Tank, RMP, Enforcement Citations, Settlements, etc.) Bay Area Air Quality Management District (Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP) Reference Number (Application/Invoice/Citation/Account): C00012 Air Resources Board - Enforcement Division, Settlement Agreement		
First Name	Middle Initial	Last Name
Company Name		
Address		
City	State	Zip
Phone Number (with area code)		Special Instructions Security Code:

Please direct credit card related questions to the ASD Accounting Office: Phone: (916) 322-6149
 Fax: (916) 322-9612

ATTACHMENT A-2

Supplemental Environmental Project Payment Transmittal Form

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03/12/19

ATTACHMENT A - 2

Supplemental Environmental Project Payment Transmittal Form
Due Date: [Within 30 Days of the Effective Date]

Date: January 18, 2019	CARB Case #: C00012
Company: Fiat Powertrain Technologies Industrial S.p.A.	
SEP Title: Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP	Total SEP Amount: \$2,000,000

Upon execution of this Agreement and the SEP Agreement (hereinafter, the Effective Date), the sum of two million dollars (\$2,000,000) shall be paid on behalf of Fiat Powertrain Technologies Industrial S.p.A. no later than 30 days of the Effective Date, as follows:

Payment Due Date:	In the Amount of:	Paid To:
Within 30 days of the Effective Date	\$2,000,000	Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP

"Effective Date" means the date upon which the Settlement Agreement is entered by the Court or a motion to enter the Agreement is granted, whichever occurs first, as recorded on the Court's docket.

Please mail the **SEP Payment Transmittal Form** and payment to the above named SEP within 30 days of the Effective Date to:

Bay Area Air Quality Management District
ATTN: Dr. David Ralston
375 Beale Street, 6th Floor
San Francisco, California 94105

03/12/19

ATTACHMENT B

Supplemental Environmental Project Agreement

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03/12/19

ATTACHMENT B

SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT INSTALLATION OF AIR FILTRATION SYSTEMS IN SENSITIVE RECEPTOR FACILITIES IN BAY AREA CARE COMMUNITIES SEP

This Supplemental Environmental Project Agreement (SEP Agreement) is entered into by and between Fiat Powertrain Technologies Industrial S.p.A (FPT) with its principal place of business at Via Puglia 15, 10156 Torino, Italy, and the Bay Area Air Quality Management District (BAAQMD) with its principal place of business at 375 Beale Street, 6th Floor, San Francisco, California 94105. FPT and BAAQMD are individually referred to as Party and collectively referred to as the Parties.

1. As stated in the Settlement Agreement, FPT and the California Air Resources Board (CARB) entered into a Settlement Agreement for an enforcement action. Under the terms of the settlement agreement, FPT agreed to undertake a Supplemental Environmental Project (SEP).
2. FPT has selected Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities as the SEP, and BAAQMD has agreed to act as the SEP Implementer for the Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP.
3. Under the terms of the Settlement Agreement, FPT has agreed that by funding the Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.

NOW, THEREFORE, in consideration of the mutual interests and benefits to the state air quality, the Parties agree as follows:

4. FPT will contribute by providing funding directly to BAAQMD in the amount of \$2,000,000 to complete the Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP, as described in Exhibit 1 – Bay Area Air Filtration SEP – Project Information and Reporting Requirements.
5. FPT shall provide CARB with proof of payment.
6. Upon receipt of the funding, BAAQMD agrees to fully implement, and complete the SEP in accordance to the description, budget, timeline, and reporting requirements stated in Exhibit 1 – Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP – Project Information and Reporting Requirements.

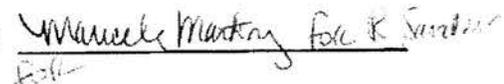
7. BAAQMD shall be responsible for overseeing and completing the SEP. BAAQMD may retain up to 6% of the funding provided by FPT for administrative expenses incurred in administering the SEP.
8. BAAQMD shall provide monthly progress, and expense reports on the performance of the SEP and final completion report directly to CARB. This shall include a full accounting of project and post-project accounting of expenditures. The final completion report must be submitted within thirty (30) days upon completion of the SEP and under penalty of perjury, declaring the completion of the SEP in accordance with the terms of this SEP Agreement.
9. If the SEP is not fully implemented in accordance with the terms of this SEP Agreement, CARB (as the third party beneficiary) is entitled to recover the full amount of the SEP from BAAQMD, less any amount disbursed by BAAQMD in reasonable furtherance of the SEP, or used as administrative expenses by BAAQMD in reasonable furtherance of the SEP, to be deposited into Air Pollution Control Fund.
10. FPT assigns any and all rights against BAAQMD to CARB in the event of a breach of this SEP Agreement.

