

1 LEIGH P. RENDÉ (PA Bar No. 203452)  
2 JOSEPH W.C. WARREN (DC Bar No. 452913)  
3 UNITED STATES DEPARTMENT OF JUSTICE  
4 Environment and Natural Resources Division  
5 Environmental Enforcement Section  
6 P.O. Box 7611, Ben Franklin Station  
7 Washington, DC 20044-7611  
8 Telephone: (202) 514-1461  
9 Email: leigh.rende@usdoj.gov  
10 Email: joseph.warren@usdoj.gov

11 *Counsel for the United States*

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 IN RE: CHRYSLER-DODGE-JEEP  
16 ECODIESEL MARKETING, SALES  
17 PRACTICES, AND PRODUCTS  
18 LIABILITY LITIGATION

Case No. 3:17-md-02777-EMC

**UNITED STATES' NOTICE OF MOTION,  
MOTION, AND MEMORANDUM IN  
SUPPORT OF ENTRY OF CONSENT  
DECREE**

Hearing: May 3, 2019

Time: 10:00 a.m.

Ct. Rm.: 5, 17<sup>th</sup> Floor

The Honorable Edward M. Chen

1 UNITED STATES,

2 Plaintiff,

3  
4 v.

3:17-cv-3446-EMC

5 FCA US LLC,  
6 FIAT CHRYSLER AUTOMOBILES  
7 N.V., V.M. MOTORI S.P.A., and  
8 V.M. NORTH AMERICA, INC.,

9 Defendants.

10  
11 PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14  
15 v.

3:19-cv-00151-EMC

16 FIAT CHRYSLER AUTOMOBILES  
17 N.V., FCA US LLC, V.M. MOTORI  
18 S.P.A., and  
19 V.M. NORTH AMERICA, INC.,

20 Defendants.

Table of Contents

1

2 NOTICE OF MOTION AND MOTION ..... 1

3 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT ..... 2

4 I. Introduction..... 2

5 II. Background..... 4

6 A. Summary of Allegations in the Complaint ..... 4

7 B. Summary of Terms of the Consent Decree..... 5

8 C. Relationship Between This Consent Decree and the Class Action Settlement ..... 9

9 III. Legal Standard ..... 9

10 IV. The Public Comment Process ..... 10

11 V. The Settlement is Fair, Reasonable, and Consistent with the Objectives of

12 the Clean Air Act and Should Be Entered by the Court. .... 11

13 A. The Settlement is Fair. .... 11

14 B. The Settlement is Reasonable and Advances the Purposes of the Clean Air Act. .... 13

15 VI. None of the Comments Received During the Period for Public Comment

16 Warrant Disapproval of the Proposed Consent Decree. .... 16

17 A. Comments by Mr. Richard Angell..... 16

18 B. Comments by Certain Tribal Committees ..... 17

19 VII. Conclusion ..... 18

20

21

22

23

24

25

26

27

28

Table of Exhibits

1. Consent Decree
2. Comments Received by Department of Justice

Table of Authorities

**Cases**

*Citizens for Better Env’t v. Gorsuch*, 718 F.2d 1117 (D.C. Cir. 1983) ..... 10

*Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ..... 17

*In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*  
 No. 15-md-2672 CRB (N.D. Cal. Oct. 25, 2016) ..... 17

*Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir. 1982) ..... 10

*SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) ..... 10

*Speed Shore Corp. v. Denda*, 605 F.2d 469 (9th Cir. 1979) ..... 10

*United States v. Azko Coatings of Am., Inc.*, 949 F.2d 1409 (6th Cir. 1991) ..... 10

*United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) ..... 10, 11, 12, 13, 14, 18

*United States v. Chevron U.S.A. Inc.*, 380 F. Supp. 2d 1104, 1111  
 (N.D. Cal. 2005) ..... 10, 11, 12, 13, 18

*United States v. City of Miami, Fla.*, 664 F.2d 435, 441 (5th Cir. 1981) ..... 15

*United States v. Coeur d’Alenes Co.*, 767 F.3d 873, 877 (9th Cir. 2014) ..... 11

*United States v. Colorado*, 937 F.2d 505 (10th Cir. 1991) ..... 12

*United States v. McInnes*, 556 F.2d 436 (9th Cir. 1977) ..... 10

*United States v. Montrose Chem. Corp.*, 50 F.3d 741, 743 (9th Cir. 1995) ..... 10, 15

*United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) ..... 9, 12, 13, 18

*United States v. Pacific Gas & Electric*, 776 F. Supp. 2d 1007, 1024-25  
 (N.D. Cal. 2011) ..... 13

*United States v. Wallace*, 893 F. Supp. 627, 632 (N.D. Tex. 1995) ..... 12



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Statutes**

42 U.S.C. § 7401(b)(1) ..... 15  
42 U.S.C. §§ 7521 through 7590 ..... 1, 4  
42 U.S.C. § 7522 ..... 5  
42 U.S.C. § 7522(a)(1) ..... 5  
42 U.S.C. § 7522(a)(2)(A) ..... 5  
42 U.S.C. § 7522(a)(3)(A) ..... 5  
42 U.S.C. § 7522(a)(3)(B) ..... 5  
42 U.S.C. §§ 9601-9675 ..... 14

**Regulations**

28 C.F.R. § 50.7 ..... 10  
40 C.F.R. § 86.1843-01 ..... 4  
40 C.F.R. § 86.1844-01(d) ..... 4  
40 C.F.R. § 86.1848-10(c)(6) ..... 4  
84 Fed. Reg. 1230 ..... 1, 11

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 3, 2019, at 10:00 a.m., or at such other date as may be agreed upon, in Courtroom 5 (17<sup>th</sup> floor) of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff the United States of America (“United States”) will and hereby does move this Court to enter, as a final judgment in this matter, the Consent Decree submitted to this Court as a Proposed Order and attached to this Motion as Exhibit 1 (“Consent Decree” or “Decree”).<sup>1</sup>

The Consent Decree, which was lodged with this Court on January 10, 2019, resolves violations of Title II of the Clean Air Act (Emissions Standards for Moving Sources), 42 U.S.C. §§ 7521 through 7590, as alleged in the United States’ complaint (“Complaint”), relating to certain diesel vehicles manufactured by FCA US LLC, V.M. Motori S.P.A., V.M. North America, Inc., and Fiat Chrysler Automobiles N.V. (collectively, “Defendants”). The Consent Decree also partially resolves the violations of law alleged in California’s complaint against the Defendants relating to the same vehicles. As set forth below in the Memorandum in Support of this Motion, the Court should sign and enter the Decree because it is fair, reasonable, and consistent with the goals of the Clean Air Act. The Defendants have consented to entry of the Decree without further notice. Decree ¶ 142. The U.S. Department of Justice published notice of the proposed settlement in the Federal Register and solicited public comment during a 30-day period that commenced upon publication of the notice. *See* 84 Fed. Reg. 1230 (Feb. 1, 2019). Three comment documents were received. After reviewing the comments, the United States continues to believe that the Decree is fair, reasonable and consistent with the Clean Air Act. The People of the State of California, by and through the California Air Resources Board

---

<sup>1</sup> The parties have identified and corrected a typographical error in the proposed Consent Decree lodged with the Court. Specifically, on page 36 of the proposed Consent Decree attached as Exhibit 1 to this motion, we have changed line 3 so that it now cites “Paragraph 29.b” in lieu of “Paragraph 29.c.” Counsel for the Defendants and the State of California have authorized the United States to represent to the Court that their clients consent to this correction.

1 (“CARB”), and Xavier Becerra, Attorney General of the State of California, (collectively,  
2 “California”) also support entry of the Consent Decree. Accordingly, the United States now  
3 respectfully requests that the Court approve and enter the proposed Consent Decree as a judicial  
4 order.

5 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

6 **I. Introduction**

7 On May 23, 2017, the United States filed its Complaint in the Eastern District of  
8 Michigan alleging that Defendants violated the Clean Air Act because, among other things,  
9 Defendants’ model year (“MY”) 2014 to 2016 Ram 1500 and MY 2014 to 2016 Jeep Grand  
10 Cherokees with 3.0 liter EcoDiesel engines (“Subject Vehicles”) contained illegal defeat devices.  
11 These defeat devices impaired the Subject Vehicles’ emission control systems and caused the  
12 Subject Vehicles to emit substantially higher levels of oxides of nitrogen (“NOx”) during certain  
13 normal real-world driving conditions than during federal emission tests. The United States’ case  
14 was subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation.<sup>2</sup>

15 The Consent Decree secures significant relief to address the violations alleged in the  
16 Complaint (as well as similar violations alleged in California’s complaint) by requiring the  
17 Defendants to recall and repair nearly 100,000 non-compliant motor vehicles, fully mitigate  
18 excess air pollution caused by the non-compliant motor vehicles, pay civil penalties of \$305  
19 million, and implement corporate reforms to prevent future violations. This settlement is the  
20 result of intense litigation, lengthy negotiations, and extensive technical testing over the past two  
21 years. The Decree is fair, reasonable, and consistent with the goals of the Clean Air Act.

22  
23  
24 

---

<sup>2</sup> California filed its complaint against Defendants in this District on January 9, 2019. Dkt. No. 1  
25 in Case No. 3:19-cv-0151-EMC. California and Defendants have agreed to resolve all of the  
26 claims alleged in California’s complaint. California and Defendants’ agreement is memorialized  
27 in this Consent Decree, the First California Partial Consent Decree (Dkt. No. 485-1), and the  
28 Second California Partial Consent Decree (Dkt. No. 486-1).

1           Given the pressing need for an expeditious resolution for the vehicles on the road,<sup>3</sup> the  
2 United States, California, and Defendants worked diligently to find a technical fix for the  
3 vehicles and to craft the settlement that is before the Court. Prior to lodging the Decree, the  
4 United States Environmental Protection Agency (“EPA”) and the California Air Resources  
5 Board (“CARB”) tested the Defendants’ proposed software fix for the Subject Vehicles,  
6 identified as the Approved Emissions Modification (“AEM”), and determined that the fix was a  
7 viable technical solution for removing the illegal software and bringing the Subject Vehicles into  
8 compliance with emission standards.

9           In brief, the Decree requires Defendants to (1) install the AEM in at least 85% of the  
10 Subject Vehicles within two years of entry of the Consent Decree by implementing an Emissions  
11 Modification Recall Program, (2) offer to consumers an extended warranty on Subject Vehicles  
12 that receive the AEM, (3) conduct future testing of the Subject Vehicles to demonstrate their  
13 compliance with emissions standards until such vehicles reach their full-useful life of 120,000  
14 miles, (4) mitigate the environmental harm caused by excess emissions by conducting a program  
15 to introduce 200,000 improved catalytic converters into commerce, (5) implement corporate  
16 reforms to improve environmental compliance and prevent these types of violations in the future,  
17 and (6) pay a \$305 million civil penalty to the United States and California. The Decree operates  
18 in tandem with the Plaintiffs’ Steering Committee’s (“PSC”) class action settlement on behalf of  
19 consumer claimants (who own or lease Subject Vehicles) that is also before the Court for  
20  
21

---

22  
23 <sup>3</sup> The Court aptly summarized the urgent need for a technical solution to fix the motor vehicles  
24 by highlighting the fact that “every day that we wait and await a remedy here, we have a hundred  
25 thousand cars on the road that are causing – that are emitting emissions that are evidently in  
26 excess of applicable standards.” Dkt. No. 357, Aug. 2, 2018 Case Mgmt. Conf., Court Tr. at 6;  
27 *see also, e.g.*, Dkt. No. 228, Sept. 27, 2017 Case Mgmt. Conf., Court Tr. at 22 (noting that there  
28 is urgency because “it appears that we have hundreds of thousands of non-compliant cars”).

1 approval, which provides consumer remedies to those class members who currently own or lease  
2 the vehicles (“Class Action Settlement”). *See* Dkt. No. 508.

## 3 **II. Background**

### 4 A. Summary of Allegations in the Complaint

5 The United States’ Complaint seeks civil penalties and injunctive relief against  
6 Defendants in connection with their manufacture and installation of defeat devices in over  
7 100,000 Subject Vehicles sold in the United States.<sup>4</sup> The Complaint followed a Notice of  
8 Violation issued by EPA with respect to the Subject Vehicles on January 12, 2017.

9 The United States’ claims arose under Title II of the Clean Air Act (Emissions Standards  
10 for Moving Sources), 42 U.S.C. §§ 7521 through 7590. Under Title II, EPA administers a  
11 certification program to ensure that every vehicle introduced into United States commerce  
12 satisfies applicable emission standards. EPA issues certificates of conformity (“COCs”) for  
13 categories of motor vehicles – known as test groups – and thereby approves the introduction of  
14 the motor vehicles covered by a COC into United States commerce. To obtain a COC, a light-  
15 duty vehicle manufacturer must perform emissions testing of a prototype motor vehicle for each  
16 test group. The manufacturer then submits a COC application to EPA for each test group of  
17 motor vehicles that it intends to enter into United States commerce, demonstrating that the test  
18 vehicle meets emission standards and is compliant with all other applicable regulations. 40  
19 C.F.R. §§ 86.1843-01, 86.1844-01(d). Motor vehicles are covered by a COC “only if they are in  
20 all material respects as described in the manufacturer’s application for certification . . . .” 40  
21 C.F.R. § 86.1848-10(c)(6).

---

22  
23  
24  
25 <sup>4</sup> As the Decree notes, the United States’ Complaint alleged that there were approximately  
26 103,828 Subject Vehicles, but Defendants later determined that the actual number of Subject  
27 Vehicles manufactured was 101,482. Nearly all of these vehicles (101,148) were registered with  
28 state departments of motor vehicles as of October 1, 2018.

1 In this case, Defendants manufactured and installed software in the Subject Vehicles with  
2 functions and calibrations that enabled the Subject Vehicles to meet emission standards when  
3 undergoing prescribed federal emission tests, but during real-world operations, such functions  
4 and calibrations reduced the use of the vehicles' emission controls, resulting in a substantial  
5 increase in tailpipe emissions. These software functions and calibrations were neither described  
6 nor justified in the Defendants' COC applications, and, as a result, the Subject Vehicles do not  
7 conform in all material respects to the specifications described in the COC applications. The  
8 undisclosed software functions and/or calibrations constitute defeat devices.

9 The United States' Complaint alleges four categories of violations of Section 203 of the  
10 CAA, 42 U.S.C. § 7522, namely: 1) importing and selling uncertified motor vehicles in violation  
11 of 42 U.S.C. § 7522(a)(1) (all Defendants); 2) manufacturing, selling or installing defeat devices  
12 in violation of 42 U.S.C. § 7522(a)(3)(B) (FCA US, V.M. Motori, and VM North America);  
13 3) tampering by rendering inoperative the certified pollution control system in violation of 42  
14 U.S.C. § 7522(a)(3)(A) (FCA US, V.M. Motori, and VM North America); and 4) failing to  
15 report information required by EPA to determine whether Defendants acted in compliance with  
16 motor vehicle emission standards in violation of 42 U.S.C. § 7522(a)(2)(A) (all Defendants).

17 B. Summary of Terms of the Consent Decree

18 Under the Decree (Section VI.B), Defendants must offer the AEM to every owner and  
19 lessee of an operable affected vehicle and provide the owners or lessees of such vehicles with the  
20 AEM Disclosure in Appendix D.<sup>5</sup> Decree ¶¶ 38, 43.b, App. D. Defendants must provide the  
21 AEM to all owners and lessees that accept the offer, along with an Extended Warranty that  
22  
23  
24  
25

---

26  
27 <sup>5</sup> The AEM Disclosure in Appendix D contains a description of impacts of the AEM on the  
28 vehicle, including impacts on fuel economy and diesel exhaust fluid consumption.

1 covers many listed emissions-control-related parts.<sup>6</sup> Decree ¶¶ 38, 45, and App. E. To  
2 accomplish this, Defendants must comply with an aggressive, but achievable, schedule to recall  
3 the non-compliant vehicles and install the AEM on at least 85% of vehicles nationally (and 85%  
4 of all vehicles in California)<sup>7</sup> by no later than two years after entry of the Decree.<sup>8</sup> Decree ¶¶  
5 37 and 41.

---

6  
7  
8 <sup>6</sup> There are two exceptions to the requirement to provide the AEM to owners and lessees of  
9 Subject Vehicles. First, Defendants need not install the AEM in any Subject Vehicle that is not  
10 operable. Decree at ¶¶ 8.ii, 8.jj, 23, and 38.a. Second, Defendants need not install the AEM in  
11 any eligible vehicle that has been altered in the manner described in Paragraph 38.e (e.g., the  
12 owner installed after-market emission-related components that are likely to substantially affect  
13 the operation of the vehicle with the AEM), unless the owner has reversed the alteration at his or  
14 her own expense. Decree ¶ 38.e.

15 <sup>7</sup> The Consent Decree sets the total number of vehicles nationally for purposes of meeting the  
16 85% Recall Target at 99,257 vehicles. Decree ¶ 41. Although the actual number of vehicles  
17 nationally as of October 1, 2018 was 100,148 vehicles, the Parties agreed to reduce this number  
18 by 891 vehicles. This adjustment was appropriate because the Class Action Settlement does not  
19 include Subject Vehicles that were originally sold in Canada, and hence, the owners and lessees  
20 of such vehicles will not receive any type of compensation if they update their vehicle with the  
21 AEM. Recognizing that this fact could impair the Defendants' ability to meet the 85% National  
22 Recall Target, the Parties agreed to reduce the national Recall Target by 891 vehicles, which is  
23 equal to 50% of the total number of Subject Vehicles that were originally sold in Canada. The  
24 total number of Subject Vehicles for purposes of meeting the California Recall Target is 13,325.  
25 *Id.*

26 <sup>8</sup> Defendants may receive credit toward the recall targets for any Subject Vehicles that were  
27 scrapped or otherwise permanently removed from commerce between October 1, 2018 and the  
28 recall-target deadline. Likewise, even if the Defendants do not install the AEM in Subject  
Vehicles with emission-related components, parts or software that have been altered in the  
manner described in Paragraph 8.qqq, Defendants may receive half credit for up to 6,000 such  
vehicles, provided that the Defendants satisfy certain conditions set forth in Paragraph  
41.c. Decree ¶ 41.



1 Failure to meet these recall rates triggers steep penalty payments of \$5.5 million for every  
2 percentage point Defendants fall short of the national 85% recall rate, and \$825,000 for every  
3 percentage point they fall short of the California 85% recall rate. Decree ¶ 41. Defendants must  
4 continue to offer the AEM for 18 years after entry of the Decree, and it must make reasonable  
5 efforts to ensure it continues to be available thereafter. Decree ¶ 39. As discussed below in  
6 Section II.C, although the Decree’s recall and fix program can operate on its own, it is also  
7 crafted to work in tandem with the Class Action Settlement that is also before this Court for  
8 approval.

9 To ensure that vehicles updated with the AEM continue to meet emissions standards  
10 through the full useful life of the vehicle, Section VI.A of the Decree contains extensive post-  
11 entry testing and analysis requirements. Decree ¶¶ 29 - 33. In brief, the Decree provides various  
12 avenues if EPA and CARB ultimately determine, after testing, that the Subject Vehicles fail to  
13 meet emission standards. Decree ¶¶ 31, 34. In such situations, Defendants are required to  
14 remedy the vehicles, unless 1) EPA and CARB determine that a remedial action is not warranted  
15 under the circumstances, in which case they may assess a stipulated penalty, Decree ¶ 31.e; or  
16 2) EPA and CARB determine that there has been a “remedy failure,” as described in the Decree,  
17 in which case they may assess a stipulated penalty and reserve all equitable rights to pursue the  
18 non-compliance through proceedings brought in this action or a new action, and/or by pursuing  
19 administrative remedies. Decree ¶ 31.h.

20 Under Section VI.D, Defendants must implement a federal mitigation program, which is  
21 intended to fully mitigate the total lifetime excess NOx emissions from Subject Vehicles in the  
22 United States, excluding California.<sup>9</sup> Decree ¶ 66. Defendants are required to improve the  
23 efficiency of 200,000 catalytic converters that will be sold in the United States, except in the few  
24

---

25  
26 <sup>9</sup> The California Mitigation Program is contained in a separate partial consent decree between  
27 California and Defendants that is intended to fully mitigate the total lifetime excess NOx  
28 emissions from the Subject Vehicles in California, as claimed by California. Decree ¶ 69; First  
California Partial Consent Decree, Dkt. No. 485-1.



1 states, including California, that already require high-efficiency aftermarket converters. *Id.*  
2 Defendants may work with one or more manufacturers of aftermarket catalytic converters to do  
3 so. *Id.* The improved catalytic converters must be equivalent to those that meet CARB's  
4 standards for catalytic converters. *Id.* By no later than July 1, 2020, Defendants must ensure  
5 that 200,000 after-market catalytic converters containing improved catalysts are manufactured  
6 and shipped to distributors for further sale and distribution through commerce in the United  
7 States. *Id.*

8 Section VI.C requires Defendants to implement a corporate compliance program to help  
9 prevent future Clean Air Act and California law violations like those that occurred here.  
10 Specifically, Defendants have already made several important corporate reforms, which they  
11 must maintain, including, revising their corporate structure to ensure that employees involved in  
12 certification testing and monitoring for purposes of vehicle certification under the Clean Air Act  
13 and California law are organizationally separate from product development, and implementing a  
14 robust whistle-blower program. Decree ¶¶ 50-51. Defendants also must provide enhanced  
15 Defeat Device and other training, and implement many significant new processes and  
16 requirements to improve compliance with emissions, certification, and other regulatory  
17 requirements during production, certification, and post-certification. Decree ¶¶ 52, 54-57.  
18 Defendants must also hire an independent compliance auditor to oversee their compliance with  
19 the program and perform three annual audits and reports. Decree ¶¶ 63-65. Further, in order to  
20 ensure that their motor vehicles meet emissions standards when driven under normal driving  
21 conditions, Defendants must perform annual in-use testing of a section of their current light-duty  
22 motor vehicle models (both diesel and non-diesel) using portable emissions measurement  
23 systems and must hire an independent third party to perform additional testing. Decree ¶ 59.

24 Defendants must also pay a civil penalty of \$305 million (plus interest). Of that amount,  
25 86% will be paid to the United States and 14% to California. This is the second largest penalty  
26 ever paid under the Clean Air Act.

27 Further, the Decree requires detailed reporting on compliance with Consent Decree  
28 requirements, which reports must be certified, Decree § VII, and contains significant stipulated

1 penalties that the governments can impose for violations of the Decree's terms. Decree § VIII  
2 and ¶ 41.a.

3 Finally, the proposed settlement resolves the United States' and California's claims as  
4 alleged in their respective complaints, subject to certain reservations, as more fully described in  
5 Section XXIII of the Decree.

6 C. Relationship Between This Consent Decree and the Class Action Settlement

7 One important aspect of the proposed Consent Decree is its overlap with, and relation to,  
8 Defendants' settlement with the PSC. The Decree is separate from the Class Action Settlement  
9 and can be entered by this Court as a standalone agreement or simultaneously with the Class  
10 Action Settlement. While the Decree secures the AEM, an extended warranty, environmental  
11 mitigation, corporate compliance reforms, and a substantial penalty, the Class Action Settlement  
12 provides consumer relief for car owners and lessees. *See* Dkt. No. 508. Accordingly, the  
13 proposed Consent Decree acknowledges that, with respect to the vast majority of the Subject  
14 Vehicles, Defendants may fulfill certain consumer-facing requirements of the Decree (e.g., the  
15 requirement to provide notice to consumers) by carrying out the detailed obligations in the Class  
16 Action Settlement. Decree ¶ 48.

17 One area where the Consent Decree and the Class Action Settlement do not overlap is  
18 with respect to the small subset of Subject Vehicles (totaling 1,782 vehicles as of October 1,  
19 2018) that were originally sold in Canada but later imported into the United States and registered  
20 with the department of motor vehicles of a state government. Such vehicles, known as  
21 "Canadian Subject Vehicles," are covered by the Consent Decree, but they are excluded from the  
22 Class Action Settlement. *See* note 6, *supra*. Accordingly, the consumer-facing requirements of  
23 the Consent Decree apply to owners and lessees of Canadian Subject Vehicles, even though such  
24 individuals are excluded from the class covered by the Class Action Settlement.

25 **III. Legal Standard**

26 Approval of a proposed consent decree is within the informed discretion of the district  
27 court. *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990). The court reviews the decree  
28 to determine whether it is fair, reasonable, and consistent with the objectives of the statute at

1 issue. *United States v. Montrose Chem. Corp.*, 50 F.3d 741, 743 (9th Cir. 1995). A court may  
2 not modify a proposed consent decree before entry; it must either approve or reject the settlement  
3 agreed upon by the parties. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 630 (9th  
4 Cir. 1982).

5 The court’s review is informed by the “overriding public interest in settling and quieting  
6 litigation.” *United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977); *see also Speed Shore*  
7 *Corp. v. Denda*, 605 F.2d 469, 473 (9th Cir. 1979) (“Settlement agreements conserve judicial  
8 time and limit expensive litigation.”). In reviewing a consent decree, the court “need not inquire  
9 into the precise legal rights of the parties nor reach and resolve the merits of the claims or  
10 controversy, but need only determine that the settlement is fair, adequate, reasonable and  
11 appropriate under the particular facts and that there has been valid consent by the concerned  
12 parties.” *Citizens for Better Env’t v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983) (internal  
13 citation omitted). Especially when reviewing a consent decree involving a federal agency, as is  
14 the case here, a district court “must refrain from second-guessing the Executive Branch.”  
15 *Montrose Chem. Corp.*, 50 F.3d at 746 (quoting *United States v. Cannons Eng’g Corp.*, 899 F.2d  
16 79, 84 (1st Cir. 1990)). The court’s “deference is particularly strong where the decree has been  
17 negotiated by the Department of Justice on behalf of an agency like the EPA which is an expert  
18 in its field.” *United States v. Chevron U.S.A. Inc.*, 380 F. Supp. 2d 1104, 1111 (N.D. Cal. 2005)  
19 (citing *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991)); *see*  
20 *also SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (stating that a court should “pay  
21 deference to the judgment of the government agency which has negotiated and submitted the  
22 proposed judgment”).

23 As demonstrated below, the Decree meets the three prongs necessary for district court  
24 approval of a settlement: it is fair, reasonable, and faithful to the objectives of the Act.

#### 25 **IV. The Public Comment Process**

26 The Department of Justice must hold a 30-day comment period on certain proposed  
27 consent decrees and must withdraw from the proposed decree if the comments disclose facts or  
28 considerations which indicate that it is inappropriate, improper or inadequate. 28 C.F.R. § 50.7.

1 The Department must file the comments with the court, *id.*, to help the court ensure that the  
2 settlement is in the public interest. Here, the Department held the required 30-day public  
3 comment period from February 1, 2019 through March 4, 2019, allowing citizens an adequate  
4 opportunity to present their views. 84 Fed. Reg. 1230 (Feb. 1, 2019).

5 The Department received three comment letters during the public comment period, which  
6 are attached to this motion as Exhibit 2. In brief, two identical comments<sup>10</sup> noted that the  
7 settlement did not address various aftermarket devices made by FCA US LLC or its affiliates  
8 that the commenters maintain could be deemed to be defeat devices, and as a result, the  
9 commenters ask EPA to include an affirmative statement in the Consent Decree clarifying that  
10 such aftermarket parts are not illegal to manufacture and sell. The second comment requested  
11 that the Consent Decree be revised so that any stipulated payments for failure to meet the 85%  
12 National Recall Target go to the Volkswagen Environmental Mitigation Tribal Trust so that the  
13 money is directed toward mitigation efforts by federally-recognized Tribes instead of to the  
14 Treasury. The United States responds to these comments below in Section VI. Neither comment  
15 should prevent this Court from finding that the proposed Consent Decree meets the applicable  
16 standard for entry.

17 **V. The Settlement is Fair, Reasonable, and Consistent with the Objectives of the**  
18 **Clean Air Act and Should Be Entered by the Court.**

19 A. The Settlement is Fair.

20 To determine whether a proposed settlement is fair, courts examine both procedural and  
21 substantive fairness. *See United States v. Coeur d'Alenes Co.*, 767 F.3d 873, 877 (9th Cir.  
22 2014); *Cannons Eng'g Corp.*, 899 F.2d at 86–88.

23 1. The Settlement is Procedurally Fair.

24 With regard to procedural fairness, courts make a determination as to whether the  
25 negotiation process was “fair and full of adversarial vigor.” *Chevron*, 380 F. Supp. 2d at 1111  
26

27 \_\_\_\_\_  
28 <sup>10</sup> As discussed *infra* note 11, these are referred to as Mr. Angell’s comments.

1 (citation omitted). “If the decree was the product of ‘good faith, arms-length negotiations,’ it is  
2 ‘presumptively valid and [an] objecting party has a heavy burden of demonstrating the decree is  
3 unreasonable.’” *Chevron*, 380 F. Supp. 2d at 1111 (*quoting Oregon*, 913 F.2d at 581). A  
4 settlement is procedurally fair if the negotiations were open and conducted at arms-length.  
5 *Cannons Eng’g Corp.*, 899 F.2d at 86-87. Procedural fairness calls for consideration of the  
6 “candor, openness, and bargaining balance” of the negotiations. *United States v. Wallace*, 893 F.  
7 Supp. 627, 632 (N.D. Tex. 1995).

8 Here, the proposed settlement was achieved as part of the coordinated efforts of all  
9 Parties under the direction of the Court’s appointed Settlement Master, Kenneth Feinberg (Dkt.  
10 No. 184, July 13, 2017). The settlement process was lengthy, intense and flanked by in-depth  
11 discovery. The United States, California, and the Defendants met frequently to conduct  
12 settlement discussions. In addition, the Parties occasionally met in sessions arranged by  
13 Settlement Master Feinberg with the PSC to discuss issues of mutual concern. Attorneys from  
14 the U.S. Department of Justice and the California Attorney General’s Office, as well as attorneys  
15 and technical experts from EPA and CARB, identified issues and negotiated with Defendants to  
16 address many complex and technical concerns on various aspects of the settlement. The  
17 regulating agencies drew on their considerable expertise in their relevant fields, both with regard  
18 to the engineering challenges posed by the modification of the vehicles and the mitigation of  
19 environmental harm. Where necessary, the Parties consulted outside experts with knowledge  
20 and experience in the relevant subject matter to inform the Parties’ negotiating positions.

21 The settlement discussions were conducted in good faith and at arms’ length by  
22 experienced counsel on all sides. The proposed Decree reflects the strength of the Parties’  
23 negotiating positions and the efforts of all Parties to reach a just and equitable resolution of the  
24 matter. The proposed settlement is not the “product of collusion.” *Chevron*, 380 F. Supp. 2d at  
25 1111; *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991). In addition, the public  
26 comments have raised no concerns about the procedural fairness of the negotiation process.  
27  
28

1                   2. The Settlement is Substantively Fair.

2                   Substantive fairness concerns “concepts of corrective justice and accountability” and that  
3 a party should bear the cost of the harm for which it is legally responsible. *Cannons Eng’g*  
4 *Corp.*, 899 F.2d at 87. With respect to substantive fairness,

5                   it is not the duty of the court to determine whether “the settlement is one which  
6 the court itself might have fashioned, or considers ideal.” *Cannons*, 899 F.2d at 84  
7 . . . . Instead, the “court’s approval is nothing more than an amalgam of delicate  
8 balancing, gross approximations and rough justice.” *Oregon*, 913 F.2d at 581  
9 (internal quotations omitted). “The court need only be satisfied that the decree  
10 represents a reasonable factual and legal determination.” *Id.* (internal quotation  
11 omitted).

12 *Chevron*, 380 F. Supp. 2d at 1111; *see also United States v. Pacific Gas & Electric*, 776 F. Supp.  
13 2d 1007, 1024-25 (N.D. Cal. 2011).

14                   Here, the Decree requires Defendants to comply with the Clean Air Act by fixing the  
15 offending vehicles, mitigating the harm caused by the excess NOx emissions, and taking action,  
16 through the Decree’s corporate compliance program, to prevent such violations in the future.  
17 Defendants will also pay a large civil penalty for their violations. In these ways, the Decree  
18 demonstrates corrective justice and holds Defendants accountable for the Clean Air Act  
19 violations alleged in the Complaint. Therefore, the settlement is substantively fair.

20                   B. The Settlement is Reasonable and Advances the Purposes of the Clean Air Act.

21                   The reasonableness of a consent decree may be determined in light of such things as  
22 whether it is technically adequate to cleanse the environment, adequately considers the public,  
23  
24  
25  
26  
27  
28

1 and takes into consideration the risks of litigation. *Cannons Eng'g Corp.*, 899 F.2d at 89–90.<sup>11</sup>  
2 Applying this three-pronged standard, the Court should find that the Consent Decree represents a  
3 reasonable resolution of the alleged violations. First, the Decree is technically adequate to  
4 cleanse the environment – Section VI.A of the Decree sets forth the detailed technical  
5 requirements that Defendants must meet to offer the AEM to affected vehicle owners and  
6 lessees, including certifying that it is free of any and all defeat devices; EPA and CARB will  
7 review future submissions from the Defendants and monitor and enforce compliance. The  
8 Decree further cleanses the environment by requiring Defendants to mitigate the increased  
9 emissions they caused.

10 Second, the Decree adequately considers the needs of the public. With respect to owners  
11 and lessees of the Subject Vehicles, the Decree requires Defendants to offer consumers the  
12 AEM, a disclosure of all impacts of the emissions modification on the vehicle (App. D), and an  
13 extended warranty covering the emissions control system and associated components for the  
14 Subject Vehicles (App. E).<sup>12</sup> In addition, the Decree requires a substantial civil penalty to  
15 recoup Defendants' economic benefit and deter future noncompliance, actions to help prevent

---

17 <sup>11</sup> The *Cannons* decision evaluated the adequacy of a decree entered into to resolve a United  
18 States complaint under the Comprehensive Environmental Response, Compensation, and  
19 Liability Act (“CERCLA”). 42 U.S.C. §§ 9601-9675. One of CERCLA’s requirements is that  
20 the defendants in those actions clean up Superfund sites and reimburse federal and state response  
21 costs. Thus, the *Cannons* court analyzed “whether the settlement satisfactorily compensates the  
22 public for the actual (and anticipated) costs of remedial and response measures.” *Id.* at 91. As  
23 such, public “compensation” of funds is not as directly applicable to this case concerning  
24 violations of a regulatory statute. However, as explained below, the Consent Decree  
25 appropriately takes the consumers and the public interest into account.

26 <sup>12</sup> Notably, the Decree does not require consumer compensation to be paid in connection with the  
27 emissions modification, as this is not relief provided for under the Clean Air Act. Instead, the  
28 Class Action Settlement determines the compensation amount for each vehicle owner or lessee  
for non-environmental harm. Although the consumers only receive money under the Class  
Action Settlement if it is approved, if it is not approved, the consumers can continue to pursue  
their claims for compensation against the Defendants.



1 Defendants' future violations, and action to mitigate the pollution that Defendants' violations  
2 caused, all of which vindicates the public's interest in clean air and in ensuring compliance with  
3 environmental laws designed to protect public health.

4 The third prong of the reasonability determination hinges on whether the Decree takes  
5 into consideration the risks of litigation. Here, the United States was simultaneously preparing  
6 for trial, engaging in settlement negotiations, and working with Defendants to find a technical  
7 fix. Both sides committed great time and resources to engage in significant discovery on  
8 liability. As a result, the United States was able to carefully assess the merits of its claims and  
9 craft a settlement that accounted for the risks and rewards of litigation. The facts related to these  
10 three prongs demonstrate that the settlement is reasonable.

11 Lastly, the purpose of the Clean Air Act is to, among other things, "protect and enhance  
12 the quality of the Nation's air resources so as to promote the public health and welfare." 42  
13 U.S.C. § 7401(b)(1). Here, because the Decree brings the Subject Vehicles into compliance,  
14 mitigates increased emissions of air pollutants, and requires systemic corporate changes to  
15 prevent, and a substantial civil penalty to deter, future Clean Air Act violations, the very nature  
16 of the Decree advances the purpose of the Clean Air Act. *See Montrose Chem. Corp.*, 50 F.3d at  
17 743); *United States v. City of Miami, Fla.*, 664 F.2d 435, 441 (5th Cir. 1981) (noting, in the  
18 context of assessing a consent decree, "the court must also consider the nature of the litigation  
19 and the purposes to be served by the decree. If the suit seeks to enforce a statute, the decree must  
20 be consistent with the public objectives sought to be attained by Congress.").



1 **VI. None of the Comments Received During the Period for Public Comment**  
2 **Warrant Disapproval of the Proposed Consent Decree.**

3 The public comments, which are attached as Exhibit 2, are summarized and addressed  
4 below.

5 A. Comments by Mr. Richard Angell<sup>13</sup>

6 Mr. Richard Angell, of the Parsons Behle & Latimer law firm, submitted a letter on  
7 behalf of himself and various aftermarket parts manufacturers and sellers that sell or sold  
8 aftermarket parts to be used solely for competition motorsports. He asserts that: 1) the scope of  
9 the Consent Decree does not match the scope of the Complaint; 2) FCA US LLC (or its  
10 affiliates) sell many different aftermarket parts under the Mopar name that could, in the view of  
11 the commenter, be considered impermissible defeat devices; 3) the devices come with warnings  
12 that they are not legal for use on streets or highways and are for competition use only; 4) based  
13 on EPA guidance, these types of parts arguably come within the scope of the Complaint's  
14 allegations concerning defeat devices and yet there is no injunction against them in the Decree;  
15 and 5) thus, the only conclusion to be drawn by this is "that the United States is satisfied that  
16 sales by FCA US LLC (or affiliates) and Mopar dealers of [these types of parts] . . . are lawful  
17 sales of competition parts." Angell Ltr. at 3. Mr. Angell does not ask the Court to reject the  
18 Decree, but requests that it be modified to include language "explicitly acknowledging EPA's  
19 position that sales of FCA products that may potentially qualify as defeat devices do not violate  
20 the Clean Air Act provided they are sold solely for competition use." *Id.*

21 Because this case and Consent Decree do not pertain to aftermarket parts for motor  
22 vehicles, it would be inappropriate and illogical to reach the conclusions and to include the type  
23 of language Mr. Angell requests in the Consent Decree. The Complaint asserts claims  
24

---

25 <sup>13</sup> Two of the three comment letters received were the same comments, written by Richard J.  
26 Angell, from the Parsons Behle & Latimer law firm. Mr. Angell submitted his comments  
27 himself, and another copy of the letter was submitted by Mr. Jeffrey C. Corey, also from the  
28 Parsons firm. This duplicate set of comments will be referred to as Mr. Angell's comments, and  
both sets are provided at Exhibit 2.

1 concerning the Subject Vehicles only, which are defined as “approximately 103,828 diesel-  
2 fueled new motor vehicles, under the Ram 500 and Jeep Grand Cherokee model names,” with  
3 Eco-Diesel engines from specific model years and test groups. Complaint, ¶¶ 2, 73-74, Dkt. No.  
4 1, *United States v. FCA US LLC*, No. 17-cv-3446 (N.D. Cal. May 23, 2017); *see also id.* pp. 27-  
5 32 (detailing four claims and types of violations concerning the Subject Vehicles). The factual  
6 allegations concern the Subject Vehicles, and not the type of aftermarket parts that Mr. Angell  
7 describes.

8 Further, it would be improper to make any pronouncements in the Decree about the types  
9 of devices or potential violations discussed by Mr. Angell. The Decree does not resolve liability  
10 for, provide injunctive relief for, or even mention the type of products and additional alleged  
11 violations that Mr. Angell describes, leaving the United States (and California) free to pursue any  
12 such violations in the future. At base, what Mr. Angell asks impermissibly infringes on the  
13 prosecutorial discretion of the United States to bring suits and to settle them as it sees fit, *Heckler*  
14 *v. Chaney*, 470 U.S. 821, 831 (1985), and does not render the Consent Decree unapprovable as  
15 written.

16 B. Comments by Certain Tribal Committees

17 The second set of comments was submitted by the National Tribal Air Association’s  
18 Executive Committee and the Tribal Air Monitoring Support Center’s Steering Committee  
19 (“Tribal Committees”). They ask that the Decree be modified so that instead of requiring the  
20 stipulated payments for missing the 85% National Recall Target to be paid to the Treasury, these  
21 monies go into the Volkswagen Environmental Mitigation Tribal Trust Fund, established under a  
22 consent decree in *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*  
23 No. 15-md-2672 CRB (N.D. Cal. Oct. 25, 2016), Dkt. No. 2103, to be directed toward mitigation  
24 efforts by the 573 federally-recognized Tribes (“Tribes”). Similarly, they ask the United States  
25 to consider this approach in future cases.

26 The Consent Decree requires Defendants to pay \$5,500,000 for each 1% that the National  
27 Recall Rate (i.e., the recall rate actually achieved under the Decree) falls short of the 85%  
28 National Recall Target. The purpose of this stipulated payment is to create a strong disincentive

1 for Defendants to fail to achieve the 85% National Recall Target by the required deadline, which  
2 ensures that the public health benefits of the settlement are achieved through the timely repair of  
3 at least 85% of the Subject Vehicles. The Tribal Committees do not suggest that the required  
4 payment is inadequate to achieve that goal. Indeed, the amount is substantial and should provide  
5 a strong deterrent against Defendants missing the required target. Stipulated penalties or  
6 payments are a common approach to ensuring consent decree compliance, and they are the  
7 approach the governments chose to employ here.

8 Even if this Court were to agree with the Tribal Committees that it might be better for the  
9 payments for violating the 85% National Recall Target to go toward mitigation instead of to the  
10 Treasury, it is not the duty of the Court to determine whether the Decree is “ideal” or whether it  
11 is just what “the court itself might have fashioned.” Rather, this Court “need only be satisfied  
12 that the decree represents a reasonable factual and legal determination.” *See Chevron*, 380 F.  
13 Supp. 2d at 1111 (quoting *Cannons Eng’g Corp.*, 899 F.2d at 84, and *Oregon*, 913 F.2d at 581  
14 (internal quotation omitted)). As demonstrated, the Decree as a whole (as well as this provision  
15 in particular) easily meets this standard.

## 16 **VII. Conclusion**

17 The proposed Consent Decree is the product of vigorous, arms-length negotiations that  
18 have produced a plan to fix at least 85% of the noncompliant vehicles and to fully remediate  
19 environmental harm caused by Defendants’ conduct, all within two years of the date the Court  
20 enters the Decree. The Consent Decree also appropriately punishes Defendants and deters future  
21 violations by requiring a substantial civil penalty of \$305 million. For all the reasons presented  
22 in this motion, the proposed Decree represents a reasonable, fair and equitable resolution of the  
23  
24  
25  
26  
27  
28

1 United States' and California's claims relating to the Subject Vehicles that is consistent with the  
2 objectives of the Clean Air Act. This Court should approve the proposed Consent Decree.

3 Respectfully submitted,

4 Dated: March 29, 2019

BRUCE S. GELBER  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

7  
8 *s/Joseph W.C. Warren* \_\_\_\_\_

JOSEPH W.C. WARREN

LEIGH P. RENDÉ

LESLIE ALLEN

ANNA GRACE

LAUREN D. GRADY

ANDREW W. KEIR

ZACHARY N. MOOR

BRANDON J. ROBERS

JEFFREY A. SPECTOR

Counsel for the United States

Environmental Enforcement Section

Environment and Natural Resources Division

United States Department of Justice

601 D Street N.W.

Washington, D.C. 20004

Telephone: 202-616-1303

Facimile: 202-514-0097

[Joseph.warren@usdoj.gov](mailto:Joseph.warren@usdoj.gov)

23 **OF COUNSEL:**

24 KATHRYN PIRROTTA CABALLERO, Senior Attorney

25 CAITLIN MEISENBACH, Attorney Advisor

Office of Enforcement and Compliance Assurance

26 U.S. Environmental Protection Agency

27 1200 Pennsylvania Ave., NW

28 Washington, DC 20460

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of March, 2019, I electronically filed a copy of the foregoing using the CM/ECF system, which sent a notification of such filing to all counsel of record.

s/ Joseph W.C. Warren  
Joseph W.C. Warren  
U.S. Department of Justice

# **EXHIBIT 1**

UNITED STATES' MOTION TO ENTER CONSENT DECREE  
MDL No. 2777 EMC

1 LEIGH P. RENDE (PA Bar No. 203452)  
JOSEPH W.C. WARREN (DC Bar No. 452913)  
2 Environment and Natural Resources Division  
Environmental Enforcement Section  
3 P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
4 Telephone: (202) 514-1461  
Email: leigh.rende@usdoj.gov  
Email: joseph.warren@usdoj.gov

5 *Counsel for the United States*

6 XAVIER BECERRA  
Attorney General of California  
7 NICKLAS A. AKERS  
Senior Assistant Attorney General  
8 JUDITH A. FIORENTINI (CA Bar No. 201747)  
Supervising Deputy Attorney General  
9 JON F. WORM (CA Bar No. 248260)  
LAUREL M. CARNES (CA Bar No. 285690)  
Deputy Attorneys General  
10 600 West Broadway, Suite 1800  
San Diego, CA 92101  
11 Telephone: (619) 738-9325  
Email: judith.fiorentini@doj.ca.gov  
12 Email: jon.worm@doj.ca.gov  
Email: laurel.carnes@doj.ca.gov

13 *Counsel for the People of the State of California*

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 IN RE: CHRYSLER-DODGE-JEEP  
18 ECODIESEL MARKETING, SALES  
PRACTICES, AND PRODUCTS  
19 LIABILITY LITIGATION

No. 3:17-md-02777-EMC

**CONSENT DECREE**

Hon. Edward M. Chen

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES,

Plaintiff,

v.