The undersigned represent that they have the authority to enter into this SEP Agreement.

FPT REPRESENTATIVE NAME

Signature: 
 Print Name: Carlo BONDONE
 Title: VP - General Counsel
 Date: January 15, 2019

BAAQMD REPRESENTATIVE NAME

Signature: 
 Print Name: Jack P. Broadbent
 BAAQMD
 APCO/Exec. Officer
 Title: _____
 Date: 10/1/19



**Supplemental Environmental Project
Proposal Form**

Directions: Use this form to submit detailed supplemental environmental project (SEP) proposals. Complete this SEP proposal form cover page, and attach the supplementary proposal documents as requested below. Questions may be directed to SEP@arb.ca.gov.

Project proposal submissions shall be directed to either SEP@arb.ca.gov or mailed to:

Air Resources Board
Enforcement Division
ATTN: SEP Proposal
P.O. Box 2815
Sacramento, CA 95812-2815

Organization Contact Information

Organization Name: Bay Area Air Quality Management District
 Contact Name: Dr. David Ralston
 Contact Title: Regional Program Manager/Community Engagement Manager
 Address: 375 Beale Street, 6th Floor
 City: San Francisco State: CA ZIP: 94105
 Phone: 415-749-8423 Email: dralston@baaqmd.gov

- Organization Description:** Provide an attachment with a brief history of the organization (mission, vision, and goals). Indicate whether you are a nonprofit 501(C)(3), government or local agency, tribal government, small business, etc.
- Organization Experience:** Provide an attachment with information on the organization's ability and capacity to complete the proposed project. Describe previous project management experience, including a list of completed projects/dates and who funded the project.

Additional Project Information – Attachment Checklist

- Project Name:** Provide the project name on the submission attachments.
- Project Description:** Provide a scope of work for the project and explain how the proposed project will benefit air quality. If applicable, explain how the project benefits disadvantaged communities.
- Project Location(s):** Provide the address(es) or GPS coordinates of where the proposed project will take place.
- Emission Benefits:** For projects with a direct emissions benefit, provide an analysis of the emissions prevention/reduction which results from the proposed SEP project.
- Project Timeline:** Include a timeline for project implementation. Provide a breakdown of the major milestones required to implement the project, including completion dates.
- Itemized Budget:** Provide a detailed list of what is needed to complete the project and the funding needed for each item. Cost breakdown should include capital, operational, and administrative costs.

Acknowledgment. By checking this box, you verify that all information given to ARB about your organization and your proposed project is factual.

Submitter Name: David Ralston Date: 05/03/2018
 Submitter Title: Regional Program Manager

SEP Proposal Form

Organization Contact Information

Organization Name:	Bay Area Air Quality Management District		
Contact Name:	David Ralston		
Contact Title:	Regional Program Manager		
Mailing Address:	375 Beale Street		
	San Francisco	CA	94105
Phone Number:	415-749-8423		
E-Mail:	dralston@baaqmd.gov		

Organization Description:

The Bay Area Air Quality Management District (BAAQMD) is the air pollution control agency responsible for monitoring and regulating air pollution in the San Francisco Bay Area. The San Francisco Bay Area Air Basin (Air Basin), with a regional population of about 11 million inhabitants, comprises the nine-counties surrounding the San Francisco Bay and includes medium-to-large cities such as San Jose, Hayward, Oakland, Richmond, Vallejo and San Francisco.

The topography and climate of the Bay Area region combined with the growing population, increasing vehicle miles traveled (VMT), expanding refinery and port activities, as well as steadily increasing manufacturing, chemical, bulk material processing and logistics make the Air Basin an area of high air pollution emissions. The impact of air pollution on public health and welfare ranks high among public concerns in our region, especially given that emission sources and impacts disproportionately affect specific communities based on historic land-use decisions and current zoning practices in addition to existent topographical conditions. Despite the last two decades of aggressive and positive efforts to reduce air pollution by both BAAQMD and the California Air Resources Board (CARB), the Air Basin still has specific localized areas with poor air quality and significantly high level of negative health impacts.

Organization Experience

BAAQMD has a long history of successfully collaborating with Bay Area Region stakeholders to reduce disproportionate emissions from variety of mobile and stationary sources through research, development, demonstration, and deployment of our Communities Air Risk Evaluation (CARE) Program since 2004. BAAQMD has identified seven CARE areas for increased resource and targeted attention to help reduce disproportionate air pollution exposure. In one key area, Bayview Hunters Point (BVHP), BAAQMD worked with community members ca. 2014 to invest penalty settlement funds to retrofit three schools in the neighborhood with air filter units.

BAAQMD has also directly participated in and funded an IVAN (Identifying Violations Affecting Neighborhoods) network in the same community area. This network - the Bayview Hunters Point Environmental Justice Response Task Force - is a community-led, multi-stakeholder collaborative effort and is part of the growing Network. The project brings together residents with community, environmental justice and health organizations, businesses and government agencies in a multi-stakeholder, problem-solving task force to remedy environmental pollution problems in the low-income community of color of Bayview Hunters Point, San Francisco.

Staff Expertise, Qualification, Knowledge, and Resources

BAAQMD has the staff resources necessary to meet the goals of the proposed project, and will administer project funds and provide comprehensive project management. The proposed project will be implemented by the Community Health Protection Office's (CHPO) Community Engagement Unit under the direction of the CHPO Officer (Elizabeth Yura) and Community Engagement Program Manager (Dr. David Ralston). Additional direct support will be provided by a Community Engagement specialist as well as general executive-level support from our Deputy Air Pollution Control Officer (Greg Nudd) and district counsel. Based on the positive experience and successful program of South Coast Air Quality Management District (SCAQMD). BAAQMD proposes to contract with IQAir on an on-call basis to help in the installation and appropriate training to install high-performance Air Filters through this SEP as well as to conduct monitoring evaluations of installed filtered air in selected community sensitive receptor facilities such as schools, community centers, senior residences or hospitals.

IQAir North America (IQAir) worked with SCAQMD on a 2009 pilot study and on a subsequent multi-site/multi-year air filtration installation and monitoring program for schools near the Ports of Los Angeles and Long Beach. IQAir, has over 19 years of hands-on and management experience in the design, engineering, and field application of air cleaning technologies for commercial, medical and residential applications. IQAir is one of the leading international providers of high performance indoor air quality engineering solutions and based on the South Coast experience, were the only vendor that could meet the established performance criteria.

Project Information

Project Title: Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area CARE Communities

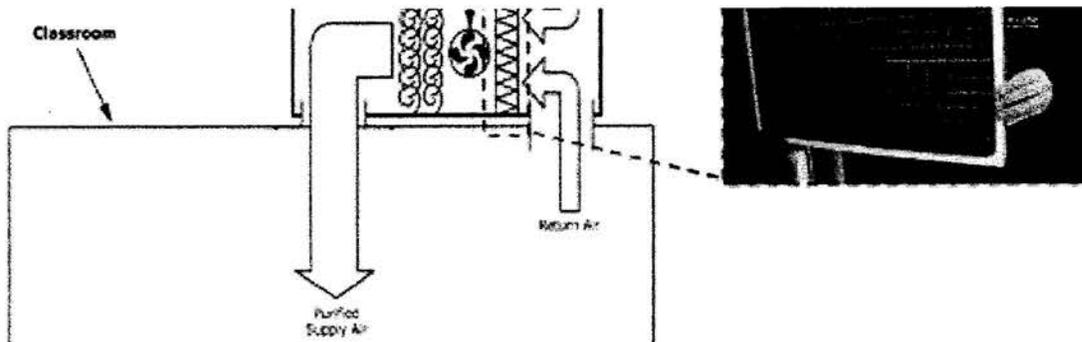
Project Description

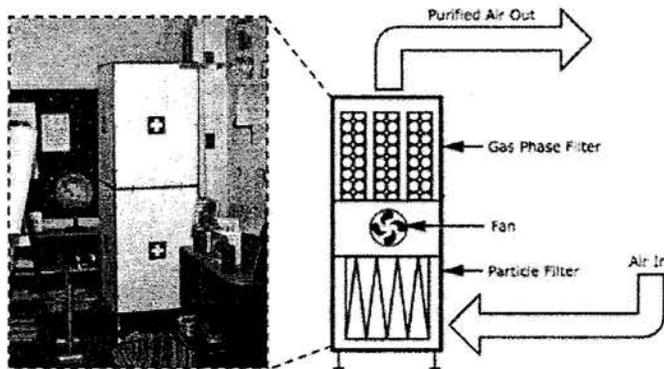
BAAQMD proposes this SEP to install and maintain high-performance air filtration systems in sensitive receptor facilities (such as schools, community centers, senior residences, hospitals and similar) located in communities impacted by air pollution, especially Environmental Justice and/or Disadvantaged Communities disproportionately impacted by air pollution. BAAQMD proposes to partner with IQAir for installation of the air filtration systems and monitoring evaluation, and will work with the local community and school district on the mitigating impacts of air filtration. Sensitive receptor facilities will be selected by BAAQMD and agreements will be developed enabling appropriate access to sites and that the facility operations will maintain the

air filtration systems after their maintenance staff are trained on maintenance procedures for these systems.