FCA US LLC,  
FIAT CHRYSLER AUTOMOBILES  
N.V., V.M. MOTORI S.P.A., and  
V.M. NORTH AMERICA, INC.,

Defendants.

3:17-cv-3446-EMC

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

FCA US LLC,  
FIAT CHRYSLER AUTOMOBILES  
N.V., V.M. MOTORI S.P.A., and  
V.M. NORTH AMERICA, INC.,

Defendants.



TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BACKGROUND .....1

I. JURISDICTION AND VENUE.....3

II. APPLICABILITY .....4

III. DEFINITIONS .....5

IV. CIVIL PENALTY .....19

V. APPROVAL OF SUBMISSIONS; U.S./CALIFORNIA DECISION-MAKING .....20

VI. INJUNCTIVE MEASURES .....23

    A. Modification of Subject Vehicles and Post-Entry Compliance Testing .....23

    B. Emissions Modification Recall Program.....58

    C. Corporate Compliance Requirements .....79

    D. Mitigation Program .....98

VII. REPORTING REQUIREMENTS.....102

VIII. STIPULATED PENALTIES .....105

IX. FORCE MAJEURE.....122

X. DISPUTE RESOLUTION .....124

XI. INFORMATION COLLECTION AND RETENTION AND CBI .....127

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS .....130

XIII. COSTS.....135

XIV. NOTICES .....135

XV. EFFECTIVE DATE .....137

XVI. RETENTION OF JURISDICTION .....137

XVII. MODIFICATION.....137

XVIII. TERMINATION .....138

XIX. PUBLIC PARTICIPATION.....139

XX. SIGNATORIES/SERVICE .....139

XXI. INTEGRATION.....139

XXII. 26 U.S.C. § 162(F)(2)(A)(II) IDENTIFICATION.....140

XXIII. FINAL JUDGMENT.....140

XXIV. APPENDICES AND DOCUMENTS INCORPORATED BY REFERENCE.....141

**BACKGROUND**

1  
2 Plaintiff United States of America, on behalf of the United States Environmental Protection  
3 Agency, filed a complaint in this action on May 23, 2017, against FCA US LLC (“FCA”), Fiat Chrysler  
4 Automobiles N.V., V.M. Motori S.P.A., and V.M. North America, Inc. (“U.S. Complaint”) alleging that  
5 Defendants violated Sections 203(a)(1) and (a)(2) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(1), (a)(2),  
6 and that FCA US LLC, V.M. Motori S.P.A., and V.M. North America, Inc. violated Sections  
7 203(a)(3)(A) and (3)(B) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(3)(A) and (3)(B), with regard to  
8 approximately 103,828 model year (“MY”) 2014 to 2016 Ram 1500 and MY 2014 to 2016 Jeep Grand  
9 Cherokee vehicles equipped with 3.0 liter EcoDiesel engines (“Subject Vehicles”). Defendants have  
10 determined that the actual number of Subject Vehicles manufactured is 101,482.

11 The U.S. Complaint alleges that each Subject Vehicle contains, as part of the electronic control  
12 module, certain software functions and calibrations that cause the emission control system of those  
13 vehicles to perform differently (i.e., to underperform or shut off) during normal vehicle operation and  
14 use than during emissions testing. The U.S. Complaint alleges that these software functions and  
15 calibrations are undisclosed “Auxiliary Emission Control Devices” (“AECs”) in violation of the Act  
16 and that they are also prohibited Defeat Devices under the Act. The U.S. Complaint also alleges that  
17 during normal vehicle operation and use, the Subject Vehicles emit increased levels of NO<sub>x</sub>. The U.S.  
18 Complaint alleges and asserts four claims for relief related to the presence of the Defeat Devices in the  
19 Subject Vehicles.

20 The People of the State of California, by and through the California Air Resources Board  
21 (“CARB”), and Xavier Becerra, Attorney General of the State of California, filed a complaint on  
22 January 9, 2019, against FCA US LLC, Fiat Chrysler Automobiles N.V., V.M. Motori S.P.A., and V.M.  
23 North America, Inc. (“California Complaint”) alleging that, in connection with the certification,  
24 marketing, distribution, and sale of approximately 14,000 Subject Vehicles in California, Defendants  
25

1 violated 42 U.S.C. § 7604(a)(1); California Health and Safety Code §§ 43016, 43017, 43151, 43152,  
2 43153, 43154, 43205, 43211, and 43212; 13 C.C.R. §§ 1961, 1961.2, 1965, 1968.2, and 2037, and the  
3 40 C.F.R. sections incorporated therein by reference; and California Business and Professions Code §§  
4 17200 et seq., 17500 et seq., and 17580.5.

5         The California Complaint alleges, in relevant part, that each Subject Vehicle contains, as part of  
6 the electronic control module, certain software functions and calibrations that cause the emission control  
7 system of those vehicles to perform differently (i.e., to underperform or shut off) during normal vehicle  
8 operation and use as compared to during emissions testing. The California Complaint alleges that these  
9 software functions and calibrations are undisclosed AECs in violation of California and federal law,  
10 and that they are also prohibited Defeat Devices under California and federal law. The California  
11 Complaint also alleges that during normal vehicle operation and use, the Subject Vehicles emit  
12 increased levels of NOx. The California Complaint seeks, among other things, civil penalties, injunctive  
13 relief, mitigation, costs and other equitable relief related to the presence of the Defeat Devices in the  
14 Subject Vehicles.

15         In 2017, EPA and CARB issued a Certificate of Conformity and an Executive Order,  
16 respectively, for the EcoDiesel Jeep Grand Cherokees and Ram 1500s for MY 2017. As a result, to  
17 remedy the alleged violations in the Subject Vehicles, Defendants proposed to update the software and  
18 calibrations in the Subject Vehicles with software and calibrations substantially similar to the MY 2017  
19 certified configuration. Defendants installed a modified MY 2017 configuration, known as the “Final  
20 Carryback Configuration,” on a number of test vehicles and conducted testing over an eight-month  
21 period in accordance with an agreed-upon protocol approved by EPA and CARB in December of 2017.  
22 Based upon the results of this testing, as well as independent testing conducted by EPA and CARB at  
23 their own facilities, the regulating agencies determined the Final Carryback Configuration, together with  
24  
25

1 other modifications unique to MY 2014, to be an appropriate repair for the Subject Vehicles, provided  
2 that Defendants comply with the terms and conditions set forth in this Consent Decree.

3 The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent  
4 Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and  
5 that this Consent Decree is fair, reasonable, and in the public interest.

6 NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission  
7 of any issue of fact or law except as provided above and with the consent of the Parties, IT IS HEREBY  
8 ADJUDGED, ORDERED, AND DECREED as follows:

9 **I. JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C.  
11 §§ 1331, 1345, and 1355, and Sections 203, 204, and 205 of the Act, 42 U.S.C. §§ 7522, 7523, and  
12 7524, and over the Parties. Venue lies in this District pursuant to 28 U.S.C. § 1407 and the MDL  
13 Panel's Transfer Order, dated April 5, 2017, and filed in this MDL action as Dkt. # 90. The Court has  
14 supplemental jurisdiction over the California State law claims pursuant to 28 U.S.C. § 1367. For  
15 purposes of this Decree, Defendants consent to the Court's jurisdiction over this Decree, over any action  
16 to enforce this Consent Decree, and over Defendants, and consent to venue in this judicial district.  
17 Defendants reserve the right to challenge and oppose any claims to jurisdiction that do not arise from the  
18 Court's jurisdiction over this Consent Decree or an action to enforce this Consent Decree.

19 2. For purposes of this Consent Decree, Defendants agree that the U.S. Complaint states  
20 claims upon which relief may be granted pursuant to Sections 203, 204, and 205 of the Act, 42 U.S.C.  
21 §§ 7522, 7523, and 7524, and that the California Complaint states claims upon which relief may be  
22 granted pursuant to 42 U.S.C. § 7604(a)(1); California Health and Safety Code §§ 43016, 43017, 43151,  
23 43152, 43153, 43154, 43205, 43211, and 43212; 13 C.C.R. §§ 1961, 1961.2, 1965, 1968.2, and 2037  
24 and the 40 C.F.R. sections incorporated therein by reference; and California Business and Professions  
25 Code §§ 17200 et seq., 17500 et seq., and 17580.

1 **II. APPLICABILITY**

2 3. The obligations of this Consent Decree apply to and are binding upon the United States  
3 and California, and upon Defendants and any of Defendants' successors, assigns, or other entities or  
4 persons otherwise bound by law.

5 4. Defendants' obligations to comply with the requirements of this Consent Decree are joint  
6 and several. In the event of the insolvency of any Defendant or the failure by any Defendant to  
7 implement any requirement of this Consent Decree, the remaining Defendants shall complete all such  
8 requirements.

9 5. Defendants shall do all things within their power and authority to ensure that any legal  
10 successor or assign of any Defendant shall remain jointly and severally liable for the payment and other  
11 performance obligations hereunder. Defendants shall include an agreement to so remain liable in the  
12 terms of any sale, acquisition, merger, or other transaction changing the ownership or control of any of  
13 the Defendants, to which any of them is a party, and no change in the ownership or control of any  
14 Defendant shall affect the obligations hereunder of any Defendant without modification of the Decree in  
15 accordance with Section XVII.

16 6. Defendants shall provide a copy of this Consent Decree to the members of their  
17 respective Boards of Directors and their executives whose duties might reasonably include compliance  
18 with, or oversight over compliance with, any provision of this Decree. Defendants shall condition any  
19 contract providing for work required under this Consent Decree to be performed in conformity with the  
20 terms hereof. Defendants shall also ensure that any contractors, agents, and employees whose duties  
21 might reasonably include compliance with any provision of the Decree are made aware of those  
22 requirements of the Decree relevant to their performance.

1 7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the  
2 failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to  
3 comply with the provisions of this Consent Decree.

4 **III. DEFINITIONS**

5 8. Terms used in this Consent Decree that are defined in the Act or in regulations  
6 promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such  
7 regulations, unless otherwise provided in this Decree. Likewise, except as provided herein, terms that  
8 are defined in the California Health and Safety Code or in CARB regulations promulgated pursuant to  
9 the California Health and Safety Code shall have the meanings assigned to them in the California Health  
10 and Safety Code or such regulations, unless otherwise provided in this Decree. Where the same term is  
11 defined in the Act or its implementing regulations and the California Health and Safety Code or CARB  
12 regulations, and such term is not defined in this Decree, the term as defined in federal law shall control,  
13 except for any terms defined in 13 C.C.R. § 1968.2, which shall apply to issues concerning On-Board  
14 Diagnostics (“OBD”) in Section VI.A. Terms that are defined in this Consent Decree are defined for  
15 purposes of this Consent Decree only and are not applicable for any other purpose. Whenever the terms  
16 set forth below are used in this Consent Decree, the following definitions shall apply:

17 **a.** “Additional OBD and Inducement Disclosures” means one or more of the  
18 following issues, which Defendants shall address after the Effective Date of this Consent Decree by  
19 modifying, in accordance with the procedures set forth in this Consent Decree, the operation of the OBD  
20 System or inducement procedures in Subject Vehicles updated with the Approved Emissions  
21 Modification:

22 **i.** Incorrect release conditions associated with OBD service 01 parameter  
23 identification (“PID”) \$41 (i.e., monitoring status this driving cycle);  
24  
25

1                   ii.        Incorrect alignment of monitors aligned with PID\$01 (i.e., monitoring  
2 status since last code clear) and PID\$41 reporting;

3                   iii.        False detection of a malfunction for the following monitors and diagnostic  
4 trouble codes (“DTCs”):

5                           a)        DTC P245B (EGR cooler bypass control circuit range/performance  
6 monitoring),

7                           b)        DTC P20C6 (backflow pump heating performance monitoring),

8                           c)        DTC P20EE (SCR catalyst efficiency below threshold bank 1  
9 monitoring),

10                          d)        DTC P0402 (EGR high flow monitoring),

11                          e)        DTC P0299 (turbocharger underboost monitoring),

12                          f)        DTC P0133 (Lambda sensor slow response monitoring),

13                          g)        DTC P2BA9 (poor DEF quality detection during conditions where  
14 the SCR temperature is above 330°C),

15                          h)        DTC P050E (cold start emission reduction strategy monitoring),  
16 and

17                          i)        DTC U0140 (loss of communication with the Body Control  
18 Module);

19                   iv.        Issues with storage of DTCs P20E8 and P20E9 (SCR over/under pressure  
20 monitoring) within the inducement array;

21                   v.        Issues with DTC P2BA9 storage location within the inducement array causing  
22 vehicles to incorrectly trigger inducement;

23                   vi.        Issues with inability to clear DTC P1D30 (oil viscosity too low) permanent  
24 fault codes; and  
25

1           vii.    Issues with DTC P0420 (catalyst system efficiency below threshold) in  
2                    detecting an empty DOC catalyst can for 14MY through 16MY Jeep Grand  
3                    Cherokee.

4           b.    “Additional OBD Non-compliances” means the following five OBD non-  
5 compliances as described in Defendants’ submission to CARB on October 29, 2018: (1) EGR Low Flow  
6 Monitoring (DTC P0401); (2) EGR High Flow Monitoring (DTC P0402); (3) Reductant Delivery  
7 Performance Monitoring (DTC P20E9), (4) Exhaust Gas Sensor Monitors Test Results Standardization  
8 (Mode \$06); and (5) Turbocharger Underboost Monitoring (DTC P0299);

9           c.    “Adjustment Factors” means the factors set forth in Appendix A that are added to  
10 Emissions Test Results for the purpose of determining compliance with emissions standards;

11           d.    “AECD Disclosure Document” means the four documents that Defendants  
12 submitted to EPA and CARB on January 7, 2019, for the purpose of listing and describing AECDs in the  
13 Subject Vehicles upon installation of the Approved Emissions Modification;

14           e.    “Aging Test Vehicles” means the vehicles designated for Aging Testing in  
15 accordance with the procedures set forth in Paragraph 29;

16           f.    “Aging Test Vehicle Pool” means the pool of potential Aging Test Vehicles  
17 described in Paragraph 29;

18           g.    “Approved Emissions Modification” has the meaning set forth in Paragraph 23;

19           h.    “Auxiliary Emission Control Device” or “AECD” has the meaning set forth in 40  
20 C.F.R. § 86.1803-01;

21           i.    “Backup Vehicle” means a vehicle that is eligible to be used as one of the “Aging  
22 Test Vehicles”;

23           j.    “Buyback,” for purposes of Paragraph 45.d of this Consent Decree only, means  
24 the return of an Eligible Vehicle by an Eligible Owner to Defendants, in exchange for a payment that  
25



1 equals or exceeds the National Automobile Dealers Association (“NADA”) Clean Retail value of the  
2 Eligible Vehicle (adjusted for options, mileage, and NADA region in accordance with the then-current  
3 NADA guide) at the time the vehicle title is surrendered by the Eligible Owner and the Eligible Vehicle  
4 is re-acquired by Defendants pursuant to the requirements of Paragraph 45.d of this Consent Decree;

5 k. “CA AG” means the California Attorney General’s Office and any of its  
6 successor departments or agencies;

7 l. “California” means the People of the State of California, acting by and through  
8 the California Attorney General and the California Air Resources Board;

9 m. “California Complaint” means the complaint filed by California in this action;

10 n. “Canadian Subject Vehicles” means Subject Vehicles that were originally sold in  
11 Canada (and, hence, have a Canadian VIN) but were subsequently registered in the United States;

12 o. “CARB” means the California Air Resources Board and any of its successor  
13 departments or agencies;

14 p. “Case Tracking System” means FCA’s system for managing information related  
15 to concerns reported through the Ethics Helpline, or concerns identified by an investigator in the Vehicle  
16 Safety and Regulatory Compliance office, and the investigation and closure of such concerns;

17 q. “Class Action Settlement” means a Consumer Class Action Settlement  
18 Agreement and Release filed in this action, *In re Chrysler-Dodge-Jeep “Ecodiesel,”* MDL No. 2777  
19 (N.D. Cal.), by the attorneys representing owners and lessees of Eligible Vehicles on or before the date  
20 this Consent Decree is lodged with the Court. If the Court approves a proposed Consumer Class Action  
21 Settlement Agreement and Release, “Class Action Settlement” means that agreement as and in the form  
22 it is ultimately approved and entered by the Court;

1           r.       “Class Action Settlement Notice” means notice(s) approved by the Court  
2 following a preliminary approval hearing in connection with a Class Action Settlement and disseminated  
3 to potential settlement class members pursuant to an order of the Court;

4           s.       “Clean Air Act” or “Act” means 42 U.S.C. §§ 7401-7671q;

5           t.       “Code of Conduct” has the meaning set forth in Paragraph 50.b;

6           u.       “Complaints” means the U.S. Complaint and the California Complaint;

7           v.       “Consent Decree” or “Decree” means this Decree, all appendices attached hereto,  
8 and all documents incorporated by reference in Section XXIV;

9           w.       “Critical Emissions Controls” means the Exhaust Gas Recirculation (“EGR”)  
10 System, Selective Catalytic Reduction (“SCR”) System, Diesel Oxidation Catalyst (“DOC”) System,  
11 and Diesel Particulate Filter (“DPF”) System in the Subject Vehicles;

12           x.       “Date of Lodging” means the date that the Consent Decree is lodged with the  
13 Court;

14           y.       “Day” or “day” means a calendar day unless expressly stated to be a business day.  
15 In computing any period of time under this Consent Decree, where the last day would fall on a Saturday,  
16 Sunday, or federal holiday, the period shall run until the close of business of the next business day;

17           z.       “Dealer” means any entity or individual authorized by FCA to sell and service  
18 Ram and/or Jeep brand vehicles in the United States;

19           aa.      “Defeat Device” has the meaning set forth in 40 C.F.R. § 86.1803-01;

20           bb.      “Defendants” means FCA US LLC, Fiat Chrysler Automobiles N.V., V.M.  
21 Motori S.P.A. and V.M. North America, Inc.;

22           cc.      “Diesel Oxidation Catalyst System” or “DOC System” means all hardware,  
23 components, parts, sensors, subassemblies, software, AECs, calibrations, and other elements of design  
24  
25

1 that collectively constitute the system for controlling emissions of carbon monoxide and hydrocarbons,  
2 together with other pollutants, through a chemical reaction precipitated by an oxidation catalyst;

3 dd. “Diesel Particulate Filter System” or “DPF System” means all hardware,  
4 components, parts, sensors, subassemblies, software, AECDs, calibrations, and other elements of design  
5 that collectively constitute the system for controlling emissions of particulate matter by trapping such  
6 particulates in a filter and periodically oxidizing them through thermal regeneration of the filter;

7 ee. “DPF Regeneration Event” refers to a discrete period of time during which an  
8 exothermic reaction is achieved across the diesel oxidation catalyst that increases the exhaust gas  
9 temperature and oxidizes particulate matter accumulated in the diesel particulate filter in order to restore  
10 performance of the diesel particulate filter;

11 ff. “ECU Data Parameters List” means the document captioned as “List of ECU Data  
12 Parameters,” which was marked “Final – January 8, 2019” and distributed on the same date by the  
13 United States to the Parties;

14 gg. “Effective Date” has the meaning set forth in Section XV;

15 hh. “Eligible Lessee” means (i) the current lessee or lessees of an Eligible Vehicle  
16 with an active lease issued through a dealer as of the date the Eligible Vehicle receives or is eligible to  
17 receive the Approved Emissions Modification; or (ii) solely for purposes of any applicable warranty  
18 obligations described in Paragraph 45 (Warranty Obligations), the subsequent lessee or lessees of an  
19 Eligible Vehicle that has received the Approved Emissions Modification;

20 ii. “Eligible Owner” means the (i) owner or owners of an Eligible Vehicle on the day  
21 that the Eligible Vehicle receives or is eligible to receive the Approved Emissions Modification or (ii)  
22 solely for the purposes of any applicable warranty obligations described in Paragraph 45 (Warranty  
23 Obligations), the subsequent owner or owners of an Eligible Vehicle that has received the Approved  
24 Emissions Modification;

1           jj.       “Eligible Vehicle” means any Subject Vehicle that is (i) registered with a state  
2 Department of Motor Vehicles or equivalent agency or held by a dealer not affiliated with Defendants  
3 and located in the United States as of the Date of Lodging; and (ii) Operable as of the date the vehicle is  
4 brought in for the Approved Emissions Modification;

5           kk.       “Emissions-Related Defect” means a defect in design, materials, or workmanship  
6 in a device, system, or assembly in the Subject Vehicles upon installation of the Approved Emissions  
7 Modification that affects any parameter or specification enumerated in Appendix VIII to 40 C.F.R. Part  
8 85 or a defect in the design, materials, or workmanship in one or more emissions-related parts,  
9 components, systems, software or elements of design in the Subject Vehicles which must function  
10 properly to ensure continued compliance with emissions standards;

11           ll.       “Emissions Test Data” means any and all data from any emissions test performed  
12 pursuant to this Consent Decree, including data from any emissions test interrupted, aborted, or deemed  
13 invalid for any reason;

14           mm.       “Emissions Test Results” means the subset of Emissions Test Data generated  
15 from a valid emissions test after such data has undergone and satisfied FCA’s Internal Quality Control  
16 and Quality Assurance Procedures and is determined to be valid data in accordance with the procedures  
17 set forth in 40 C.F.R. Part 86, Subpart B;

18           nn.       “Engine Control Unit” or “ECU” (a/k/a “engine control module” or “ECM”)  
19 means an electronic hardware device, together with the software and calibrations installed on the device,  
20 that is capable of controlling, among other things, the operation of the emission control system in the  
21 Subject Vehicles;

22           oo.       “EPA” means the United States Environmental Protection Agency and any of its  
23 successor departments or agencies;

24           pp.       “Ethics Helpline” has the meaning set forth in Paragraph 50.c;  
25

1           **qq.**     “Exhaust Gas Recirculation System” or “EGR System” means all hardware,  
2 components, parts, sensors, subassemblies, software, AECs, calibrations, and other elements of design  
3 that collectively constitute the system for limiting the formation of NO<sub>x</sub> in the combustion chamber by  
4 recirculating a portion of engine exhaust gas into the cylinders of the engine;

5           **rr.**     “Final Carryback Configuration” means the configuration of software and  
6 calibrations for the TCU and ECU, provided by Defendants to EPA and CARB on hard drives (Serial  
7 Nos. 102200083050, 102200080017, and 102200083234) on December 19, 2018. The calibration  
8 verification numbers (“CVN”) and the calibration identification numbers (“CALID”) for the Final  
9 Carryback Configuration are attached hereto at Appendix B;

10           **ss.**     “Final Carryback Configuration Description Document” means the document  
11 submitted by Defendants to EPA and CARB on November 13, 2018, and December 12, 2018, listing  
12 and describing all differences between the Final Carryback Configuration and the MY 2017 certified  
13 configuration for test group HCRXT03.05PV;

14           **tt.**     “First-Tier Customers” means the immediate customers (e.g., retailers and  
15 distributors) of the manufacturer(s) of the Improved Catalytic Converters required by the Program;