As an example, air filtration technologies such as high-performance air filters and stand-alone units have been successfully demonstrated in classroom environments to significantly reduce exposure to diesel particulates. Even in conditions such as classrooms where doors are being opened and possibly windows, while the effectiveness of air filtration is lessened (estimated at 10-20% though very hard to determine given day to day changes in outdoor air pollution concentrations and the extent windows are opened) there is, based on the South Coast experience, still a positive overall impact and further, this decrease in efficiency can be offset by appropriate onsite training and education on how to effectively maintain the indoor air volume quality. BAAQMD staff consulted with Patricia Kwon of South Coast who worked on the pilot study of air filtration for classrooms. She was enthusiastic about the program, and stated that South Coast is continuing to fund these projects in schools using SEP and penalty fines. In addition, based on the experience of the SCAQMD, of 15 different air filtration technologies tested by UCE CE-CERT, the high-performance filters and stand-alone units manufactured by IQAir were the only technologies that met the performance specifications in the test (*Indoor Air Journal*, 2013). BAAQMD has also, in a limited initiative, previously supported the installation of high-performance air filtration for classroom applications (ca 2014) in three schools in the Bayview Hunters Point neighborhood of San Francisco.

Scope of Work: BAAQMD will enter into a contract for installation, facilitation, monitoring, training, and 5-years of maintenance for the installation of high-performance air filtration funded through the SEP program. The period of performance for this implementation project is anticipated to continue for six months from the date of grant award for installation, with five additional years for post installation follow-up. The proposed scope of work will include tasks and deliverables to meet BAAQMD's objectives of the implementation project including performance of various tasks to complete the implementation project, facilitate cooperation from selected facilities in providing access to the building, conducting post-installation monitoring and filter replacements and training for continued maintenance of the installed air filtration systems. In such a scenario, IQAir as the contractor will also include Air Visual Pro (AVP) measurement sensor systems (up to 3 per site) as part of the installation and measurement process. Real-time access to AVP monitoring data will also be provided on-line BAAQMD will provide technical assistance as necessary to ensure smooth implementation based on past air experience in managing similar air filtration programs.





High-performance panel filters (top) and stand-alone units (below) used in the SCAQMD Pilot Study of High-Performance Air Filtration for Classroom Applications

The implementation project will involve: 1) installation of high-performance air filtration systems in classrooms and/or common areas depending on type of facility, 2) collection of air flow and monitoring data after installation of the air filtration systems results to verify the performance of the systems, 3) post installation reports, 4) training of school maintenance staff on maintenance of these air filtration systems to ensure their proper and efficient operation, and 5) five to ten year supply of replacement filters. Figure 1 shows two of the high-performance air filtration technologies we propose to utilize (Photos courtesy of the SCAQMD Pilot Study of High-Performance Air Filtration for Classroom Applications, 2009).

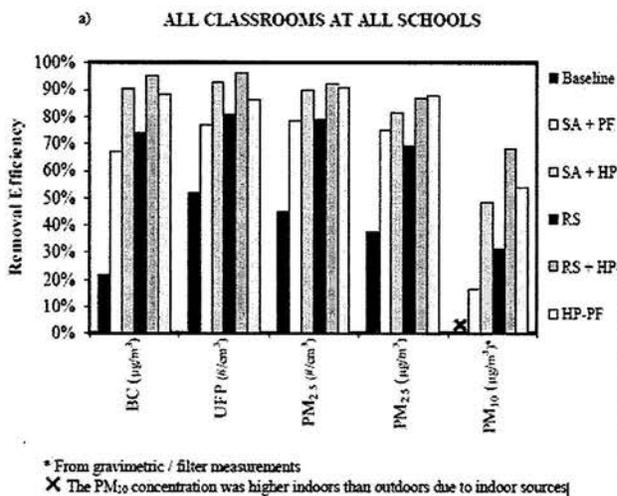
Project Location(s)

Sensitive receptor facilities in communities impacted by air pollution, including Environmental Justice and/or CARE Communities. School selection will be based on exposure to relevant pollutants (with a focus on PM_{2.5}), affected geographical locations, environmental health data or complaints from local school districts, and other pertinent selection criteria.

Emission Benefits

Based on the South Coast study and experience, air filtration systems in schools were utilized to target fine and ultrafine particulate matter and black carbon such as found in locomotives and trucks associated with freight activities in the region. BAAQMD is modeling our proposed use and installation of high-performance filters based on the successful and positive experiences of the SCAQMD. Results from the SCAQMD Pilot Study of High-Performance Air Filtration for Classroom Applications (2009) show reductions of in-classroom exposure to harmful particulate species by up to 90%. Testing results indicate that the Nanomax S-220 panel filter manufactured by IQAir had removal efficiencies between 89%-92% for ultrafine particulate matter and between 88%-91% for black carbon. The CleanZone SL stand-alone unit manufactured by IQAir showed removal efficiencies between 94% - 100% for UFP and 83% - 94% for BC, and was the only stand-alone unit that did not exceed the noise threshold of 45 decibels set by school districts for new in-classroom equipment. The specific air pollutants addressed by the air filtration systems are fine and ultra-fine particles, and diesel particles from combustion sources such as automobiles, trucks, locomotives, ships, industry and wildfires. In addition, these air filtration solutions are suitable to remove coarser particles such as fine dust, pollen, mold spores, and tire debris.

Prior Air Filtration Pilot Study Results



The combination of a register system and a high-performance panel filter (RS + HP-PF) was the most effective solution for reducing the indoor concentrations of BC, UFP, and PM_{2.5} (both mass and particle count), with average removal efficiencies from 87 to 96%. Replacing a conventional HVAC-based panel filter (PF) with a HP-PF resulted in a substantial reduction in the indoor levels of all particulate pollutants inside classrooms. When the HP-PF alone, the study average removal efficiencies were close to 90% (88, 86, 91, and 88%, for BC, UFP, PM_{2.5} count, and PM_{2.5} mass, respectively). This is significantly higher than baseline (pre-existing) removal efficiencies of 20-50%.

Source: SCAQMD Pilot Study of High Performance Air Filtration for Classroom Applications (2009)

Health studies have determined that fine and ultra-fine particles, including potent air toxic diesel soot and other toxic air contaminants, present the greatest air pollution health risk to our communities.

Performance Measures: Air filtration technologies need to meet the minimum performance requirements based on the experience of the South Coast study and implementation for High Performance Air Filtration in Classroom Applications and, overall, shall provide a significant improvement in air quality conditions with respect to Baseline Conditions.

- Ultrafine Particles (UFP) – Particles roughly defined by an aerodynamic diameter less than 0.1 µm, estimated by measuring the total number concentration of all airborne particles down to at least 10 nm in diameter)
- Fine Particulate Matter (PM_{2.5}) – Particles with an aerodynamic diameter less than 2.5 µm, estimated with an established continuous or filter-based PM measurement method
- Black Carbon (BC) – Component of PM indicative of diesel emissions measured with established light absorption methods. Elemental Carbon (EC) measurements using established methods could substitute for BC measurements.
- Baseline Conditions – Percentage reduction in the indoor concentration of a particular air pollutant relative to its concurrent outdoor level before installation of any air filtration device.
- Minimum Average Removal Performance – Minimum percentage reduction in the indoor concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration devices, averaged over all time periods.
- Potential Average Removal Performance – Potential percentage reduction in the indoor concentration of a particular pollutant relative to its concurrent outdoor level after installation of one or more air filtration devices, demonstrated for several indicative time periods.

Demonstrated Effectiveness Inside Schools/Classrooms or Equivalent Environments: In the Air Basin, most CARE-community schools are near important sources of air pollution, including stationary sources such as refineries and mobile sources, especially heavily trafficked roadways. IQAir has previous experience with installation of particulate filtration devices in schools/classrooms located near major sources of PM (e.g. major roadways with high percentages of diesel truck traffic) through its work on the pilot study and implementation program in schools near the Ports of Los Angeles and Long Beach. PM filtration (MERV 16 and HyperHEPA) is also highly effective for toxics such as hexavalent chromium+6. Furthermore, gas phase technology in its stand-alone units has been approved by CARB for removal of mercaptans for Porter Ranch residents in the Aliso Canyon gas leak.