16           **uu.**     “FTP72” means the “Urban Dynamometer Driving Schedule” set forth at 40  
17 C.F.R. Part 86, Appendix I (Dynamometer Schedules);

18           **vv.**     “FTP75” means the emissions test cycle described in 40 C.F.R. § 86.135-12 and  
19 the procedures set forth at 40 C.F.R. §§ 1066.810-1066.820;

20           **ww.**     “Full Useful Life” or “FUL” has the meaning set forth in 40 C.F.R. § 86.1805-  
21 12;

22           **xx.**     “Highway Fuel Economy Test” or “HWFE” means the emissions test cycle  
23 described in 40 C.F.R. § 600.109-08(b) and Appendix I (Highway Fuel Economy Driving Schedule) to  
24 Part 600 and the procedure described in 40 C.F.R. § 1066.840;

1 yy. “Improved Catalytic Converter(s)” has the meaning set forth in Paragraph 66.a;

2 zz. “Improvement Plan” means the document submitted to California and the  
3 Department of Justice (“DOJ”), dated November 30, 2018, which contains descriptions of various  
4 actions and improvements that Defendants have implemented or will continue to implement to further  
5 Defendants’ compliance with environmental laws and regulations concerning vehicle emissions and  
6 certification, including each one’s intended purpose and an implementation schedule for those that  
7 remain to be implemented;

8 aaa. “Independent Compliance Auditor” means the person or entity that serves to  
9 oversee Defendants’ compliance with the obligations under Section VI.C (Corporate Compliance) as set  
10 forth in Paragraphs 63-65;

11 bbb. “Internal Quality Control and Quality Assurance Procedures” means the set of  
12 procedures described in a spreadsheet that Defendants submitted to EPA and CARB on October 9, 2018,  
13 and any subsequent updates to such procedures submitted pursuant to Paragraph 35.c (Update of Internal  
14 Quality Control and Quality Assurance Procedures);

15 ccc. “Invoiced Transaction” has the meaning set forth in Paragraph 67.a;

16 ddd. “Invoiced Transaction Data” has the meaning set forth in Paragraph 67.a;

17 eee. “Lease Termination” means, for purposes of Paragraph 45.d of this Consent  
18 Decree only, the return of an Eligible Vehicle by an Eligible Lessee to Defendants, at no cost to the  
19 Eligible Lessee and with full cancellation of the remaining terms of the lease with no financial or other  
20 penalty, under terms specified in Paragraph 45.d;

21 fff. “Leave No Doubt Campaign” has the meaning set forth in Paragraph 50.d;

22 ggg. “Materials” means Defendants’ Submissions and other documents, certifications,  
23 plans, reports, notifications, statements of position, data, or other information or communication  
24 required by or submitted concerning this Decree;

1            hhh. “MY 2014 Field Fix” means all actions required to replace the selective catalytic  
2 reduction catalyst in the MY 2014 Subject Vehicles, as memorialized and described in the service  
3 bulletins attached hereto at Appendix C;

4            iii. “MY 2016 Ram 1500 Test Vehicle” means the MY 2016 Ram 1500 with VIN  
5 1C6RR7PM2GS186189 that was tested as part of the Test Protocol;

6            jjj. “MY 2018 Mileage Accumulation Method” means the method of accumulating  
7 miles that CARB approved on September 12, 2017, for certification of the 2018 MY FCA 3.0L diesel  
8 vehicles set forth in the FCA 3.0L V6 Gen II Diesel Ram Truck/Grand Cherokee Durability Test Plan  
9 Proposal of August 1, 2017 (including modifications on August 3, 2017, August 30, 2017, and  
10 September 11, 2017), and which authorized FCA to implement, among other things, a temporary  
11 calibration change to ensure that the interval between DPF Regeneration Events did not exceed 250  
12 miles while the vehicle was accumulating miles in accordance with the approved mileage accumulation  
13 method;

14            kkk. “NOx” means oxides of nitrogen;

15            lll. “On-Board Diagnostics System” or “OBD System” means all hardware,  
16 components, parts, sensors, subassemblies, software, AECs, calibrations, and other elements of design  
17 that collectively constitute the system for monitoring the Critical Emissions Controls, as well as all other  
18 systems and components that must be monitored pursuant to 13 C.C.R. § 1968.2, for the purpose of  
19 identifying and detecting malfunctions of such monitored systems and components, and for alerting the  
20 driver of such potential malfunctions by illuminating the malfunction indicator light (“MIL”);

21            mmm. “OBD Demonstration ECU Data Parameters List” means the document captioned  
22 as “List of OBD Demonstration ECU Data Parameters,” which was marked “Final – January 8, 2019”  
23 and distributed on the same date by the United States to the Parties;

1            **nnn.** “OBD Summary Table” or “OBD Summary Tables” means one or more of the  
2 tables submitted by Defendants to EPA and CARB on November 17, 2018, November 29, 2018, and  
3 December 12, 2018, and that describe the OBD System and functionality in the Jeep Grand Cherokee  
4 with the 3.45 axle ratio per MY and the Ram 1500 with the 3.55 and 3.92 axle ratios per MY upon  
5 modification of the Subject Vehicles with the Approved Emissions Modification;

6            **ooo.** “Operable” means that a vehicle can be driven under its own engine power;

7            **ppp.** “Original Configuration” means the configuration of software and calibrations in  
8 the ECU and TCU of the Subject Vehicles that will be updated and replaced by Final Carryback  
9 Configuration in accordance with the terms of the Consent Decree;

10           **qqq.** “Owner-Altered Subject Vehicle” means any Subject Vehicle that is associated  
11 with the purchase and/or installation of after-market emissions-related components, parts, and/or  
12 software, or the removal or alteration of any original emissions-related components, parts, and/or  
13 software, including any alteration, installation, or removal likely to reduce the effectiveness of the  
14 emission control system. Nothing in this definition or the mere fact that a Subject Vehicle qualifies as  
15 an Owner-Altered Subject Vehicle under this definition shall constitute a determination by EPA or  
16 CARB that any particular vehicle owner has in fact altered the emission control system;

17           **rrr.** “Paragraph” means a portion of this Decree identified by an Arabic numeral;

18           **sss.** “Parties” means the United States, California, and Defendants;

19           **ttt.** “Personally-Identifiable Information” or “PII” means information that can be used  
20 to distinguish or trace an individual’s identity, either alone or in combination with other personal or  
21 identifying information that is linked or linkable to a specific individual, such as an individual’s name  
22 and Vehicle Identification Numbers;

23           **uuu.** “Plaintiffs” means the United States and California;



1           www. “Pre-Approved OBD Deficiencies” means the following seventeen deficiencies  
2 as described in the conditional approval issued by CARB on July 27, 2017 (Ref. No. E-17-211) for MY  
3 2017 Test Group HCRXT03.05PV for the Ram 1500 and Jeep Grand Cherokee Vehicles: (1) NMHC  
4 Converting Catalyst Monitoring; (2) SCR Converting Catalyst Monitoring; (3) Fuel System Pressure  
5 Monitoring; (4) Fuel System Quantity Monitoring; (5) Upstream NOx Sensor Monitoring; (6) EGR Low  
6 Flow Monitoring; (7) EGR Slow Response Monitoring; (8) EGR Cooler Performance Monitoring; (9)  
7 Boost System Overboost Monitoring; (10) Boost System Slow Response Monitoring; (11) Charge Air  
8 Cooling Monitoring; (12) EGT Mode 1 CSERS Monitoring; (13) Transmission CSERS Monitoring;  
9 (14) SCR Adaption Monitoring; (15) EGR Shut-off for Exhaust Valve Cleaning Monitoring; (16) Fuel-  
10 System Timing Demonstration Procedure; and (17) Particulate Matter (“PM”) Filtering Performance  
11 Demonstration Procedure;

12           www. “Prep Cycle” means any type of drive cycle and soak that Defendants may  
13 undertake for the purpose of preparing the vehicle for an emissions test, including without limitation the  
14 FTP75, US06, SC03, or HWFE emissions tests;

15           xxx. “Procured Vehicles” means Subject Vehicles that Defendants procured in  
16 accordance with Paragraph 29.a for potential inclusion in the Aging Test Vehicle Pool;

17           yyy. “Program” or “Mitigation Program” has the meaning set forth under Section VI.D  
18 (Mitigation Program), Paragraph 66;

19           zzz. “Recall Report” has the meaning set forth in Paragraph 25.b.i;

20           aaaa. “Recall Target Deadline” has the meaning set forth in Paragraph 37;

21           bbbb. “Remedy Period” has the meaning set forth in Paragraph 45.d;

22           cccc. “Retention Date” has the meaning set forth in Paragraph 63.b;

23           dddd. “Road-Load Determination Procedures” has the meaning set forth in 40 C.F.R. §  
24 1066.301;

1           eeee. “Root-Cause Evaluation” means an investigation of an issue, as such issue is  
2 described in Paragraphs 29.c.vi, and 31.a-31.c of this Consent Decree, that occurs in a Subject Vehicle  
3 during implementation of this Consent Decree and which requires investigation pursuant to this Consent  
4 Decree. The purpose of the Root-Cause Evaluation is to identify the reason(s) why the issue occurred.  
5 A Root-Cause Evaluation shall also include an assessment of whether the issue is an Emissions-Related  
6 Defect that would likely occur in five or more Subject Vehicles and, if so, shall include the  
7 recommended actions to be taken by Defendants, if any, to address such Emissions-Related Defect in  
8 Subject Vehicles;

9           ffff. “SC03” means the emissions test cycle described in paragraph (h) of Appendix I  
10 (Dynamometer Schedules) of 40 C.F.R. Part 86 and the procedures set forth at 40 C.F.R. § 1066.810 and  
11 § 1066.835;

12           gggg. “Scrapped” means a vehicle that has been rendered permanently inoperable and  
13 cannot be driven under its own engine power;

14           hhhh. “Section” means a portion of this Decree identified by a Roman numeral;

15           iiii. “Selective Catalytic Reduction System” or “SCR System” means all hardware,  
16 components, parts, sensors, subassemblies, software, AECs, calibrations, and other elements of design  
17 that collectively constitute the system for controlling NOx emissions through selective catalytic  
18 reduction using a catalyst and an ammonia-based diesel exhaust fluid (“DEF”) as the reducing agent,  
19 including without limitation all hardware, components, parts, sensors, subassemblies, software, AECs,  
20 calibrations, and other elements of design relating to (1) the DEF storage tank, (2) the DEF injectors, (3)  
21 the dosing control unit, and (4) the SCR catalyst assembly;

22           jjjj. “Standard Road Cycle” means the mileage accumulation method set forth in  
23 Appendix V to 40 C.F.R. Part 86;

1 kkkk. “Subject Vehicles” means each and every MY 2014 to 2016 Jeep Grand Cherokee  
2 and Ram 1500 equipped with a 3.0 liter EcoDiesel engine and sold or offered for sale, or introduced or  
3 delivered for introduction into commerce, or registered in the United States or its Territories, or  
4 imported into the United States or its Territories, and that was identified by Defendants as covered by  
5 one of the following test groups: ECRXT03.05PV, FCRXT03.05PV, or GCRXT03.05PV;

6 llll. “Submission” means any plan, report, application, or other item that is required to  
7 be submitted for approval pursuant to this Consent Decree;

8 mmmm. “Test Protocol” means the “EPA and CARB Protocol for Assessment of  
9 FCA’s Proposed Modification of MY 2014-2016 Diesel Jeep Grand Cherokee and Ram 1500 Vehicles,”  
10 to which the Parties agreed and which is marked “Final December 9, 2017”;

11 nnnn. “Test Protocol Vehicles” means the seven vehicles – four Ram 1500s and three  
12 Jeep Grand Cherokees – listed in Attachment 1 of the Test Protocol, as well as the Ram 1500 (VIN  
13 1C6RR7PM2GS186189) added with the agreement of EPA and CARB on February 13, 2018;

14 oooo. “Thermal Management Strategies” means any method that controls, modulates, or  
15 adjusts the temperature of exhaust gases and that, as a result, changes the effectiveness of the DOC  
16 System, the DPF System, or the SCR System;

17 pppp. “Transmission Control Unit” or “TCU” (a/k/a “transmission control module” or  
18 “TCM”) means the electronic hardware device, together with the software and calibrations installed on  
19 the device, that is capable of controlling the operation of the transmission in the Subject Vehicles;

20 qqqq. “US06” means the emissions test cycle described in paragraph (g) of Appendix I  
21 (Dynamometer Schedules) of 40 C.F.R. Part 86 and the procedures set forth at 40 C.F.R. § 1066.810 and  
22 § 1066.831;

23 rrrr. “United States” means the United States of America, acting on behalf of EPA;  
24  
25

1 ssss. “U.S. Complaint” means the complaint filed by the United States in this action on  
2 May 23, 2017; and

3 tttt. “Warrantable Failure” has the meaning set forth in Paragraph 45.d.

4 **IV. CIVIL PENALTY**

5 9. Within 30 days after the Effective Date, Defendants shall pay the total sum of \$305  
6 million as a civil penalty, together with interest accruing from the date on which the Consent Decree is  
7 lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

8 10. Of the amount set forth in Paragraph 9, Defendants shall pay \$262,300,000, plus the  
9 interest due thereon, to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S.  
10 Department of Justice account, in accordance with instructions provided to Defendants by the Financial  
11 Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of California  
12 after the Effective Date. The payment instructions provided by the FLU will include a Consolidated  
13 Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments  
14 required to be made in accordance with this Consent Decree. The FLU will provide the payment  
15 instructions to:

16 Charles Christman, FCA NAFTA Treasurer  
17 800 Chrysler Drive, CIMS 485-12-78  
18 Auburn Hills, MI  
19 48326-2757  
20 E mail: Charles.Christman@fcagroup.com  
21 Phone: 248-512-2312

22 on behalf of Defendants. Defendants may change the individual to receive payment instructions on their  
23 behalf by providing written notice of such change to the United States and EPA in accordance with  
24 Section XIV (Notices).

25 11. At the time of payment, Defendants shall send notice that payment has been made: (i) to  
EPA via email at cinwd\_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office,  
26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular

1 mail in accordance with Section XIV; and (iii) to EPA in accordance with Section XIV. Such notice  
2 shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *In re:*  
3 *Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation* and shall  
4 reference Civ. No. 3:17-md-02777-EM, the CDCS Number and DJ # 90-5-2-1-11607.

5 12. Of the amount set forth in Paragraph 9, Defendants shall pay \$42,700,000, plus the  
6 interest due thereon, to CARB by check, accompanied by a Payment Transmittal Form (which CARB  
7 will provide to the addressee listed in Paragraph 10 after the Effective Date), mailed to:

8 Air Resources Board, Accounting Branch  
9 P.O. Box 1436  
Sacramento, CA 95812-1436

10 or by wire transfer, in which case Defendants shall use the following wire transfer information and send  
11 the Payment Transmittal Form to the above address prior to each wire transfer:

12 State of California Air Resources Board  
13 c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
14 Notice of Transfer: Yogeeta Sharma Fax: (916) 322-9612.

15 Defendants are responsible for any bank charges incurred for processing wire transfers. Except as  
16 otherwise provided by this Consent Decree, penalties paid to CARB shall be deposited into the Air  
17 Pollution Control Fund and used by CARB to carry out its duties and functions.

18 13. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section  
19 or Section VIII (Stipulated Penalties), or any recall rate payments made pursuant to Paragraph 41.a, in  
20 calculating their federal, state, or local income tax.

21 **V. APPROVAL OF SUBMISSIONS;**  
**U.S./CALIFORNIA DECISION-MAKING**

22 14. For purposes of this Consent Decree, unless otherwise specified in this Consent Decree:

23 a. With respect to any Submission, other obligation that requires approval or other  
24 decision by Plaintiffs, or force majeure claim of Defendants concerning Section VI.A (Modification of  
25 Subject Vehicles and Post-Entry Compliance Testing), EPA and CARB, or the United States and

1 California, as applicable, will issue a joint decision concerning the Submission, other obligation, or force  
2 majeure claim;

3           b.       With respect to any obligation that requires approval or other decision by  
4 Plaintiffs, or force majeure claim of Defendants concerning Section VI.D, the position of EPA or the  
5 United States shall control; and

6           c.       With respect to any other Submission, obligation that requires approval or other  
7 decision by Plaintiffs, or force majeure claim of Defendants under the Consent Decree, the position of  
8 EPA or the United States, after consultation with CARB or California, as applicable, shall control.

9       15.       For purposes of this Section, Section VI.A (Modification of Subject Vehicles and Post-  
10 Entry Compliance Testing), Section VIII (Stipulated Penalties), Section IX (Force Majeure), and Section  
11 X (Dispute Resolution), in accordance with the decision-making authorities set forth in Paragraph 14,  
12 references to “EPA/CARB” mean EPA and CARB jointly, or EPA or CARB, as applicable; references  
13 to “the United States/California” mean the United States and California jointly, or the United States or  
14 California, as applicable; and references to the United States/CARB mean the United States/CARB  
15 jointly, or the United States or CARB, as applicable.

16       16.       Paragraphs 16-19 govern the review of Submissions required by this Consent Decree.  
17 Any additional specific procedures or specifications for the review of certain Submissions set forth  
18 elsewhere in the Consent Decree shall also apply to such Submissions or the review of such  
19 Submissions. After review of any Submission, EPA/CARB shall in writing: (a) approve the  
20 Submission; (b) approve the Submission upon specified conditions; (c) approve part of the Submission  
21 and disapprove the remainder; or (d) disapprove the Submission. In the event of an approval upon  
22 specified conditions or a disapproval, in full or in part, of any portion of the Submission, if not already  
23 provided with the EPA/CARB written decision, upon the request of Defendants, EPA/CARB will  
24 provide in writing the reasons for such specified conditions or disapproval.  
25

1           17. If the Submission is approved pursuant to Paragraph 16(a), Defendants shall take all  
2 actions required by the Submission, in accordance with the schedules and requirements of the  
3 Submission, as approved. If the Submission is conditionally approved or approved only in part pursuant  
4 to Paragraph 16(b) or (c), Defendants shall, upon written direction from EPA/CARB, take all actions  
5 required by the Submission that EPA/CARB determine(s) are technically severable from any  
6 disapproved portions, subject to Defendants' right to dispute only the specified conditions or the  
7 disapproved portions, under Section X (Dispute Resolution).

8           18. If the Submission is disapproved in whole or in part pursuant to Paragraph 16(c) or (d),  
9 Defendants shall, within 30 days or such other time as the Parties agree to in writing, correct all  
10 deficiencies and resubmit the Submission, or disapproved portion thereof, for approval, in accordance  
11 with Paragraph 16. If the resubmission is approved in whole or in part, Defendants shall proceed in  
12 accordance with Paragraph 17.

13           19. If a resubmitted Submission is disapproved in whole or in part, EPA/CARB may again  
14 require Defendants to correct any deficiencies in the Submission, in accordance with Paragraph 18; or  
15 EPA/CARB may itself/themselves correct any deficiencies, and Defendants shall implement the  
16 Submission as modified by EPA/CARB.

17           20. Defendants may elect to invoke the dispute resolution procedures set forth in Section X  
18 (Dispute Resolution) concerning any decision of EPA/CARB to disapprove, approve upon specified  
19 conditions, or modify a Submission. If Defendants elect to invoke dispute resolution, they shall do so by  
20 delivery of a Notice of Dispute (in accordance with Paragraph 106) within 30 days (or such other time as  
21 the Parties agree to in writing) after receipt of the applicable decision.

22           21. Any stipulated penalties applicable to the original Submission, as provided in  
23 Section VIII (Stipulated Penalties), shall accrue during the 30-day period or other specified period  
24 pursuant to Paragraph 18. Such stipulated penalties shall not be payable unless the resubmission is  
25

1 untimely or is disapproved in whole or in part; provided that, if the original Submission was so deficient  
2 as to constitute a material breach of Defendants' obligations under this Decree, the stipulated penalties  
3 applicable to the original Submission shall be due and payable notwithstanding any subsequent  
4 resubmission.

5 **VI. INJUNCTIVE MEASURES**

6 **A. Modification of Subject Vehicles and Post-Entry Compliance Testing**

7 22. Certification of Final Carryback Configuration.

8 a. Defendants shall disclose all AECDs in the Final Carryback Configuration by  
9 listing and describing them in the AECD Disclosure Document in accordance with 40 C.F.R. § 86.1844-  
10 01(d)(11), and, in the event that Defendants identify any AECDs not initially listed in such AECD  
11 Disclosure Document, Defendants shall submit to EPA and CARB an update of the AECD Disclosure  
12 Document by no later than 180 days from the Effective Date. Defendants shall not use the update  
13 procedure under this Paragraph 22.a to modify the Final Carryback Configuration. No AECD listed in  
14 the AECD Disclosure Document or in the update shall be a Defeat Device. EPA and CARB will follow  
15 their respective regulatory procedures, including those set forth in 40 C.F.R. § 86.1809-01, and may use  
16 any screening tests that they deem appropriate to determine whether a Defeat Device exists in the Final  
17 Carryback Configuration or in any other modification made to the Subject Vehicles after the Effective  
18 Date.

19 b. Simultaneously with their execution and delivery of the Consent Decree to the  
20 United States and California, Defendants shall execute and deliver an affidavit signed by a corporate  
21 official from FCA US LLC certifying in accordance with Paragraph 79 to the following with respect to  
22 all Subject Vehicles that receive the Approved Emissions Modification, as defined under Paragraph 23  
23 below:

24 i. The Subject Vehicles shall be free of any and all Defeat Devices;  
25



1                   ii.           The AECDS in the AECD Disclosure Document, including those in any  
2                   update submitted under Paragraph 22.a, shall be described in accordance with the requirements  
3                   of 40 C.F.R. § 86.1844-01(d)(11);

4                   iii.           The OBD System and functionality in the Subject Vehicles shall be as  
5                   described in the OBD Summary Table, which complies with the requirements set forth in 13  
6                   C.C.R. § 1968.2(i)(2.2); and

7                   iv.           Unless otherwise approved or allowed pursuant to this Consent Decree,  
8                   the TCU and ECU in the Subject Vehicles shall be identical, in terms of their software and  
9                   calibrations, to the TCU and ECU on the respective Test Protocol Vehicles modified and tested  
10                  under the Test Protocol with the Final Carryback Configuration.

11           23.    Approved Emissions Modification. Upon the Effective Date of this Consent Decree,  
12 Defendants are authorized to make – and shall undertake and complete in accordance with the  
13 requirements of the Emissions Modification Recall Program set forth in Section VI.B of this Consent  
14 Decree – the following two modifications (collectively “Approved Emissions Modification”) upon any  
15 Subject Vehicle when (1) such modifications are requested by the Eligible Owner or Eligible Lessee of  
16 such vehicle or (2) Defendants possess and control such vehicle for which there is no Eligible Owner or  
17 Eligible Lessee.