Minimal Impact on Air Flow: The pilot study and implementation programs demonstrate that IQAir's air filtration devices do not significantly reduce the existing airflow rates through the HVAC system and/or do not require higher power consumption to achieve similar flow rates.

Project Timeline

The program is divided into several phases: project administration, access agreements with the school districts (if not already executed), selection of schools, installation, training of school maintenance staff, air flow and monitoring to verify performance of the systems, and reporting (site assessments, post installation reports, annual O&M reports). Once funds are received and a contract amendment executed with IQAir, and agreements executed with school districts (requiring school district board approval). Air filtration installation is after school hours and during vacations when school is not in session to minimize impacts upon students.

Itemized Budget

Site assessments for each facility installation and a 5-10-year supply of replacement filters will include a budget. Installations will be done to maximize the number of facilities. For schools, the average costs for installation (with five-year filter supply) for PM filtration are as follows: pre-K (\$25,000), elementary (\$106,500), middle (\$146,500), and high school (\$200,000). Installation costs will vary based on the number of buildings, existing HVAC systems, number of enclosed spaces, and other factors. Costs for HyperHepa and MERV 16 systems are slightly higher.

Acknowledgment: By checking this box, you verify that you have read and understand the ARB SEP Policy and verify that all information given to ARB about your organization and your proposed project is factual.

ATTACHMENT B - EXHIBIT 1 (con't)
Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area
Care Communities SEP
Project Information and Reporting Requirements

[See preceding Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP document for detailed information about this project.]

SEP Recipient Reporting Requirements:

1. Fiat Powertrain Technologies Industrial S.p.A (FPT) shall submit payment to the Bay Area Air Quality Management District (BAAQMD) according to the schedule below. In the event that FPT stops making this scheduled payment, the BAAQMD will inform Ms. Ann Stacy of the California Air Resources Board (CARB) within ten (10) days from the date of missed payment.

Payment Due Date:	In the Amount of:	Paid To:
Within 30 days of the Effective Date of the Settlement Agreement	\$2,000,000	Bay Area Air Quality Management District

“Effective Date” means the date upon which the Settlement Agreement is entered by the Court or a motion to enter the Agreement is granted, whichever occurs first, as recorded on the Court’s docket.

Ms. Ann Stacy
 Air Pollution Specialist
 (916) 229-0501
 ann.stacy@arb.ca.gov

2. Upon receipt of SEP Funds, BAAQMD shall be required to send Ms. Ann Stacy the SEP Payment Acknowledgement Form with proof of payment, within ten (10) days.
3. BAAQMD shall be required to submit quarterly progress reports to CARB at sep@arb.ca.gov. The quarterly progress reports shall describe the progress of the project, and shall include a full accounting of project and post-project accounting of expenditures. Progress reports shall also describe any issues encountered with project implementation.
4. Quarterly progress reports shall be submitted to CARB by the 15th of the month following the completion of the quarter. Each monthly progress report shall cover activities completed between the first and last day of the quarter. The first progress report will be due December 15, 2018, and should cover the work completed between the start of this SEP and through the end of November.

03/12/19

BAAQMD shall have 30 months to perform and complete the Installation of Air Filtration Systems in Sensitive Receptor Facilities in Bay Area Care Communities SEP. Upon completion of the project, BAAQMD shall submit a final completion report within thirty (30) days declaring the completion of the SEP in accordance with the terms of this SEP Agreement.

Report Submission

All progress reports shall be submitted to CARB at the following email address: sep@arb.ca.gov.

If needed, you may send your reports to CARB via certified mail to:

California Air Resources Board – Enforcement Division
ATTN: Ms. Ann Stacy, Air Pollution Specialist
P.O. Box 2815
Sacramento, California 95812

1 **APPENDIX 2**

2 **Test Plan For Manufacturer Self -Test**

3 FPT shall select for testing under this Test Plan a Modified Vehicle with an engine from the
4 engine family EFPXH03.0F1B. The selected engine may be registered to operate in any of the 48
5 contiguous states, shall have been field-aged and shall have accumulated a minimum of 77,000
6 miles but no greater than full useful life mileage.

7
8 FPT shall conduct the tests consistent with the requirements in California Code of Regulations,
9 title 13, sections 1971.1(l)(4) and 1971.5(c), as modified below, and taking into consideration the
10 Allowable OBD Non-compliances listed in Appendix 3 for the respective engine families after
11 the respective Remedial Action Plan is implemented.