18                   a.           Install Final Carryback Configuration. Defendants shall modify the Subject  
19 Vehicle by updating its ECU and TCU with the Final Carryback Configuration; and

20                   b.           Implement MY 2014 Field Fix. With respect to each Subject Vehicle for MY  
21 2014 that has not received the MY 2014 Field Fix, Defendants shall remove the SCR catalyst and install  
22 a new SCR catalyst that complies with the design and performance criteria applicable to the MY 2014  
23 Field Fix.

1           24.    Modifications to Address Unforeseen Technical Problems in the Installation of the  
2 Approved Emissions Modification.

3           a.       In the event that, due to an unforeseen technical issue, Defendants determine they  
4 cannot install the Approved Emissions Modification on certain Subject Vehicles for reasons other than  
5 those described in Paragraph 38.e (Grounds for Refusal to Apply Modifications to an Eligible Subject  
6 Vehicle), Defendants shall, within 60 days of learning of such event, provide EPA and CARB for review  
7 and approval a proposed plan and schedule for either modifying the Subject Vehicles to accept the  
8 Approved Emissions Modification or modifying the Approved Emissions Modification to be able to  
9 install it on the Subject Vehicles. The plan shall (i) describe the conditions or circumstances that  
10 prevent installation of the Approved Emissions Modification on the Subject Vehicles, (ii) estimate the  
11 number of Subject Vehicles likely affected by such conditions or circumstances, (iii) describe any and  
12 all modifications necessary to implement the Approved Emissions Modification in such vehicles,  
13 including (if necessary) any changes to the ECU or TCU software or to the Final Carryback  
14 Configuration, and (iv) describe all changes, if any, to the information described in the AECD  
15 Disclosure Document and/or OBD Summary Table. If Defendants subsequently learn new information  
16 relevant to the matters discussed in the plan, they shall amend the plan no later than 30 days after the  
17 receipt of such information.

18           b.       At the request of EPA or CARB (or both), Defendants shall collect and provide  
19 test data or other information that EPA and CARB reasonably require to evaluate the proposed plan and  
20 schedule. In the event that EPA and CARB fail to make a determination on the proposed plan within 60  
21 days of its receipt, Defendants may, at their discretion, consider the plan to be denied for the purpose of  
22 invoking Dispute Resolution pursuant to Section X. EPA and CARB reserve the right to reject  
23 Defendants' determination that Defendants cannot install the Approved Emissions Modification on  
24 certain Subject Vehicles for reasons other than those described in Paragraph 38.e (Grounds for Refusal  
25

1 to Apply Modifications to an Eligible Subject Vehicle), and Defendants reserve the right to challenge  
2 such a decision under Section X (Dispute Resolution).

3           c.       Upon receipt of an approved plan and schedule from EPA and CARB, Defendants  
4 shall implement the approved plan in accordance with the approved schedule. Except as otherwise  
5 provided herein, nothing in this Paragraph waives, modifies, or alters Defendants' rights and obligations  
6 under this Consent Decree, including (but not limited to) those rights and obligations set forth in Section  
7 IX (Force Majeure).

8           25.     Restriction upon Modifications to Critical Emissions Controls, Thermal Management  
9 Strategies, or the OBD System. Except for the modifications under Paragraph 23 (Approved Emissions  
10 Modification), Paragraph 24 (Modifications to Address Unforeseen Technical Problems in the  
11 Installation of the Approved Emissions Modification), and Paragraph 31.f (Remedial Action),  
12 Defendants are enjoined from modifying Critical Emissions Controls, Thermal Management Strategies,  
13 or the OBD System of the Subject Vehicles, unless they do so in accordance with this Paragraph or  
14 unless such modifications have been reported to and approved by the National Highway Traffic Safety  
15 Administration ("NHTSA") either as a safety recall action or a voluntary campaign (each, a "NHTSA  
16 Recall"). With respect to modifications of the Critical Emissions Controls, Thermal Management  
17 Strategies, or OBD System of the Subject Vehicles made pursuant to a NHTSA Recall, Defendants shall  
18 comply with the requirements of Paragraph 25.c, below. The requirements of this Paragraph apply  
19 irrespective of whether a modification is undertaken by Defendants voluntarily or pursuant to an order  
20 or request by EPA, CARB, or NHTSA. Compliance with this Paragraph 25 shall fulfill Defendants'  
21 obligation to submit a voluntary emissions recall report to EPA under 40 C.F.R. § 85.1904(a), as well as  
22 fulfill Defendants' obligation to submit a voluntary recall plan or influenced emissions recall plan to  
23 CARB under 13 C.C.R. §§ 2113(a) and (b) and 13 C.C.R. §§ 1968.5(c)(1) and (c)(2) with respect to the  
24 proposed modification. Except as expressly stated herein, nothing in this Paragraph 25 is intended to  
25

1 modify, alter, or waive Defendants’ obligations under 40 C.F.R. Part 85, Subpart T (Emissions Defect  
2 Reporting Requirements), 13 C.C.R. Division 3, Article 2.4 (Procedures for Reporting Failures of  
3 Emissions-Related Components), or any other regulatory requirements applicable to modifications of the  
4 Critical Emissions Controls, Thermal Management Strategies, or OBD System of the Subject Vehicles.

5 a. Modifications relating to the EGR System, SCR System, or Thermal Management  
6 Strategies.

7 i. In the event that Defendants propose to modify the EGR System, SCR  
8 System, or Thermal Management Strategies in the Subject Vehicles, Defendants shall submit an  
9 application for modification (“Application”) to both EPA and CARB for review and approval  
10 with the certification required pursuant to Paragraph 79. Each Application shall include (1) a  
11 description of the Subject Vehicles that Defendants propose to modify, including the estimated  
12 number of such vehicles, (2) a statement setting forth all reasons for the proposed modification,  
13 and (3) an engineering evaluation as to (A) whether the proposed modification will result in a  
14 reduction in the effectiveness of the emission control system under conditions which may  
15 reasonably be expected to be encountered in normal vehicle operation and use and, if so, the  
16 rationale for why it is not a Defeat Device, and (B) whether the proposed modification will result  
17 in the Subject Vehicles exceeding an applicable emissions standard or violate other applicable  
18 requirements, including those relating to the OBD System. In addition, irrespective of whether  
19 the Application relates to an Emissions-Related Defect, Defendants shall ensure that the  
20 Application to EPA complies with the requirements set forth at 40 C.F.R. § 85.1904 and that the  
21 Application to CARB complies with the requirements at 13 C.C.R. § 2114.

22 ii. At the request of EPA or CARB (or both), Defendants shall collect and  
23 provide test data that EPA and CARB reasonably require to evaluate the Application.  
24  
25

1                   iii.           If EPA and CARB determine that the Application satisfies the criteria in  
2 Paragraph 25.a.iv, below, they will notify Defendants in writing that the Application is approved.  
3 If EPA and CARB determine that the Application fails to satisfy the criteria in Paragraph 25.a.iv,  
4 below, then they will notify Defendants in writing that the Application is disapproved,  
5 identifying the bases for the disapproval. In the event that EPA and CARB fail to make a  
6 determination on the Application within 60 days of its receipt, Defendants may, at their  
7 discretion, consider the Application to be denied for the purposes of invoking Dispute Resolution  
8 pursuant to Section X of this Consent Decree.

9                   iv.           In reviewing the Application, EPA and CARB will consider whether  
10 Defendants have demonstrated that the proposed modification complies with applicable  
11 emissions standards, OBD requirements, and inducement requirements, and that it contains no  
12 Defeat Devices. EPA and CARB will follow their respective regulatory procedures, including  
13 those set forth at 40 C.F.R. § 86.1809-01, and may use any screening tests that they deem  
14 appropriate to determine whether a Defeat Device exists in the proposed modification that is the  
15 subject of the Application.

16                   v.           Upon receipt of written approval of the Application by EPA and CARB,  
17 Defendants may modify the Subject Vehicles in accordance with the requirements and conditions  
18 set forth in such written approval.

19           b.           Other Modifications of Critical Emissions Controls or the OBD System.

20                   i.           With respect to any modification of Critical Emissions Controls or the  
21 OBD System in the Subject Vehicles that does not require an Application under Paragraph 25.a  
22 (Modifications Relating to the EGR System, SCR System, or Thermal Management Strategies),  
23 Defendants shall submit a recall report (“Recall Report”) to both EPA and CARB with the  
24 certification required pursuant to Paragraph 79. The Recall Report submitted to EPA shall  
25

1 comply with 40 C.F.R. § 85.1904, except that (1) Defendants shall submit the Recall Report no  
2 later than 30 days before the date that they begin to notify owners or lessees of the recall and  
3 modification, and (2) such report shall be submitted even if Defendants anticipate that the recall  
4 and modification may involve fewer than 25 Subject Vehicles. The Recall Report submitted to  
5 CARB shall comply, as applicable, with all procedures and requirements set forth at 13 C.C.R. §  
6 2114 and 13 C.C.R. § 1968.5(c)(1) (except that Defendants shall submit the Recall Report no  
7 later than 30 days before the date that they begin to notify owners or lessees of the modification),  
8 and 13 C.C.R. § 1968.5 (d)(1)(A). In the Recall Reports to EPA and CARB, Defendants shall  
9 include an explanation as to why the modification does not require an Application under  
10 Paragraph 25.a (Modifications Relating to the EGR System, SCR System, or Thermal  
11 Management Strategies).

12 ii. At the request of EPA or CARB (or both), Defendants shall provide  
13 additional information that EPA and CARB reasonably require to evaluate the modification  
14 described in the Recall Report.

15 iii. Unless EPA or CARB disapprove the proposed modification, Defendants  
16 may begin implementation of the modification upon the 31st day (or later) after the submission  
17 of the Recall Report. EPA or CARB may take any action authorized under their respective  
18 regulations or under the Clean Air Act and comparable California law in the event that they  
19 should subsequently determine that the modification described in the Recall Report is non-  
20 compliant with regulatory requirements, including (but not limited to) the right to cause the  
21 nonconformity to be remedied at no expense to the owner.

22 c. Modifications Approved by NHTSA.

23 i. Notwithstanding the foregoing provisions in Paragraphs 25.a-25.b above,  
24 with respect to any NHTSA Recall that modifies the Critical Emissions Controls, Thermal  
25

1 Management Strategies, or OBD System, Defendants may implement such modification in  
2 accordance with the schedule set forth in the safety recall action or voluntary campaign. On the  
3 day of the submittal of the recall report to NHTSA in accordance with 49 C.F.R. § 573 (“Part  
4 573 Report”), Defendants shall also send written notification to EPA and CARB that they are  
5 implementing a NHTSA-approved modification and attach a copy of the Part 573 Report to such  
6 notification.

7 ii. No later than 30 days after the submittal of the Part 573 Report to EPA  
8 and CARB, Defendants shall submit the Application or Recall Report, as applicable, to EPA and  
9 CARB in accordance with Paragraphs 25.a-25.b above. In the event that EPA and CARB  
10 subsequently notify Defendants that the NHTSA-approved modification is non-compliant with  
11 regulatory requirements relating to environmental laws, Defendants shall, within 60 days of such  
12 notification, either (a) submit to EPA and CARB for review and approval a proposed plan and  
13 schedule for addressing the non-compliances identified by EPA and CARB or (b) challenge the  
14 agencies’ determination in accordance with Section X (Dispute Resolution) of this Consent  
15 Decree. If Defendants believe that the non-compliances cannot be addressed without  
16 jeopardizing compliance with NHTSA requirements, Defendants shall set forth all the bases for  
17 this belief and submit a proposed plan that provides for “no further action” to be taken to remedy  
18 the non-compliances identified by EPA and CARB.

19 iii. Upon receipt of written approval of the proposed plan by EPA and CARB,  
20 Defendants shall implement the plan in accordance with the approved schedule or take no further  
21 action, if such a plan has been approved by EPA and CARB.

22 d. Modification to Address DPF Regeneration Issue. Defendants shall continue and  
23 complete their investigation of test vehicles that were unable to complete emissions testing under the  
24 Test Protocol due to the frequency of DPF regenerations. No later than 180 days from the Effective  
25

1 Date, Defendants shall submit to EPA and CARB a report setting forth their findings regarding these  
2 DPF regeneration occurrences, stating whether the same issue is likely to occur in five or more of the  
3 Subject Vehicles and, if so, what actions, if any, that Defendants propose to prevent these DPF  
4 regenerations. Defendants shall provide all data, vehicles, and information reasonably requested by  
5 EPA and CARB to evaluate Defendants' report and any conclusions reached by Defendants. If EPA and  
6 CARB determine that such DPF regenerations are caused by, in whole or in part, a defective component  
7 and/or a problem with emissions-related software or calibrations in the test vehicles, and if the agencies  
8 determine that such defect or problem is likely to occur in a substantial number of Subject Vehicles for  
9 any model within any model year, they may require Defendants to implement an administrative recall  
10 program to address such defect or problem. Any such modification of the Subject Vehicles to address  
11 such defect or problem must comply with the requirements of this Consent Decree, including this  
12 Paragraph 25.

13 26. Timing of Modifications other than the Approved Emissions Modification. Nothing in  
14 this Consent Decree prohibits Defendants from making modifications to the Subject Vehicles  
15 concurrently with implementing the Approved Emissions Modification, provided that such  
16 modifications comply with this Paragraph 26.

17 a. Modifications Subject to Paragraph 25. With respect to modifications subject to  
18 Paragraph 25 (Restriction upon Modifications to Critical Emissions Controls, Thermal Management  
19 Strategies, or the OBD System), Defendants may, upon lodging of this Consent Decree with the Court,  
20 commence with the procedures set forth in Paragraphs 25.a-25.c in order to provide notice of – and, if  
21 necessary, to obtain approval for – a modification to Critical Emissions Controls, Thermal Management  
22 Strategies, or the OBD System in the Subject Vehicles. Subject to Defendants' compliance with  
23 Paragraph 25, Defendants are authorized to make modifications to the Critical Emissions Controls,  
24  
25



1 Thermal Management Strategies or the OBD System in the Subject Vehicles concurrently with  
2 implementing the Approved Emissions Modification.

3           b.     Modifications Subject to Paragraph 24 and Paragraph 31.f. With respect to  
4 modifications subject to Paragraph 24 (Modifications to Address Unforeseen Technical Problems in the  
5 Installation of the Approved Emissions Modification) or Paragraph 31.f (Remedial Action), Defendants  
6 may, at any time after the Effective Date, commence with the procedures under this Consent Decree in  
7 order to obtain approval for such modifications. Subject to Defendants' compliance with Paragraphs 24  
8 and 31.f, Defendants are authorized to make such modifications concurrently with implementing the  
9 Approved Emissions Modification.

10           c.     Modifications that Are Not Subject to Procedures under this Consent Decree.  
11 With respect to Subject Vehicles modifications that are not subject to the requirements of this Consent  
12 Decree, Defendants shall comply with all regulatory requirements under the Clean Air Act and  
13 comparable California law that are applicable to such modifications. Subject to Defendants' compliance  
14 with such requirements, Defendants are authorized to make such modifications concurrently with  
15 implementing the Approved Emissions Modification.

16           27.    Prohibition on Sales of Vehicles that Have Not Entered into Commerce. To the extent  
17 that any MY 2014-16 Jeep Grand Cherokee or Ram 1500 vehicle equipped with a 3.0 liter EcoDiesel  
18 engine has never been introduced into commerce and, therefore, remains the property of one or more  
19 Defendants, such vehicle shall not be sold, leased, imported, or otherwise introduced into commerce,  
20 unless and until Defendants have installed the Approved Emissions Modification on such vehicle. No  
21 vehicle that receives the Approved Emissions Modification under this Paragraph shall count toward  
22 meeting the National Recall Target or California Recall Target.

23           28.    Compliance with Emissions Standards. Subject Vehicles updated with the Approved  
24 Emissions Modification shall comply with the following emissions standards through their FUL:  
25

- 1 a. Tier 2, Bin 5, as set forth in 40 C.F.R. § 86.1811-04(c)(6);
- 2 b. Tier 2, LDT4, as set forth in 40 C.F.R. § 86.1811-04(f);
- 3 c. Highway NOx exhaust emissions standard, as set forth in 40 C.F.R. § 86.1811-
- 4 04(j); and
- 5 d. LEV II LEV, as set forth in 13 C.C.R. § 1961.

6 29. Aging Testing. To demonstrate compliance with the emissions standards in Paragraph  
7 28, Defendants shall conduct emissions testing in accordance with this Paragraph on three Subject  
8 Vehicles (“Aging Test Vehicles”) that have received the Approved Emissions Modification and that  
9 have been subsequently aged to 117,000 miles. One of the Aging Test Vehicles shall be the MY 2016  
10 Ram 1500 Test Vehicle, and the other two Aging Test Vehicles shall be a MY 2014 Jeep Grand  
11 Cherokee and a MY 2015 Ram 1500. Defendants shall purchase the Aging Test Vehicles (not including  
12 the MY 2016 Ram 1500 Test Vehicle), as well as purchase a minimum of three other Subject Vehicles  
13 to be held in reserve (“Backup Vehicles”), in accordance with the procedures set forth in Paragraph 29.a,  
14 below. All of the Subject Vehicles purchased by Defendants shall be screened in accordance with  
15 Paragraphs 29.b-29.c, below. All Procured Vehicles (as defined, below, under Paragraph 29.a) that meet  
16 the screening criteria, together with the MY 2016 Ram 1500 Test Vehicle, shall be included in the pool  
17 of vehicles (“Aging Test Vehicle Pool”) and eligible for selection as Aging Test Vehicles. EPA and  
18 CARB will review the Aging Test Vehicle Pool and designate those vehicles in the pool that will be the  
19 Aging Test Vehicles and those that will be Backup Vehicles following the procedures set forth in  
20 Paragraph 29.d, below. Defendants shall age all of the Aging Test Vehicles, as well as any Backup  
21 Vehicles that they may also wish to age, in accordance with Paragraph 29.e, below. After aging,  
22 Defendants shall conduct emissions tests on the Aging Test Vehicles in accordance with Paragraph 29.f,  
23 below, to determine whether the vehicles meet the emissions standards referenced in Paragraph 28.  
24 Defendants shall complete all emissions testing requirements under this Paragraph and submit the  
25

1 Emissions Test Results and all other Emissions Test Data to EPA and CARB by no later than 18 months  
 2 after the Effective Date. In the event that Defendants are required to conduct one or more Root-Cause  
 3 Evaluations in accordance with Paragraphs 31.a or 31.b, below, Defendants shall complete all such  
 4 evaluations and submit all reports by the deadlines specified in Paragraphs 31.a or 31.b, below.

5 **a. Procurement of Subject Vehicles for Aging Test Vehicle Pool.** Defendants shall  
 6 purchase a minimum of five Subject Vehicles from individual consumers who advertised their vehicles  
 7 for sale. Defendants may purchase such vehicles at any time, provided that they acquire at least five  
 8 vehicles no later than three months after the Effective Date for the sole purpose of conducting aging  
 9 testing in accordance with this Paragraph 29. Defendants shall ensure that all Subject Vehicles  
 10 purchased under this subparagraph (“Procured Vehicles”) comply with the specifications set forth in the  
 11 following table:

12 <b>Minimum Quantity of Vehicles</b>	13 <b>Model Year</b>	14 <b>Model</b>	15 <b>Mileage at time of purchase</b>	16 <b>Axle Ratio</b>
17 2	2014	Jeep Grand Cherokee	Mileage shall be within 10,000 miles (plus or minus) of the average mileage for all MY 2014 Jeep Grand Cherokees on the Date of Lodging, calculated based on Service & Quality Data Feed (“SQDF”) data.	3.45
18 2	2015	Ram 1500	Mileage shall be within 10,000 miles (plus or minus) of the average mileage of all MY 2015 Ram 1500s as of the Date of Lodging, calculated based on SQDF data.	3.92
19 1	2016	Ram 1500	Mileage shall be within 10,000 miles (plus or minus) of the mileage of the MY 2016 Ram 1500 Test Vehicle as of the Date of Lodging.	3.55

22  
 23 At the time of each purchase, Defendants shall collect any and all service records retained by the seller  
 24 pertaining to the Procured Vehicle. Likewise, Defendants shall collect any and all service records stored  
 25 in dealer databases pertaining to the Procured Vehicles. At any time, Defendants may conduct any

1 routine maintenance covered by the applicable owner's manual to ensure proper functioning of the  
2 Procured Vehicles. If Defendants want to clean, repair, or replace a part or component of the emission  
3 control system or the OBD System of a Procured Vehicle and such activity is not routine maintenance  
4 covered by the applicable owner's manual, they shall seek and obtain written approval from EPA and  
5 CARB before proceeding with such work. If Defendants want to conduct non-routine maintenance that  
6 will not affect or alter the emission control system or OBD System of the Procured Vehicle, they may  
7 proceed with such work after providing 72-hour written notice to EPA and CARB. Defendants shall  
8 maintain a log of maintenance performed on all Procured Vehicles.

9           b.     Initial Screening of Procured Vehicles. Within 5 business days of a Procured  
10 Vehicle arriving at the emissions test location or any other facility owned or controlled by Defendants or  
11 their contractors, Defendants shall conduct, or cause to be conducted, an initial screening of the  
12 Procured Vehicle to determine whether it is free of the defects set forth at 40 C.F.R. Part 86, Subpart S,  
13 Appendix II (As-Received Testing Vehicle Rejection Criteria). If the screening reveals one or more of  
14 such defects in the Procured Vehicle, Defendants shall immediately reject such vehicle from eligibility  
15 for inclusion in the Aging Test Vehicle Pool. Defendants need not procure an additional Subject  
16 Vehicle to replace the rejected vehicle if Defendants already possess two or more potential Aging Test  
17 Vehicles (including the MY 2016 Ram 1500 Test Vehicle) that match the model and model year of the  
18 rejected vehicle. Otherwise, if Defendants do not possess two such vehicles, Defendants shall procure,  
19 as soon as practicable, a substitute vehicle that is the same model and model year as the rejected vehicle  
20 and that meets the specifications set forth in Paragraph 29.a, above, for such model and model year.  
21 Defendants shall conduct initial screening of the substitute Procured Vehicle in accordance with this  
22 Paragraph 29.b. Defendants may conduct initial screening on as many Procured Vehicles as they deem  
23 appropriate, provided that the Aging Test Vehicle Pool ultimately includes a minimum of five Procured  
24 Vehicles at the time Defendants complete all emissions screening under Paragraph 29.c, below. Within  
25

1 30 days of completion of all emissions screening pursuant to Paragraph 29.c, Defendants shall submit a  
2 report to EPA and CARB that includes a description of each Procured Vehicle that Defendants rejected  
3 during the initial screening performed pursuant to this Paragraph 29.b and an explanation as to why the  
4 vehicle was rejected.

5           c.       Emissions Screening of Procured Vehicles. With respect to Procured Vehicles  
6 that meet the initial screening criteria in Paragraph 29.b, above, Defendants shall conduct further  
7 screening to determine whether emissions from such vehicles, together with applicable Adjustment  
8 Factors, comply with the emissions standards referenced in Paragraph 28. If a Procured Vehicle has not  
9 yet received the Approved Emissions Modification, Defendants shall update the Procured Vehicle with  
10 the Approved Emissions Modification and age such vehicle for 1,000 miles using the Standard Road  
11 Cycle without waiting for any further approvals from EPA or CARB. Defendants shall undertake and  
12 complete the emissions testing in accordance with Paragraphs 29.c.i to 29.c.iv, below.

13           i.       Emissions Tests. Defendants shall conduct FTP75, US06, HWFE, and  
14 SC03 emissions tests on each Procured Vehicle that meets the criteria in Paragraph 29.b, above.  
15 At the outset of such testing, Defendants shall conduct Road-Load Determination Procedures  
16 with respect to each Procured Vehicle for the purpose of determining the appropriate  
17 dynamometer settings for emissions testing of the Procured Vehicle. Defendants shall conduct  
18 the emissions tests and measure and calculate emissions results using all applicable testing  
19 procedures set forth in 40 C.F.R. Part 86, Subpart B, as well as in 40 C.F.R. Part 1066, except as  
20 provided in Paragraph 29.c.ii (“Prep Cycle”) and Paragraph 29.c.iii (“DPF Regeneration  
21 Events”), below. Defendants shall provide the Emissions Test Results and all other Emissions  
22 Test Data to EPA and CARB in accordance with Paragraph 35 (Information Sharing with EPA  
23 and CARB). Nothing in this Paragraph 29.c.i is intended to require Defendants to comply with  
24 procedures set forth in 40 C.F.R. Part 1066 with respect to data validation.  
25

1                   ii.           Prep Cycle. Defendants shall not force any type of regeneration of the  
2 diesel particulate filter during any Prep Cycle for an emissions test. Defendants shall conduct a  
3 single FTP72 drive cycle during which no DPF Regeneration Event occurs as the Prep Cycle for  
4 the FTP75 emissions test, and then follow this FTP72 with the applicable soak period required  
5 under the regulations before commencing the emissions test. For the US06, HWFE, and SC03  
6 emissions tests, Defendants may perform any Prep Cycle that Defendants deem appropriate,  
7 provided that such Prep Cycle complies with applicable regulatory requirements and with the  
8 limitations set forth in this Paragraph 29.c.ii.

9                   iii.           DPF Regeneration Events. If a DPF Regeneration Event occurs, either  
10 during a Prep Cycle or an emissions test, Defendants shall, as needed, perform multiple back-to-  
11 back runs of the following drive cycles without any key-off cycle in between the back-to-back  
12 runs to allow the DPF Regeneration Event to complete: FTP72, HWFE, or US06. Defendants  
13 shall invalidate any such emissions test in which a DPF Regeneration Event occurs during the  
14 Prep Cycle or the emissions test.

15                   iv.           Application of Adjustment Factors and Submittal of Results. Defendants  
16 shall apply the Adjustment Factors to the Emissions Test Results and provide such results, along  
17 with all other Emissions Test Data, to EPA and CARB in accordance with Paragraph 35  
18 (Information Sharing with EPA and CARB), below.

19                   v.           Emissions Screening Criteria. If the Emissions Test Results for Procured  
20 Vehicles, together with the Adjustment Factors, exceed the applicable emissions standards  
21 referenced in Paragraph 28, above, Defendants shall reject the Procured Vehicle from eligibility  
22 for inclusion in the Aging Test Vehicle Pool. Defendants need not procure an additional Subject  
23 Vehicle to replace the rejected vehicle if Defendants already possess two or more potential  
24 Aging Test Vehicles (including the MY 2016 Ram 1500 Test Vehicle) that match the model and  
25

1 model year of the rejected vehicle. Otherwise, if Defendants do not possess two such vehicles,  
2 Defendants shall procure, as soon as practicable, a substitute vehicle that is the same model and  
3 model year as the rejected vehicle and that meets the specifications set forth in Paragraph 29.a,  
4 above, for such model and model year. Defendants shall follow the process set forth in  
5 Paragraphs 29.b-29.c for such Procured Vehicles. Defendants may conduct emissions screening  
6 on as many Procured Vehicles as they deem appropriate, provided that the Aging Test Vehicle  
7 Pool ultimately includes a minimum of five Procured Vehicles at the time Defendants complete  
8 all emissions screening under this Paragraph 29.c.

9 vi. Root-Cause Evaluation of Procured Vehicle That Does Not Meet  
10 Emissions Screening Criteria. If a Subject Vehicle does not meet the emissions screening  
11 criteria specified in Paragraph 29.c.v, above, Defendants shall conduct a Root-Cause Evaluation  
12 to determine the reason(s) why it did not meet the emissions screening criteria and shall submit a  
13 report with their findings to EPA and CARB within 60 days of the vehicle failing to meet the  
14 emissions screening criteria, unless EPA and CARB agree in writing to an extension of this  
15 deadline. Defendants shall provide all data, vehicles, and information reasonably requested by  
16 EPA and CARB to evaluate the findings in Defendants' Root-Cause Evaluation report and any  
17 conclusions Defendants reached regarding the failure. In the report, Defendants may recommend  
18 whether additional data or information is needed in order to evaluate the reason(s) why the  
19 Subject Vehicle did not meet the emissions screening criteria. If EPA and CARB determine that  
20 the Subject Vehicle did not meet the emissions screening criteria due to a potential non-  
21 conformity unrelated to the Approved Emissions Modification that may exist in other Subject  
22 Vehicles, they will follow their regulatory procedures for determining whether to implement a  
23 recall under 40 C.F.R. Part 85, Subpart S, and 13 C.C.R. §§ 2113 and 2123 or take other  
24 appropriate actions under their respective regulations. Any administrative action taken by EPA  
25



1 or CARB to address the potential non-conformity shall not be subject to review under Section X  
2 (Dispute Resolution), except to the extent that the administrative action results in (a) a  
3 modification to the Subject Vehicles that must comply with the procedures in Paragraph 25  
4 (Restriction upon Modifications to Critical Emissions Controls, Thermal Management Strategies,  
5 or the OBD System) or other requirements of this Consent Decree and (b) an action or decision  
6 by EPA or CARB under the Consent Decree with respect to any such modification. In any such  
7 dispute, Defendants may only challenge the action taken, or decision made, by EPA and CARB  
8 under the Consent Decree relating to the modification to the Subject Vehicles.

9 d. Designation of Aging Test Vehicle and Backup Vehicles. Within 30 days of  
10 completion of all emissions screening pursuant to Paragraph 29.c, above, Defendants shall submit to  
11 EPA and CARB a list and description of all Procured Vehicles in the Aging Test Vehicle Pool. The  
12 submittal shall include (1) all services and maintenance records that Defendants collected from sellers  
13 and dealer databases, (2) the log of all maintenance performed by Defendants on the Procured Vehicles,  
14 (3) a checklist for each Procured Vehicle documenting that it passed the initial screenings conducted  
15 under Paragraph 29.a, and (4) the Emissions Test Results from the emissions screening conducted under  
16 Paragraph 29.c, above. After receipt of this information, EPA and CARB will select two Procured  
17 Vehicles that, together with the MY 2016 Ram 1500 Test Vehicle, shall serve as the Aging Test  
18 Vehicles. One of the Aging Test Vehicles selected by EPA and CARB will be a MY 2014 Jeep Grand  
19 Cherokee, and the other shall be a MY 2015 Ram 1500. After EPA and CARB select the Aging Test  
20 Vehicles, all other Procured Vehicles in the Aging Test Vehicle Pool shall be designated as Backup  
21 Vehicles.

22 e. Mileage Accumulation.

23 i. No later than 15 days after EPA's and CARB's designation of the Aging  
24 Test Vehicles, Defendants shall commence aging of each Aging Test Vehicle on a dynamometer  
25



1 or a test track to 117,000 miles using the MY 2018 Mileage Accumulation Method. Defendants,  
2 at their option and at any time, may also decide to age Backup Vehicles, in which case  
3 Defendants shall employ the same aging method that they use for the Aging Test Vehicles.  
4 Defendants, at their discretion, may temporarily suspend aging of any vehicle to conduct interim  
5 emissions testing before proceeding to accumulate mileage to 117,000 miles. In the event that  
6 Defendants conduct such interim testing, Defendants shall follow the same procedures required  
7 under Paragraphs 29.c.i to 29.c.iv, above. Defendants shall provide Emissions Test Results and  
8 all other Emissions Test Data from interim testing to EPA and CARB within 15 days of  
9 completing such testing in accordance with Paragraph 35 (Information Sharing with EPA and  
10 CARB).

11 ii. If, during mileage accumulation conducted pursuant to Paragraph 29.e.i  
12 above, an Aging Test Vehicle is unable to complete aging to 117,000 miles, Defendants may  
13 replace the Aging Test Vehicle with a comparable Backup Vehicle, provided that Defendants  
14 provide EPA and CARB with written notice at least 20 days in advance of making this  
15 replacement. Such notice shall set forth all facts and circumstances currently known as to why  
16 the Aging Test Vehicle could not complete aging, and provide any and all reasons as to why  
17 Defendants believe that the replacement is necessary. If Defendants believe that the Aging Test  
18 Vehicle was unable to complete aging to 117,000 miles due to the lack of durability of the  
19 emission control system or the Approved Emissions Modification, Defendants shall conduct a  
20 Root-Cause Evaluation in accordance with Paragraph 31.a, below.

21 iii. Defendants shall provide all data, vehicles, and information reasonably  
22 requested by EPA and CARB to evaluate the circumstances that led to the replacement of any  
23 Aging Test Vehicle. Based upon their evaluation of this information, EPA and CARB may  
24 (1) accept Defendants' selection of the Backup Vehicle as a replacement for the original Aging  
25

1 Test Vehicle, (2) direct Defendants to resume aging and testing of the original Aging Test  
2 Vehicle, (3) require Defendants to conduct a Root-Cause Evaluation of the original Aging Test  
3 Vehicle under Paragraph 31.a, below, or (4) undertake some combination of these alternatives.

4 f. Emissions Testing. Within 15 days of an Aging Test Vehicle (or a Backup  
5 Vehicle that replaces an original Aging Test Vehicle pursuant to Paragraph 29.e) accumulating 117,000  
6 miles, Defendants shall commence emissions testing of the vehicle, using the same procedures required  
7 under Paragraphs 29.c.i-29.c.iv, above. Defendants shall provide the Emissions Test Results and all  
8 other Emissions Test Data to EPA and CARB in accordance with Paragraph 35 (Information Sharing  
9 with EPA and CARB). An Aging Test Vehicle (or a Backup Vehicle that replaces an original Aging  
10 Test Vehicle) will be deemed to have failed emissions testing if any Emissions Test Result, together  
11 with the applicable Adjustment Factors, exceeds the relevant FUL emissions standards referenced in  
12 Paragraph 28, unless within 30 days of the emissions test Defendants submit a written request to EPA  
13 and CARB in accordance with Paragraph 29.g, below, to invalidate the Emissions Test Results  
14 (“Invalidation Request”). If Defendants do not submit a timely Invalidation Request, Defendants shall  
15 conduct a Root-Cause Evaluation in accordance with Paragraph 31.b, below, to determine the reason(s)  
16 why the vehicle failed emissions testing.

17 g. Invalidation Request. No later than 30 days after the date of an emissions test that  
18 generates Emissions Test Results that, together with applicable Adjustment Factors, would cause an  
19 Aging Test Vehicle (or a Backup Vehicle that replaces an original Aging Test Vehicle pursuant to  
20 Paragraph 29.e) to be deemed in non-compliance with the emissions standards referenced in Paragraph  
21 28, Defendants may submit an Invalidation Request to EPA and CARB if they believe that, due to a  
22 technical issue with the generation of data during the emissions test, the Emissions Test Results should  
23 be disregarded for the purpose of determining compliance with the emissions standards referenced in  
24 Paragraph 28. As part of the Invalidation Request, Defendants may provide EPA and CARB with  
25

1 supplemental Emissions Test Results and Emissions Test Data from repeat emissions testing using the  
2 same vehicle that generated the Emissions Test Results that are the subject of the Invalidation Request.  
3 If EPA and CARB grant the Invalidation Request, the vehicle that initially failed emissions testing shall  
4 repeat the emissions testing in accordance with Paragraph 29.f, above, except that such re-testing is not  
5 necessary if EPA and CARB determine that supplemental Emissions Test Results, together with  
6 applicable Adjustment Factors, submitted in support of the Invalidation Request show that the vehicle  
7 complies with the emissions standards reference in Paragraph 28. If EPA and CARB deny the  
8 Invalidation Request, they shall jointly issue a written decision setting forth the technical bases for their  
9 decision. For the purpose of determining Defendants' obligation to conduct a Root-Cause Evaluation  
10 pursuant to Paragraph 31.b, below, the date that EPA and CARB issue their written decision shall  
11 constitute the date that the Aging Test Vehicle (or a Backup Vehicle that replaces an original Aging Test  
12 Vehicle pursuant to Paragraph 29.e) failed emissions testing.

13       30.     In-Use Verification and In-Use Confirmatory Testing. No later than one year after the  
14 Effective Date, Defendants shall, as detailed below, undertake and complete in-use testing to verify that  
15 Subject Vehicles that have received the Approved Emissions Modification remain in compliance with  
16 the emissions standards referenced in Paragraph 28. For each year thereafter, for a total period of no  
17 more than 5 years from the Effective Date, Defendants shall repeat in-use testing required under this  
18 Paragraph, except for Subject Vehicles within a particular model year that are the subject of a  
19 determination of non-compliance issued under Paragraph 31.e, below, that requires Defendants to  
20 submit a remedial plan, or for which Defendants have submitted a remedial plan pursuant to Paragraph  
21 31.f, below. In conducting such testing in any given year, Defendants shall comply with the procedures  
22 set forth in Paragraphs 30.a-30.d, below. Nothing herein requires Defendants to test any Subject  
23 Vehicle that is beyond FUL. Defendants shall generate records required under 40 C.F.R. § 86.1847-01  
24  
25

1 and maintain such records in accordance with Section XI (Information Collection and Retention and  
2 CBI).

3           a.       Selection of Vehicles for In-Use Verification Testing. Each year, Defendants  
4 shall select no less than seven Subject Vehicles that have been updated with the Approved Emissions  
5 Modification for the purpose of conducting in-use verification testing (“IUVT Vehicles”). Defendants  
6 shall select two IUVT Vehicles (one Jeep Grand Cherokee and one Ram 1500) from within California  
7 following the procedures set forth at 13 C.C.R. § 2137, and they shall select the remaining five IUVT  
8 Vehicles randomly from owners and lessees outside of California following the procedures set forth at  
9 40 C.F.R. § 86.1845-04(d) and Appendices I to III of 40 C.F.R. Part 86, Subpart S. Defendants shall  
10 select at least two IUVT Vehicles (including one Jeep Grand Cherokee and one Ram 1500) for each  
11 model year, inclusive of the IUVT Vehicles selected for the required California testing. Defendants may  
12 not exclude Subject Vehicles from being selected as IUVT Vehicles solely based on the lack of  
13 maintenance records or a history of multiple owners or repairs. No later than 90 days after the Effective  
14 Date, Defendants shall propose, in writing, to EPA and CARB specifications as to mileage, vehicle body  
15 types and configurations, and axle ratios that Defendants will use to select IUVT Vehicles for in-use  
16 verification testing pursuant to this Consent Decree over the next five years. Such specifications shall  
17 be deemed to be approved unless, within 30 days of their receipt, EPA and CARB provide written notice  
18 to Defendants of alternative specifications for selecting IUVT Vehicles. Defendants shall comply with  
19 the specifications provided by EPA and CARB, unless within 30 days of receipt of such alternative  
20 specifications, Defendants invoke dispute resolution under Section X. In no event shall Subject  
21 Vehicles with mileage equal to or greater than 119,000 miles, be used for testing under this Paragraph  
22 30.

23           b.       Emissions Tests for In-Use Verification Testing. For each of the IUVT Vehicles  
24 selected for in-use verification testing in accordance with Paragraph 30.a, above, Defendants shall  
25

1 conduct FTP75, US06, and HWFE emissions tests. At the outset of such testing, Defendants shall  
2 conduct Road-Load Determination Procedures with respect to each of the IUVT Vehicles for the  
3 purpose of determining dynamometer settings for emissions testing of each vehicle. Defendants shall  
4 conduct such emissions tests and calculate emissions results following the procedures set forth in  
5 Paragraphs 29.29.c.i-29.c.iv, above. Defendants shall provide the Emissions Test Results and all other  
6 Emissions Test Data to EPA and CARB in accordance with Paragraph 35 (Information Sharing with  
7 EPA and CARB). If, after applying applicable Adjustment Factors, the Emissions Test Results for at  
8 least two of the IUVT Vehicles exceed the emissions standards referenced in Paragraph 28, and if the  
9 average emissions for all vehicles that exceed the emissions standards is 115% of the emissions  
10 standards or greater, then Defendants shall undertake in-use confirmatory testing in accordance with  
11 Paragraph 30.c, below.

12           c.     In-Use Confirmatory Testing. Within 20 days of meeting the criteria for in-use  
13 confirmatory testing set forth in Paragraph 30.b, above, Defendants shall submit to EPA and CARB for  
14 review and approval an in-use confirmatory test plan (“IUCP”) to test other Subject Vehicles within the  
15 same model year as the IUVT Vehicles that triggered In-Use Confirmatory Testing. Defendants’ IUCP  
16 shall comply with the requirements of 40 C.F.R. § 86.1846-01(i) by describing the details of the vehicle  
17 procurement, maintenance, and testing procedures (not otherwise specified by regulation) that  
18 Defendants will use for in-use confirmatory testing. Upon approval of the IUCP, Defendants shall  
19 undertake and complete the plan no later than six months after EPA and CARB approve the IUCP. The  
20 approved IUCP shall only require Defendants to conduct FTP75, US06, and HWFE emissions tests.

21           d.     Defendants shall apply the applicable Adjustment Factors to the Emissions Tests  
22 Results conducted in accordance with the IUCP to determine each Subject Vehicle’s emissions.  
23 Defendants shall provide the Emissions Test Results and all other Emissions Test Data to EPA and  
24 CARB in accordance with Paragraph 35 (Information Sharing with EPA and CARB). If the Emissions  
25

1 Tests Results, together with the applicable Adjustment Factors, exceed an emissions standard referenced  
2 in Paragraph 28, Defendants shall conduct a Root-Cause Evaluation in accordance with Paragraph 31.c,  
3 below.

4 31. Root-Cause Evaluation and Remedial Procedures for Subject Vehicles. Based upon the  
5 results of aging testing under Paragraph 29 or in-use testing under Paragraph 30, EPA and CARB will  
6 follow the procedures in this Paragraph 31 to determine whether Defendants shall undertake additional  
7 remedial measures to ensure that the Subject Vehicles comply with the emissions standards referenced  
8 in Paragraph 28. Prior to issuance of such a determination pursuant to Paragraph 31.e, below, EPA and  
9 CARB will receive and consider the findings and recommendations of a Root-Cause Evaluation report  
10 submitted by Defendants pursuant to Paragraphs 31.a, 31.b, or 31.c, below, unless Defendants fail to  
11 submit such report more than 150 days after its applicable deadline. EPA and CARB may agree, in  
12 writing, to extend the deadlines set forth below for the submission of Root-Cause Evaluation reports.

13 a. Root-Cause Evaluation for Vehicles that are Removed from Mileage  
14 Accumulation under Paragraph 29.e. If an Aging Test Vehicle or Backup Vehicle begins, but cannot  
15 complete, mileage accumulation under Paragraph 29.e, and EPA and CARB request that Defendants  
16 conduct a Root-Cause Evaluation pursuant to Paragraph 29.e.iii or a Root-Cause Evaluation is otherwise  
17 required pursuant to Paragraph 29.e.ii, Defendants shall conduct such Root-Cause Evaluation to  
18 determine the reason(s) why the vehicle was unable to complete aging to 117,000 miles. Defendants  
19 shall submit the Root-Cause Evaluation report to EPA and CARB within 60 days of EPA's and CARB's  
20 request that Defendants conduct a Root-Cause Evaluation pursuant to Paragraph 29.e.iii, or within 60  
21 days from the date that Defendants replace the Aging Test Vehicle pursuant to Paragraph 29.e.ii.  
22 Defendants shall provide all data, vehicles, and information reasonably requested by EPA and CARB to  
23 evaluate Defendants' Root-Cause Evaluation and any conclusions reached by Defendants. In the report,  
24  
25

1 Defendants may recommend whether additional data or information is needed in order to evaluate the  
2 reason(s) why the Subject Vehicle could not complete mileage accumulation.

3           b.       Root-Cause Evaluation for Vehicles that Cannot Meet Emissions Standards after  
4 Aging to 117,000 Miles. If an Aging Test Vehicle or Backup Vehicle that replaces an Aging Test  
5 Vehicle fails to meet emissions standards in Paragraph 28 after aging to 117,000 miles, Defendants shall  
6 conduct a Root-Cause Evaluation to determine the reason(s) for the failure and shall submit a report of  
7 their findings to EPA and CARB within 120 days of the vehicle failing to meet the emissions standards.  
8 As part of the Root-Cause Evaluation, Defendants may seek to demonstrate that the failed Aging Test  
9 Vehicle or Backup Vehicle does not represent emissions levels and deterioration in actual use for  
10 Subject Vehicles of the same model year. As part of this demonstration, Defendants may age one or  
11 more Backup Vehicles in the same model year as the failed Aging Test Vehicle to 117,000 miles using  
12 the MY 2018 Mileage Accumulation Method and conduct emissions testing pursuant to Paragraphs  
13 29.c.i- 29.c.iv. Defendants shall provide all data, vehicles, and information reasonably requested by  
14 EPA and CARB to evaluate Defendants' Root-Cause Evaluation and any conclusions reached by  
15 Defendants.

16           c.       Root-Cause Evaluation for Vehicles that Cannot Meet Emissions Standards  
17 During IUCP Testing. If one or more Subject Vehicles fail to meet emissions standards in Paragraph 28  
18 during IUCP testing, Defendants shall conduct a Root-Cause Evaluation to determine the reason(s) for  
19 the failure, and shall submit a report of their findings to EPA and CARB within 120 days of the vehicle  
20 failing to meet the emissions standards. As part of the Root-Cause Evaluation, Defendants may seek to  
21 demonstrate that the IUCP Vehicle that failed emissions testing does not represent emissions levels and  
22 deterioration in actual use for Subject Vehicles of the same model year as the failed IUCP Vehicle. In  
23 the report, Defendants may recommend whether additional data or information is needed in order to  
24 evaluate the reason(s) why the Subject Vehicle did not meet the emissions standard. Defendants shall  
25



1 provide all data, vehicles, and information reasonably requested by EPA and CARB to evaluate  
2 Defendants' Root-Cause Evaluation and any conclusions reached by Defendants.