12
13 California Code of Regulations, title 13, section 1971.5(c)(4)(B) shall not apply to this Test Plan.
14 Instead, if the results of the OBD emission tests conducted under California Code of Regulations,
15 title 13, section 1971.5(c)(3) indicate that the OBD system does not properly illuminate the MIL
16 for one (1) or more of the component/system monitors before emissions exceed the malfunction
17 criteria defined in California Code of Regulations, title 13, Sections 1971.1(e) through (g), FPT
18 shall conduct further testing on additional engines.

- 19 (i) Within six months after completion of testing required in (c)(3), FPT shall
20 emission test an additional four (4) engines from engine family DFPXH03.0F1B or
21 EFPXH03.0F1B.
- 22 (ii) FPT shall only test the component/system monitor(s) for which the OBD emission
23 test results in (b)(3) exceeded the OBD recall limit defined in California Code of
24 Regulations, title 13, sections 1971.1(e) through (g)

25
26 California Code of Regulations, title 13, section 1971.5(c)(4)(D) shall not apply to this Test Plan.
27 If the results of the OBD emission tests conducted on the additional four (4) engines indicate that
28

1 the OBD system does not properly illuminate the MIL for one or more of the tested
2 component/system monitor(s) before emissions exceed the malfunction criteria found at
3 California Code of Regulations, title 13, sections 1971.1(e) through (g) on two (2) or more of the
4 four (4) engines, FPT shall not conduct any additional testing. FPT shall instead conduct a recall
5 of the failed engine families to address the failed monitor(s).

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APPENDIX 3

Allowable OBD Non-Compliances for Model Years 11-12

1	Boost Slow Response Monitoring
2	Overboost Monitoring
3	EGR Slow Response Monitoring
4	Alternate Statistical MIL Illumination Protocol
5	Durability Demonstration Testing
6	Engine-off Timer Monitoring
7	Idle Fuel Quantity Monitoring
8	Idle Speed Monitoring
9	Catalyzed PM Filter Monitoring
10	DEF Doser Monitoring
11	NOx Catalyst Conversion Efficiency Monitoring
12	Demonstration Testing Evaluation Protocol
13	Data Stream Reporting
14	Freeze Frame Reporting
15	Fault Code Pinpointing
16	Diagnostic Test Results Reporting
17	Thermostat Monitoring
18	Fuel Rail Pressure Demonstration Procedure
19	Reductant Delivery Performance Monitoring
20	Fuel System Timing Demonstration Testing
21	Charge Air Cooler IRAF Determination
22	DPF Performance Monitoring – Exceeds OBD Threshold Limit
23	Fuel Rail Pressure Monitoring – Exceeds OBD Threshold Limit
24	Lambda Sensor Monitoring – Exceeds OBD Threshold Limit
25	Exhaust Gas Sensor In Use Monitoring Performance – Below Minimum

03/12/19

Allowable OBD Non-Compliances for Model Years 13-14

1	Boost Slow Response Monitoring
2	Overboost Monitoring
3	EGR Slow Response Monitoring
4	Alternate Statistical MIL Illumination Protocol
5	Durability Demonstration Testing
6	Engine-off Timer Monitoring
7	Idle Fuel Quantity Monitoring
8	Idle Speed Monitoring
9	Catalyzed PM Filter Monitoring
10	DEF Doser Monitoring
11	NOx Catalyst Conversion Efficiency Monitoring
12	Demonstration Testing Evaluation Protocol
13	Data Stream Reporting
14	Freeze Frame Reporting
15	Fault Code Pinpointing
16	Diagnostic Test Results Reporting
17	Thermostat Monitoring
18	Fuel Rail Pressure Demonstration Procedure
19	Reductant Delivery Performance Monitoring
20	Fuel System Timing Demonstration Testing
21	Charge Air Cooler IRAF Determination
22	Ammonia (NH3) Sensor Monitoring
23	DPF Performance Monitoring – Exceeds OBD Threshold Limit
24	Exhaust Gas Sensor In Use Monitoring Performance – Below Minimum

03/12/19

1 **APPENDIX 4**

2 **Test Plan For Heavy Duty In-Use Testing**

3
4 1. Engine Selection - FPT shall select Modified Vehicles' engines for testing meeting the
5 following qualifications:

- 6 A. The minimum mileage on the Modified Vehicles shall be the earlier of
7 accumulation of 20,000 miles after the date the vehicle was remedied, *or*
8 twelve (12) months after the date the Modified Vehicle was remedied.
9 B. The Modified Vehicles selected for testing under this Test Plan may be
10 registered to operate in any of the 48 contiguous states.