3 d. EPA's and CARB's Options to Remedy Subject Vehicles that Fail Aging Testing  
4 or IUCP Testing. If Defendants miss the applicable deadline to submit a Root-Cause Evaluation report  
5 set forth under Paragraphs 31.a, 31.b, or 31.c, above, and Defendants fail to submit the Root-Cause  
6 Evaluation report within 150 days of missing the applicable deadline, EPA and CARB may issue a  
7 determination of non-compliance in accordance with Paragraph 31.e, below, without waiting to receive  
8 such report from Defendants. Otherwise, upon receipt of the Root-Cause Evaluation report, EPA and  
9 CARB will follow either of the procedures set forth in Paragraphs 31.d.i or 31.d.ii, below, unless the  
10 agencies determine that no further action is required.

11 i. If, after considering a Root-Cause Evaluation report submitted under  
12 Paragraphs 31.a, 31.b, or 31.c, EPA and CARB determine that one or more Subject Vehicles  
13 failed Aging Testing or IUCP testing due, in whole or in part, to (a) the lack of durability of the  
14 emission control system as modified by the Approved Emissions Modification or (b) a failure of  
15 the Approved Emissions Modification, the agencies may issue a determination of non-  
16 compliance and require remedial action in accordance with Paragraphs 31.e and 31.f, below.

17 ii. If, after considering a Root-Cause Evaluation report submitted under  
18 Paragraphs 31.a, 31.b, or 31.c, EPA and CARB determine the Subject Vehicle could not meet  
19 emissions standards for any reason other than those set forth in Paragraph 31.d.i, above, they will  
20 follow their regulatory procedures for determining whether to implement a recall under 40  
21 C.F.R. Part 85, Subpart S, and 13 C.C.R. §§ 2113 and 2123, or take other appropriate actions  
22 under their respective regulations. Any administrative action taken by EPA or CARB as  
23 specified in this Paragraph 31.d.ii, shall not be subject to review under Section X (Dispute  
24 Resolution), except to the extent that the administrative action results in (a) a modification to the  
25



1 Subject Vehicles that must comply with the procedures in Paragraph 25 (Restriction upon  
2 Modifications to Critical Emissions Controls, Thermal Management Strategies, or the OBD  
3 System) or other requirements of this Consent Decree and (b) an action or decision by EPA or  
4 CARB under the Consent Decree with respect to any such modification. In any such dispute,  
5 Defendants may only challenge the action taken, or decision made, by EPA and CARB under the  
6 Consent Decree relating to the modification to the Subject Vehicles.

7 e. Determination of Non-Compliance. If EPA and CARB issue a determination of  
8 non-compliance in accordance with Paragraph 31.d.i, above, they will do so jointly and in writing,  
9 setting forth the factual, technical, and legal bases for their determination and addressing the  
10 recommendations and findings, if any, in Defendants' Root-Cause Evaluation report(s). If EPA and  
11 CARB determine that the issue that caused the Subject Vehicle to fail Aging Test (under Paragraph 29)  
12 or in-use compliance testing (under Paragraph 30) is likely to occur in a substantial number of Subject  
13 Vehicles for any model year or is likely to cause certain Subject Vehicles to exceed emissions limits by  
14 a substantial margin, they may require Defendants to submit a remedial plan under Paragraph 31.f,  
15 below, for all Subject Vehicles within such model year. Alternatively, if they determine that a remedial  
16 plan is not warranted under the circumstances, they may assess a stipulated penalty under Paragraph 86.j  
17 (Failure to Comply with Emissions Standards) with respect to the estimated number of vehicles within  
18 the model year that either do not comply with the emissions standards referenced in Paragraph 28 or are  
19 expected not to comply with such standards upon reaching their FUL.

20 f. Remedial Action. If EPA and CARB issue a determination of non-compliance  
21 under Paragraph 31.e, above, and if such determination requires the submittal of a remedial plan,  
22 Defendants shall submit such a plan to EPA and CARB for review and approval within 90 days of  
23 Defendants' receipt of the determination of non-compliance, unless Defendants challenge the  
24 determination of non-compliance under Section X (Dispute Resolution), in which event Defendants  
25

1 shall submit the proposed remedial plan within 30 days of the final resolution of the dispute in favor of  
2 EPA and CARB. The proposed remedial plan shall set forth the actions and schedule for recalling all  
3 Subject Vehicles covered by the determination of non-compliance and for bringing such vehicles into  
4 compliance with the emissions standards referenced in Paragraph 28. The plan submitted to EPA shall  
5 comply with the requirements of 40 C.F.R. Part 85, Subpart S, and the plan submitted to CARB shall  
6 comply with the influenced recall requirements of 13 C.C.R. § 2114. With respect to both Submissions,  
7 Defendants shall include a discussion of the proposed methods that they will employ for verifying that  
8 the approved remedial action will bring the Subject Vehicles into compliance with the emissions  
9 standards referenced in Paragraph 28. Such proposed methods, at a minimum, shall include in-use  
10 verification testing and, as appropriate based on the results of the in-use verification testing, in-use  
11 compliance testing conducted pursuant to applicable regulations for no more than three years from the  
12 date Defendants commence implementation of the remedial action. Upon approval of such plans,  
13 Defendants shall implement the approved remedial action in accordance with the approved schedule.

14           g.     Extension of Recall Target Deadline. Simultaneously with their submission of a  
15 proposed remedial plan, Defendants shall submit to EPA and CARB for review and approval a proposed  
16 plan for achieving the National Recall Target and the California Recall Target in light of the need to  
17 recall such Subject Vehicles to bring them into compliance with the emissions standards referenced in  
18 Paragraph 28. The proposed plan shall include (1) a proposed extension of the Recall Target Deadline  
19 based upon the National Recall Rate and the California Recall Rate as of the date of submittal of the  
20 proposed remedial plan and (2) a proposed modification of the Approved Emissions Modification  
21 Disclosure at Appendix D. If EPA and CARB approve the remedial plan in accordance with  
22 Paragraph 31.f, above, they will follow the procedures in Paragraph 42.c for extending the Recall Target  
23 Deadline. The approved extension of the Recall Target Deadline shall be used to determine whether  
24 Defendants will be required under Paragraph 41 (Recall Participation Targets) to make payments for  
25

1 failure to meet the National Recall Target and the California Recall Target within the time limits  
2 specified under this Consent Decree. If EPA and CARB reject the proposed plan for achieving the  
3 National Recall Target and the California Recall Target, they will issue a joint decision, in writing,  
4 setting forth the factual, technical, and legal reasons as to their decision.

5 h. Remedy Failure. EPA and CARB may issue a written determination of remedy  
6 failure if (1) Defendants inform EPA and CARB that the Subject Vehicles identified in the  
7 determination of non-compliance cannot be modified so as to meet the emissions standards referenced in  
8 Paragraph 28, (2) Defendants fail to submit a remedial plan after missing the deadline set forth in  
9 Paragraph 31.f by 150 days or more, (3) Defendants propose a remedial plan that does not include a  
10 viable technical solution for achieving compliance with the emissions standards referenced in Paragraph  
11 28, or (4) based on the emissions performance of the Subject Vehicles following implementation of the  
12 approved remedial action specified in Paragraph 31.f, EPA and CARB determine that the remedial  
13 action failed to bring Subject Vehicles into compliance with such emissions standards. The joint  
14 determination shall set forth the factual, technical, and legal bases for the determination of remedy  
15 failure. Upon issuance of the written determination of remedy failure, Defendants shall be subject to  
16 stipulated penalties as set forth in Paragraph 86.j (Failure to Comply with Emissions Standards) with  
17 respect to the Subject Vehicles identified in the determination of non-compliance issued under  
18 Paragraph 31.e, above, and notwithstanding any other provision of this Consent Decree including  
19 Paragraphs 121-122 (concerning the effect of settlement), the United States and California reserve all  
20 equitable rights to address such non-compliance under applicable laws and regulations by instituting  
21 proceedings in this action or in a new action and/or by pursuing administrative remedies. If Defendants  
22 timely invoke dispute resolution under Section X to challenge the determination of remedy failure, the  
23 United States and California may institute civil or administrative proceedings to address non-  
24 compliances with emissions standards only upon final resolution of the dispute in favor of EPA and  
25

1 CARB. Likewise, in the event of such a dispute, Defendants shall not be required to pay any stipulated  
2 penalties accruing under Paragraphs 86.j and 94 unless and until the final resolution of the dispute in  
3 favor of EPA and CARB.

4 32. Compliance with OBD Requirements.

5 a. Requirements Applicable to Subject Vehicles. Except for Pre-Approved OBD  
6 Deficiencies, Additional OBD Non-Compliances, and the OBD issues identified in the Additional OBD  
7 and Inducement Disclosures, the Subject Vehicles that have been modified with the Approved  
8 Emissions Modification shall comply with the OBD requirements set forth at 13 C.C.R. § 1968.2.

9 b. Alterations to Approved Emissions Modification to Address Issues Identified in  
10 Additional OBD and Inducement Disclosures. No later than 90 days following the Effective Date of this  
11 Consent Decree, Defendants shall propose, in accordance with the procedures set forth in this Consent  
12 Decree, modifications to address the Additional OBD and Inducement Disclosures.

13 33. OBD Testing. To demonstrate performance of the OBD System in Subject Vehicles that  
14 have received the Approved Emissions Modification, within 480 days of the Effective Date, Defendants  
15 shall complete the testing set forth in this Paragraph and submit a summary report of such testing and all  
16 test results to CARB and EPA. Defendants shall perform OBD demonstration testing on one MY 2014  
17 Subject Vehicle and one MY 2015 Subject Vehicle. Defendants may select either a Jeep Grand  
18 Cherokee or a Ram 1500 for the MY 2014 vehicle. Whichever model Defendants select for MY 2014,  
19 Defendants must select the other for MY 2015.

20 a. OBD Test Vehicles. To perform the OBD demonstration testing, Defendants  
21 shall procure a MY 2014 OBD test vehicle and a MY 2015 OBD test vehicle (referred to herein as an  
22 “OBD Test Vehicle”), as well as at least one backup OBD test vehicle for each model year (referred to  
23 herein as an “OBD Backup Test Vehicle”). Each OBD Test Vehicle and OBD Backup Test Vehicle  
24 shall have between 45,000 and 65,000 miles. Defendants shall screen procured vehicles for inclusion as  
25

1 an OBD Test Vehicle and OBD Backup Test Vehicle using the same procedures set forth in Paragraphs  
2 29.b and 29.c.i-29.c.iv (including installation of the Approved Emissions Modification), with the  
3 exception that following the initial screening of Procured Vehicles pursuant to Paragraph 29.b,  
4 Defendants shall conduct FTP75 emissions testing on the OBD Test Vehicles and OBD Backup Test  
5 Vehicles in the as-received configuration. Provided that such vehicles meet the applicable FTP75  
6 emissions standard in the as-received configuration (inclusive of any applicable Adjustment Factors), or  
7 otherwise at Defendants' discretion, such vehicles shall be eligible for the OBD demonstration testing  
8 specified in this Paragraph 33.a. Upon completing the emissions screening of Procured Vehicles  
9 pursuant to Paragraphs 29.c.i-29.c.iv, Defendants shall then age the OBD Test Vehicles to FUL.  
10 Defendants need not age an OBD Backup Test Vehicle unless and until Defendants must use the OBD  
11 Backup Test Vehicle for the OBD demonstration testing specified in this Paragraph 33.a. To age the  
12 vehicles, Defendants shall use a combination of the Standard Road Cycle and the MY 2018 Mileage  
13 Accumulation Method, using each method to accumulate 50 percent of the total mileage needed to reach  
14 FUL.

15           b.     Required OBD Demonstration Tests. Defendants shall conduct demonstration of  
16 the OBD monitors set forth below using the test methods set forth at 13 C.C.R. § 1968.2(h)(5) and the  
17 evaluation criteria set forth at 13 C.C.R. § 1968.2(h)(6). Defendants may apply the value used to  
18 represent the frequency of regenerations that Defendants developed and applied in conducting OBD  
19 demonstrations for the MY 2017 Ram 1500.

20                   i.       For the MY 2014 OBD Test Vehicle, Defendants shall conduct the  
21 following OBD emissions demonstration tests: Fuel Injector Quantity Low (P026C), NOx Sensor  
22 Upstream Offset Low (P1287), SCR Efficiency (P20EE), Air/Fuel Sensor Offset Rich (P2196),  
23 Upstream NOx Sensor Stuck Low (P225D), Fuel Injection Timing-Over Advanced (P01D4),  
24  
25

1 Fuel Injection Timing-Over Retarded (P01CB), and Upstream NOx Sensor Slow Response  
2 (P22FA).

3 ii. For the MY 2015 OBD Test Vehicle, Defendants shall conduct the  
4 following OBD emissions demonstration tests: Fuel Rail Pressure Too High (P0088), Turbo  
5 Underboost (P0299), NOx Sensor Downstream Offset Low (P1289), Fuel Injector Quantity Low  
6 (P026C), NOx Sensor Upstream Offset Low (P1287), SCR Efficiency (P20EE), Air/Fuel Sensor  
7 Offset Rich (P2196), Upstream NOx Sensor Stuck Low (P225D), Fuel Injection Timing-Over  
8 Advanced (P01D4), Fuel Injection Timing-Over Retarded (P01CB), and Upstream NOx Sensor  
9 Slow Response (P22FA).

10 iii. Defendants shall conduct additional OBD emissions demonstration tests  
11 on both the MY 2014 OBD Test Vehicle and the MY 2015 OBD Test Vehicle for any monitors  
12 that meet the following selection criteria:

13 a) For any monitor included among the Pre-Approved OBD  
14 Deficiencies for exceeding the applicable OBD emissions threshold, Defendants shall  
15 conduct additional OBD emissions demonstration tests if the emissions test results for the  
16 OBD emissions demonstration test from the MY 2018 Ram 1500 full OBD emissions  
17 demonstration testing is greater than 150 percent of the applicable OBD emissions  
18 threshold.

19 b) For all other monitors, Defendants shall conduct additional OBD  
20 emissions demonstration tests if the emissions test results for the OBD emissions  
21 demonstration test from the MY 2018 Ram 1500 full OBD emissions demonstration  
22 testing is greater than 80 percent of the applicable OBD emissions threshold.

1           34.    New OBD Non-Compliances.

2           a.       For any OBD non-compliance disclosed by Defendants to CARB and EPA, or  
3 that CARB and EPA otherwise discover, and that has not been identified as a Pre-Approved OBD  
4 Deficiency, an Additional OBD Non-Compliance, or identified among the Additional OBD and  
5 Inducement Disclosures, Defendants shall pay a stipulated penalty as set forth in Paragraph 86.k and  
6 provide additional time to the Extended Warranty as set forth in Paragraph 86.k. For any OBD non-  
7 compliance that could cause a consumer's vehicle to fail or not complete the Inspection and  
8 Maintenance program testing (in accordance with 13 C.C.R. § 1968.5(b)(6)(C)(ii)), in lieu of providing  
9 additional time to the Extended Warranty, Defendants shall submit to CARB and EPA for review and  
10 approval a remedial plan in accordance with 13 C.C.R. § 1968.5(d) to address the OBD non-compliance  
11 that could cause the vehicle to fail the Inspection and Maintenance program, provided that Defendants  
12 shall not be subject to the OBD recall provisions if a vehicle fails or is otherwise not able complete the  
13 Inspection and Maintenance program because insufficient miles have been accumulated on the vehicle  
14 following application of the Approved Emissions Modification to clear any fault codes or Inspection and  
15 Maintenance readiness flags.

16           b.       For any OBD non-compliance for one model in a test group disclosed by  
17 Defendants to CARB and EPA, or that CARB and EPA otherwise discover, and that has not been  
18 identified as a Pre-Approved OBD Deficiency, an Additional OBD Non-Compliance, or identified  
19 among the Additional OBD and Inducement Disclosures, the entire test group is presumed to have that  
20 OBD non-compliance (e.g., if the MY 2014 Ram has such an OBD non-compliance, the MY 2014 Jeep  
21 Grand Cherokee is also deemed to have the same OBD non-compliance). However, Defendants may  
22 overcome this presumption by demonstrating to CARB and EPA that a particular OBD non-compliance  
23 does not apply to both models in a test group before being subject to any recall requirements to address  
24 the OBD non-compliance that caused a failure of the Inspection and Maintenance program pursuant to  
25



1 Paragraph 34.a, stipulated penalties pursuant to Paragraph 86.k, or Extended Warranties pursuant to  
2 Paragraph 86.k of this Consent Decree. CARB and EPA shall issue a joint written decision if they reject  
3 Defendants' demonstration, setting forth the factual, technical, and legal bases for such rejection of  
4 Defendants' demonstration.

5 c. Penalty Payment to CARB for Additional OBD Non-Compliances. Defendants  
6 shall make one aggregate penalty payment to CARB for each Additional OBD Non-Compliance on each  
7 Subject Vehicle in California. The total penalty due to CARB under this Paragraph is \$3,175,200.  
8 Within 30 days of the Effective Date, Defendants shall pay the penalty due under this Paragraph to  
9 CARB according to the instructions set forth in Paragraph 96.

10 35. Information Sharing with EPA and CARB.

11 a. Notification of Testing. Defendants shall notify EPA and CARB 15 days prior to  
12 conducting emissions tests in accordance with Paragraphs 29 (Aging Testing) and 30 (In-Use  
13 Verification Testing and In-Use Confirmatory Testing), so that the agencies can arrange to observe the  
14 testing.

15 b. Notification of Test Failure. In the event that a Subject Vehicle fails an emissions  
16 test, Defendants shall provide written notice to EPA and CARB within 72 hours of such an event.

17 c. Update of Internal Quality Control and Quality Assurance Procedures. In the  
18 event that Defendants update or modify the procedures listed and described in the Internal Quality  
19 Control and Quality Assurance Procedures, Defendants shall submit a copy of such changes to EPA and  
20 CARB within 30 days of making such changes.

21 d. EPA and CARB Data Portal. Defendants shall provide EPA and CARB with  
22 access to an internet-based portal to download data relating to test vehicles. Beginning no later than two  
23 weeks following the commencement of any emissions testing under this Consent Decree, and continuing  
24 every two weeks thereafter until all emissions testing under this Consent Decree has been completed,  
25



1 Defendants shall provide to the portal updates of Emissions Test Results and all other Emissions Test  
2 Data, as well as provide updates of all standardized OBD data collected from testing vehicles both  
3 before and after emissions testing. Defendants have no duty to provide updates to the portal during  
4 those weeks where no data is available. Data uploaded to the portal shall remain available to EPA and  
5 CARB until termination of the Consent Decree.

6 e. Dynamometer Data Reporting Requirements. Defendants shall provide  
7 Emissions Test Results and all other Emissions Test Data in the native format in which it exists as  
8 collected by Defendants and, in addition, shall provide the emissions summary report in Excel format.  
9 For any test that Defendants believe to be invalid, Defendants shall identify any and all reasons  
10 supporting this belief. Likewise, for any interrupted or aborted test, Defendants shall provide any and  
11 all reasons why the test was interrupted or aborted. Defendants shall provide the following information  
12 with respect to all Emissions Data Results:

13 i. ECU Data. Defendants shall provide a separate data log file for data  
14 collected from the ECU for each emissions test. Defendants shall collect data for all of the  
15 parameters set forth in the ECU Data Parameters List from each test vehicle during each test.  
16 Defendants shall provide the data in ETAS/INCA data format (i.e., .dat), except in the event that  
17 Emissions Test Results, together with the applicable Adjustment Factors in Appendix A, exceed  
18 the emissions standards referenced in Paragraph 28, above, in which event Defendants shall  
19 provide the data in a spreadsheet (e.g., .xlsx or .ascii) or comma separated values (CSV). In  
20 providing data, Defendants shall apply a file-naming convention that identifies the Vehicle  
21 Identification Number (“VIN”) of the test vehicle, the model year of the test vehicle, the test  
22 drive cycle, and date of test cycle;

23 ii. Continuous Emissions Data. Defendants shall provide all second-by-  
24 second raw emissions measurements for NO<sub>x</sub>, total hydrocarbons (“THC”), carbon monoxide  
25

1 (“CO”), and carbon dioxide (“CO<sub>2</sub>”) for each emissions test performed. Defendants shall  
2 provide this raw data in a CSV format that can be imported into a spreadsheet or database.  
3 Defendants shall also provide all second-by-second raw emissions measurements for non-  
4 methane hydrocarbons (“NMHC”) if and when Defendants have commissioned test facilities to  
5 conduct this measurement;

6 iii. Bag Results. Defendants shall provide an emissions test report containing  
7 the bag results for the emissions tests performed on a dynamometer, including (but not limited  
8 to) the bag results for PM; and

9 iv. Standardization OBD Data. Defendants shall provide all downloads of all  
10 standardized OBD data, in accordance with 13 C.C.R. § 1968.2, of the tested vehicles. This data  
11 shall be collected both pre- and post-testing for each emissions test.

12 f. OBD Data. For OBD testing performed pursuant to Paragraph 33 (OBD Testing),  
13 Defendants shall provide test data collection as set forth at 13 C.C.R. § 1968.2(h)(5.3), including all test  
14 data as detailed in 13 C.C.R. § 1968.2(h)(5.3.2), and a separate data log file for data collected from the  
15 ECU for each test. Defendants shall ensure that data collected from the ECU in the test vehicles  
16 includes all of the parameters set forth in the OBD Demonstration ECU Data Parameters List.  
17 Defendants shall provide the OBD Demonstration ECU data in ETAS/INCA data format (i.e., .dat), and  
18 they shall apply a file-naming convention that identifies the VIN of the test vehicle, the model year of  
19 the test vehicle, the test drive cycle, and date of test cycle.

20 g. Public Data Portal. Defendants shall establish and maintain an internet-based  
21 portal to enable the public to download Emissions Test Results generated under Paragraph 29 (Aging  
22 Testing) or Paragraph 30 (In-Use Verification and In-Use Confirmatory Testing). Such data shall  
23 include continuous emissions data (as described in Paragraph 35.e.ii, above) and bag results (as  
24 described in Paragraph 35.e.iii, above). Defendants shall not be required to post any data to the portal  
25

1 that they claim is confidential business information (“CBI”) unless and until EPA issues a determination  
2 rejecting such claim and such determination is no longer subject to challenge by Defendants. Data  
3 uploaded to the portal shall remain available until termination of the Consent Decree.

4 36. Reporting Requirements. In accordance with the timing for annual reports required by  
5 Paragraph 70.a, Defendants shall send an annual report to EPA and California that includes:

6 a. A list and descriptions of all modifications to the Subject Vehicles made within  
7 the past twelve month period under Paragraphs 24 or 25;

8 b. A summary of all activities, if any, within the past twelve months relating to aging  
9 testing under Paragraph 29, including the procurement and screening of vehicles, mileage accumulation  
10 on Aging Test Vehicles and/or Backup Vehicles, emissions testing, and Root-Cause Evaluations;

11 c. A summary of all activities, if any, within the past twelve months relating to in-  
12 use testing under Paragraph 30, including the selection and screening of Subject Vehicles, in-use  
13 verification testing of such vehicles, in-use confirmatory testing of such vehicles, emissions testing, and  
14 Root-Cause Evaluations;

15 d. A summary of all activities, if any, within the past twelve months relating to  
16 remedial action under Paragraph 31.f, including the submission of a remedial plan or the implementation  
17 of an approved remedial plan and schedule; and

18 e. A summary of all activities, if any, within the past twelve months relating to OBD  
19 testing under Paragraph 33, including the disclosure of any new OBD non-compliances as described in  
20 Paragraph 34.