11 2. Test Procedure

12 FPT shall follow "California Exhaust Emission Standards and Test Procedures for 2004
13 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," as amended September
14 1, 2017, Part II (Test Procedures), Subpart T-Manufacturer-Run In-Use Testing Program
15 for Heavy-Duty Diesel Engines and Code of Federal Regulations Title 40, Part 86 (40
16 CFR 86), Subpart T. FPT shall screen the engines in its candidate pool according to the
17 requirements of CISD-06-010 ("Manufacturer-Run, Heavy-Duty In-Use Testing Program:
18 Vehicle Screening Guidance" (May 5, 2006)) and test a sample of engines in these
19 families according to the applicable test procedures (40 CFR Part 86, Subpart T and the
20 California Test Procedures, Subpart T). In addition, FPT shall submit the vehicle data, 1
21 Hz test data, and engine map data to CARB according to the formats available at
22 [https://www.epa.gov/vehicle-and-engine-certification/reporting-templates-and-guidance-](https://www.epa.gov/vehicle-and-engine-certification/reporting-templates-and-guidance-manufacturer-run-heavy-duty-use)
23 [manufacturer-run-heavy-duty-use](https://www.epa.gov/vehicle-and-engine-certification/reporting-templates-and-guidance-manufacturer-run-heavy-duty-use) (Heavy-Duty Diesel, In-Use Testing), in compliance
24 with CISD-06-011 ("Manufacturer-Run, Heavy-Duty In-Use Testing Program: Reporting
25 Guidance" (May 5, 2006)) and with the updated Data Requirements of May 11, 2012, to:

26 California Air Resources Board
27 9480 Telstar Avenue, Suite 4
28 El Monte, CA 91731
Attention: Sharon Lemieux

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*Attorneys for the People of the State of California ex
rel. the California Air Resources Board*

**EXEMPT FROM FILING FEES
[GOV. CODE, § 6103]**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

**THE PEOPLE OF THE STATE OF CALIFORNIA EX
REL. THE CALIFORNIA AIR RESOURCES
BOARD,**

Plaintiff,

v.

**FIAT POWERTRAIN TECHNOLOGIES
INDUSTRIAL S.P.A.; AND DOES 1-20,
INCLUSIVE,**

Defendants.

Case No.

**PROOF OF SERVICE OF SERVICE
BY U.S. MAIL OF:**

- (1) Letter to court dated January 18, 2019
- (2) Summons
- (3) Complaint
- (4) Civil Case Cover Sheet
- (5) Civil Case Cover Sheet Addendum
- (6) [Proposed] Order

03/12/19

1 **DECLARATION OF SERVICE BY U.S. MAIL**

2 Case Name: **People ex re California Air Resources Board**
3 **v.**
4 **Fiat Powertrain Technologies Industrial S.P.A.**

5 No.:

6 I declare:

7 I am employed in the Office of the Attorney General, which is the office of a member of the
8 California State Bar, at which member's direction this service is made. I am 18 years of age or
9 older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702,
10 Los Angeles, CA 90013.

11 On January 18, 2019, I served copies of the following documents:

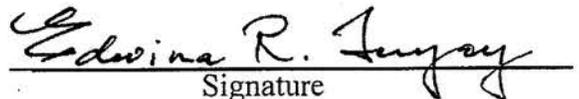
- 12 1) Letter to court dated January 18, 2019
13 2) Summons
14 3) Complaint for Injunctive Relief and Civil Penalties
15 4) Civil Case Cover Sheet
16 5) Civil Case Cover Sheet Addendum
17 6) [Proposed] Order Re California Code of Civil Procedure Section 664.6

18 by placing true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in
19 the United States Mail at Los Angeles, California, addressed as follows:

20 Julie R. Domike
21 Haynes and Boone, LLP
22 800 17th Street, NW
23 Suite 500
24 Washington, DC 20006-3962
25 Julie.domike@haynesboone.com
26 Attorneys for Fiat Powertrain Technologies Industrial S.p.A.

27 I declare under penalty of perjury under the laws of the State of California the foregoing is true
28 and correct and that this declaration was executed on January 18, 2019, at Los Angeles,
California.

29 _____
30 Edwina R. Tuyay
31 Declaratnt

32 
33 Signature