21 **B. Emissions Modification Recall Program**

22 37. Establishment of Recall Program. Defendants shall establish an Emissions Modification  
23 Recall Program in accordance with the requirements of this Section VI.B. Under the program,  
24 Defendants shall offer and, if accepted, provide the Approved Emissions Modification, together with the  
25

1 applicable disclosures as described in Paragraph 43.b and applicable warranties as described in  
2 Paragraph 45.a, to Eligible Owners and Eligible Lessees of Subject Vehicles that meet the eligibility  
3 requirements set forth under this Consent Decree (i.e., Eligible Vehicles). As described in Paragraph 41  
4 (Recall Participation Targets), the Recall Program shall have the goal of implementing the Approved  
5 Emissions Modification on at least 85 percent of all Subject Vehicles, both in the United States and in  
6 the State of California, by no later than the 2-year anniversary of the Effective Date (“Recall Target  
7 Deadline”).

8 38. Offer to Modify Subject Vehicles with Approved Emissions Modification.

9 a. No later than 15 days after the Effective Date, Defendants shall offer to Eligible  
10 Owners and Eligible Lessees the Approved Emissions Modification, as described in Paragraph 23.  
11 Defendants shall notify Eligible Owners and Eligible Lessees of this offer in accordance with Paragraph  
12 43 (Notices and Disclosures Regarding Recall Program). For each Eligible Owner and Eligible Lessee  
13 that accepts this offer, Defendants shall provide the Approved Emissions Modification in accordance  
14 with this Paragraph 38. In addition, Eligible Owners and Eligible Lessees of Subject Vehicles that have  
15 received the Approved Emissions Modification shall receive from Defendants an Extended Warranty in  
16 accordance with Paragraph 45 (Warranty Obligations).

17 b. Scheduling. Defendants shall use commercially reasonable efforts to complete  
18 the Approved Emissions Modification for a given Eligible Vehicle within 15 days of the date on which  
19 an Eligible Owner or Eligible Lessee requests and schedules the modification, either through  
20 Defendants’ call center or by contacting a Dealer. During the period from the Effective Date through  
21 the eighteenth (18th) anniversary of the Effective Date, in no event shall an Eligible Owner or Eligible  
22 Lessee be required to wait more than 75 days for a scheduled appointment to receive the Approved  
23 Emissions Modification after requesting an appointment through Defendants’ call center or by  
24 contacting a Dealer.

1           c.     Call Center and Online Support. Defendants shall, as part of the Recall Program,  
2 provide a toll-free call center staffed during normal business hours and a web page accessible from  
3 Defendants' primary consumer website in the United States. The call center shall respond to consumer  
4 questions and concerns about the Approved Emissions Modification, and shall provide assistance in: (1)  
5 scheduling appointments at Dealers to receive the Approved Emissions Modification; (2) answering  
6 questions regarding the effects of the Approved Emissions Modification on the Subject Vehicles as  
7 described in Appendix D (Disclosure); (3) providing information about the Extended Warranty and  
8 warranty protections contained in Paragraph 45 (Warranty Obligations); and (4) providing information  
9 about any consumer incentives or benefits being offered in connection with the Approved Emissions  
10 Modification. The web page shall provide information specified in clauses (3) and (4) of the preceding  
11 sentence. Such call center and web page shall be maintained by Defendants and operational through the  
12 Recall Target Deadline.

13           d.     No Consideration May Be Required. In no event shall Defendants request or  
14 receive any consideration from Eligible Owners or Eligible Lessees as a condition for Defendants' duty  
15 to offer and provide the Approved Emissions Modification and Extended Warranty. Defendants, their  
16 agents, contractors, dealers, successors, or assigns shall provide the Approved Emissions Modification  
17 and the Extended Warranty free of charge to all Eligible Owners and Eligible Lessees. Defendants may  
18 not require any release of liability for any legal claims or arbitration of any claim that an Eligible Owner  
19 or Eligible Lessee may have against Defendants or any other person solely in exchange for receiving the  
20 Approved Emissions Modification or the Extended Warranty.

21           e.     Grounds for Refusal to Apply the Modification to an Eligible Vehicle. If an  
22 Eligible Vehicle has been altered with the use of any after-market emissions-related components, parts,  
23 and/or software or the removal of any original emissions-related components, parts, and/or software, and  
24 such alteration(s) are likely to substantially affect the operation of the vehicle with the Approved  
25

1 Emissions Modification or substantially impede installation of the Approved Emissions Modification,  
2 Defendants shall not be required to install the Approved Emissions Modification on the Eligible Vehicle  
3 until the owner of such vehicle, at his or her expense, has reversed the alteration(s) such that the  
4 Approved Emissions Modification may be installed and not be substantially affected. Defendants may  
5 receive half credit toward the National Recall Target and the California Recall Target for such vehicles,  
6 but only to the extent that such vehicles meet the definition of Owner-Altered Subject Vehicles and  
7 Defendants comply with Paragraph 41.c below.

8 f. No Prohibition on Other Incentives. Nothing in this Consent Decree is intended  
9 to prohibit Defendants from offering an Eligible Owner or Eligible Lessee any further incentives or  
10 trade-in options from time to time in addition to those contemplated herein; however, Defendants may  
11 not offer Eligible Owners or Eligible Lessees other incentives or trade-in options in lieu of the  
12 requirements contained herein, in whole or in part.

13 39. No End Date for Emissions Modifications Recall. Except as otherwise provided under  
14 this Consent Decree and in Paragraph 38.c, Defendants' duties and responsibilities under Paragraph 38  
15 (Offer to Modify Subject Vehicles with Approved Emissions Modification) to offer and provide the  
16 Approved Emissions Modification to Eligible Owners and Lessees shall not terminate, subject to the  
17 terms of this Paragraph. Defendants must continue to provide the Approved Emissions Modification to  
18 all Eligible Owners or Eligible Lessees as provided in Paragraphs 38.a and 38.b through the eighteenth  
19 (18th) anniversary of the Effective Date. Following the eighteenth (18th) anniversary of the Effective  
20 Date, Defendants must continue to provide the Approved Emissions Modification as provided in  
21 Paragraph 38.a where feasible, and must make reasonable efforts to ensure that the Approved Emissions  
22 Modification continues to remain available. Such reasonable efforts shall include, at a minimum: (1)  
23 maintaining an inventory of Subject Vehicle-compatible ECUs and TCUs, the electronic file that  
24 constitutes the Approved Emissions Modification, and the tools, equipment, and instructions necessary  
25

1 for installing the Approved Emissions Modification; (2) communicating to Dealers through Defendants’  
2 electronic dealer communication system that this Approved Emissions Modification is “open” and that  
3 Defendants’ retains the electronic file that constitutes the Approved Emissions Modification, along with  
4 the tools and instructions required to install the Approved Emissions Modification; and (3) providing the  
5 Approved Emissions Modification, whether through a Dealer or otherwise, to Eligible Owners and  
6 Eligible Lessees pursuant to this Paragraph 39 for as long as the necessary parts, tools, and equipment  
7 referred to in clause (1) above remain in working order and/or are available from third parties. In  
8 accordance with Section XVIII (Termination), the requirements contained in this Paragraph 39 shall  
9 continue in full force and effect after Termination of the Consent Decree. Defendants may move for  
10 Termination of the Consent Decree pursuant to the requirements of Section XVIII even though the  
11 provisions of this Paragraph 39 remain in full force and effect.

12       40.     Owner-Altered Subject Vehicle Report. Defendants shall, no later than 30 days  
13 following the Effective Date, submit to EPA and CARB in accordance with the requirements of Section  
14 XIV (Notices) an Owner-Altered Subject Vehicle Report that contains a list by VIN of all Subject  
15 Vehicles that, based on information obtained by Defendants, meet or are likely to meet the definition of  
16 an Owner-Altered Subject Vehicle. Such list shall identify with specificity: (1) the alterations that are  
17 potentially associated with each Owner-Altered Subject Vehicle, including the particular hardware or  
18 software changes or modifications (including removal) associated with the vehicle and, if known, the  
19 name of the manufacturer or vendor of such hardware or software; (2) the model and model year of the  
20 vehicle; and (3) if known, the state in which the vehicle is registered. Where applicable, the Owner-  
21 Altered Subject Vehicle Report shall also describe how, to the best of Defendants’ knowledge, the  
22 particular hardware or software alteration(s) or removal(s) is likely to reduce the effectiveness of the  
23 emission control system if installed on a Subject Vehicle. The Owner-Altered Subject Vehicle Report  
24 shall not contain any PII other than the VINs of the Owner-Altered Subject Vehicles. For each element  
25



1 of software, part or component that Defendants contend is likely to reduce the effectiveness of the  
2 emission control system if installed on a Subject Vehicle, Defendants shall include with the Owner-  
3 Altered Vehicle Report copies of any reasonably available advertisements, product literature, or other  
4 material that supports Defendants' contention. Until the Recall Target Deadline, Defendants may  
5 supplement the Owner-Altered Subject Vehicle Report or otherwise proffer evidence to claim credit for  
6 additional vehicles pursuant to Paragraph 41.

7 41. Recall Participation Targets. By no later than the Recall Target Deadline, Defendants  
8 shall perform the Approved Emissions Modification on at least 85% of those Subject Vehicles that  
9 existed and were registered as of October 1, 2018, as defined below ("National Recall Target").  
10 Additionally, by no later than the Recall Target Deadline, Defendants shall perform the Approved  
11 Emissions Modification on at least 85% of those Subject Vehicles that existed and were registered in  
12 California as of October 1, 2018, as defined below ("California Recall Target"). Defendants shall  
13 receive credit toward the National Recall Target (and for California vehicles, the California Recall  
14 Target) for: (1) every Approved Emissions Modification of a Subject Vehicle that Defendants execute  
15 prior to the Recall Target Deadline; (2) any Subject Vehicle that is scrapped or otherwise permanently  
16 removed from commerce between October 1, 2018 and the Recall Target Deadline; and (3) any Owner-  
17 Altered Subject Vehicles that qualifies for half credit under Paragraph 41.c below, provided that no  
18 Subject Vehicle may be counted more than once. These three enumerated options are the exclusive  
19 ways in which Defendants may receive any credit toward the National Recall Target and California  
20 Recall Target under this Consent Decree. For purposes of this Paragraph, the total number of Subject  
21 Vehicles that existed and were registered as of October 1, 2018 is 100,148, unless the class of vehicles  
22 covered by the Related Class Action Settlement does not include any Canadian Subject Vehicles, in  
23 which case the number of Subject Vehicles is set at 99,257. For purposes of this Paragraph, the total  
24 number of Subject Vehicles registered in California as of October 1, 2018 is 13,325.



1           a.       If, by the Recall Target Deadline, Defendants fail to achieve the 85% Recall Rate  
2 Targets required by this Paragraph 41, Defendants shall make payments as follows:

3                   i.       National Recall Rate Payment. For failure to reach the National Recall  
4 Target, Defendants shall make a payment of \$5,500,000 for each 1% that the National Recall  
5 Rate falls short of the National Recall Target. In calculating any payment required under this  
6 subparagraph, the National Recall Rate shall be rounded to the nearest half percentage point.

7                   ii.       California Recall Rate Payment. For failure to reach the California Recall  
8 Target, Defendants shall make a payment of \$825,000 for each 1% that the California Recall  
9 Rate falls short of the California Recall Target. In calculating any payment required under this  
10 subparagraph, the California Recall Rate shall be rounded to the nearest half percentage point.

11           b.       All payments made pursuant to this Paragraph 41 shall be made in the manner set  
12 forth in Section IV (Civil Penalty) and shall be made no later than 30 days following the Recall Target  
13 Deadline. Payments relating to the National Recall Target shall be made to the United States in the  
14 manner set forth in Paragraph 10. Payments relating to the California Recall Target shall be made to  
15 CARB in the manner set forth in Paragraph 12.

16           c.       Defendants may receive credit toward the National Recall Target for up to 6,000  
17 Owner-Altered Subject Vehicles, and may receive credit toward the California Recall Target for up to  
18 900 Owner-Altered Subject Vehicles registered in California, that have not received an Approved  
19 Emissions Modification prior to the Recall Target Deadline, provided that Defendants meet the  
20 requirements of this Paragraph 41.c with respect to such vehicles. The credit received for each Owner-  
21 Altered Subject Vehicle shall be limited to one half the credit that Defendants may receive for each  
22 Subject Vehicle that receives the Approved Emissions Modification (i.e., for 6,000 Owner-Altered  
23 Subject Vehicles, Defendants may receive credit for 3,000 vehicles against the National Recall Rate; and  
24 for 900 Owner-Altered Subject Vehicles registered in California, a credit of 450 vehicles against the  
25

1 California Recall Rate). In order to receive credit toward the Recall Targets for an Owner-Altered  
2 Subject Vehicle, Defendants must:

3 i. Identify the Owner-Altered Subject Vehicle by VIN in a final Owner-  
4 Altered Subject Vehicle Report to EPA and CARB consistent with the requirements of  
5 Paragraph 40 to be submitted upon the expiration of the Recall Target Deadline. Such report  
6 must state separately for each Owner-Altered Subject Vehicle whether the vehicle is registered in  
7 California. The report shall not contain any PII other than the VIN.

8 ii. Provide evidence that the Owner-Altered Subject Vehicle has been the  
9 subject of no fewer than three written communications from Defendants to the Eligible Owner or  
10 Eligible Lessee of the vehicle regarding the availability of the Approved Emissions Modification  
11 sent a minimum of 30 days apart, or that the Owner-Altered Subject Vehicle was brought to a  
12 Dealer and did not receive the Approved Emissions Modification; and

13 iii. Confirm that such Owner-Altered Subject Vehicles have not, as of the date  
14 of the Report concerning such Owner Altered Subject Vehicles, received the Approved  
15 Emissions Modification or been scrapped or otherwise permanently removed from commerce.

16 42. Adjustments to Recall Program in the Event of Future Remedial Action.

17 a. Amendment of Approved Emissions Modification for Subject Vehicles Repaired  
18 Pursuant to a Remedial Action. If and when EPA and CARB approve a remedial action under  
19 Paragraph 31.f (Remedial Action), the Approved Emissions Modification (“Original AEM”) shall  
20 immediately, and without any further action by the Court, be amended for all Subject Vehicles that are  
21 to be repaired under the approved remedial action (“RA Subject Vehicles”). The amended Approved  
22 Emissions Modification (“Amended AEM”) for the RA Subject Vehicles shall replace the Original  
23 AEM or may include the Original AEM as updated and/or supplemented by repairs required by EPA and  
24 CARB under the approved remedial action. Wherever the term “Approved Emissions Modification”  
25

1 appears in this Consent Decree, such term as applied to the RA Subject Vehicles means the Amended  
2 AEM. If no remedial action is approved by EPA and CARB under Paragraph 31.f (or no such remedial  
3 action is proposed by Defendants), the Original AEM shall remain in effect as the operative Approved  
4 Emissions Modification for such vehicles.

5           b.     Adjustment of Recall Rates. Notwithstanding any other Paragraph under this  
6 Consent Decree, Defendants shall receive no credit toward the National Recall Target (and for  
7 California, the California Recall Target) for RA Subject Vehicles updated with the Original AEM in the  
8 event that EPA and CARB approve a remedial action under Paragraph 31.f to repair the RA Subject  
9 Vehicles. Instead, for all such vehicles, Defendants shall receive credit toward the National Recall  
10 Target (and for California, the California Recall Target) for every Amended AEM that Defendants  
11 install in an RA Subject Vehicle prior to the Recall Target Deadline, as well as any RA Subject Vehicle  
12 that is scrapped or otherwise permanently removed from commerce or that qualifies as an Owner-  
13 Altered Subject Vehicle under Paragraph 41.c between October 1, 2018 and the Recall Target Deadline,  
14 provided that no RA Subject Vehicle may be counted more than once.

15           c.     Extension of Time to Meet Recall Targets. In the event that EPA and CARB  
16 approve a remedial action under Paragraph 31.f (Remedial Action), the agencies will extend the Recall  
17 Target Deadline set forth in Paragraph 37 for a period of not less than 4 months, and may, in their  
18 discretion, extend such deadlines for a longer period to the extent necessary to allow Defendants an  
19 appropriate amount of time to install the Amended AEM or Original AEM on Subject Vehicles. In  
20 determining whether to grant an extension beyond 4 months, the agencies may consider, as they deem  
21 appropriate, the progress toward the Recall Targets, the number of vehicles that are subject to the  
22 remedial action, and the number of vehicles that are not subject to the remedial action.

23           i.     If a remedial action is approved by EPA and CARB before the Recall  
24 Target Deadline set forth in Paragraph 37, any extension of the Recall Target Deadline allowed  
25

1 under this Paragraph 42.c and Paragraph 31.g shall apply for all Subject Vehicles and shall not  
2 be limited solely to RA Subject Vehicles. In addition, if EPA and CARB approve a remedial  
3 action, no payment required under Paragraph 41.a shall be due until 30 days following the  
4 extended Recall Target Deadline allowed for under this Paragraph 42.c and Paragraph 31.g.

5 ii. If a remedial action is approved by EPA and CARB after the Recall Target  
6 Deadline set forth in Paragraph 37, EPA and CARB shall establish a new Recall Target Deadline  
7 under Paragraph 31.g with respect to the affected RA Subject Vehicles only, and Defendants  
8 shall be subject to the Recall Participation Targets in Paragraph 41 for all Subject Vehicles,  
9 subject to the requirements of Paragraph 42.b above. If, after the extended Recall Target  
10 Deadline for RA Subject Vehicles has passed, Defendants have failed to reach the Recall  
11 Participation Targets in Paragraph 41, in determining the amount of any payment owed pursuant  
12 to Paragraph 41 and Paragraph 42.b, Defendants shall receive credit for any payments already  
13 made under Paragraph 41. However, in no event shall Defendants be entitled to any refund of  
14 any payment made under Paragraph 41.a prior to a remedial action approval by EPA and CARB.

15 iii. As an example to illustrate the operation of Paragraph 42.c.ii above, if  
16 Defendants achieve an 82% recall rate nationally for all Subject Vehicles, Defendants would  
17 pay, within 30 days following the Recall Target Deadline, \$16,500,000 in penalties according to  
18 the terms of Paragraph 41. If, sometime later, a remedial action is approved for a portion of  
19 Subject Vehicles, those vehicles that received the Original AEM and that are the subject of the  
20 remedial action would be subtracted from the 82% recall rate. For purposes of this example,  
21 assume this subtraction results in a revised recall rate of 77%). In accordance with Paragraph  
22 42.c.ii, Defendants would be granted an extension of the Recall Target Deadline for RA Subject  
23 Vehicles only. If, at the end of this extension, Defendants have achieved a total recall of 80% in  
24 accordance with Paragraph 42.b, Defendants would owe an additional \$11,000,000 in penalties.  
25

1           Conversely, if Defendants achieve a total recall of 84% in accordance with Paragraph 42.b,  
2           Defendants would owe no additional penalties, but would not be entitled to a refund of any  
3           penalties already paid.

4           43.    Notices and Disclosures Regarding Recall Program.

5                a.    Initial Program Notice. No later 15 days after the Effective Date, Defendants  
6 shall send or cause to be sent by First-Class, postage paid U.S. mail to all Eligible Owners and Eligible  
7 Lessees known to Defendants notice of the Recall Program and a complete description of Eligible  
8 Owners and Eligible Lessees' rights thereunder. Such notice must satisfy the requirements of Paragraph  
9 43.a.i or 43.a.ii below.

10                   i.    Class Action Settlement Notice. Defendants may satisfy their obligation  
11           under Paragraph 43 by sending to Eligible Owners and Eligible Lessees a Court-approved Class  
12           Action Settlement Notice as part of a Class Action Settlement if such notice is approved by the  
13           Court before the Effective Date of this Consent Decree and if EPA, in consultation with CARB,  
14           does not require Defendants to distribute an alternative notice pursuant to (ii) below.

15                   ii.   Alternative Notice. If Defendants do not send to Eligible Owners and  
16           Eligible Lessees a Court-approved Class Action Settlement Notice in accordance with Paragraph  
17           43.a., above, or if Defendants are advised by EPA, in consultation with CARB, at any time  
18           before January 22, 2019 that Defendants must submit to the agencies a proposed Recall Program  
19           notice different from the Class Action Settlement Notice (including, but not limited to, a  
20           proposed Recall Program notice for Eligible Owners or Eligible Lessees of Canadian Subject  
21           Vehicles), Defendants shall, no later than February 7, 2019, submit to the United States and  
22           California for review and approval a proposed notice together with a proposed plan for  
23           disseminating such notice to applicable Eligible Owners and Eligible Lessees.

1           b.     Modification Disclosure. Before applying the Approved Emissions Modification  
2 to an Eligible Vehicle, Defendants shall provide to the affected Eligible Owner or Eligible Lessee a copy  
3 of an Approved Emissions Modification Disclosure (“Disclosure”) that contains all information listed in  
4 Appendix D and also includes a link to the public website referenced in this Paragraph that contains the  
5 same information. Such disclosure shall be included in the initial program notice described in Paragraph  
6 43.a above. In addition, an Approved Emissions Modification Disclosure that contains all the  
7 information listed in Appendix D shall be made available online on a public website by Defendants  
8 within two business days of the Effective Date.

9           c.     Dealer Notice. No later than 15 days after the Effective Date, Defendants shall  
10 provide to Dealers in the United States a notice describing Dealers’ obligations under the Recall  
11 Program. Notices sent to Dealers under this Paragraph shall advise Dealers of their obligations to install  
12 the Approved Emissions Modification, disseminate the Modification Disclosure under Paragraph 43.b,  
13 and comply with the requirements of Paragraphs 38 above and 45 below.

14           d.     Subsequent Notices. Nothing in this Consent Decree shall prevent Defendants  
15 from issuing subsequent notices or taking additional measures to inform Eligible Owners or Eligible  
16 Lessees of the Recall Program and encouraging prompt participation in the Recall Program, provided,  
17 however, that Defendants may not provide any notice or additional information regarding the Recall  
18 Program that is inconsistent with or contradictory to the notices required by Paragraph 43, and any  
19 notice or additional information must be consistent in all material respects with the Disclosure included  
20 as Appendix D, including any subsequent modifications to address unforeseen technical problems made  
21 pursuant to Paragraph 24 or any subsequent changes to the Approved Emissions Modification made  
22 pursuant to Paragraph 31. Defendants shall provide a copy of any subsequent consumer notices  
23 regarding the Recall Program that they provide to Eligible Owners or Eligible Lessees to EPA, CARB,  
24 and CA AG in accordance with Section XIV (Notices) as part of Defendants’ reports required by  
25

1 Paragraph 47 and shall provide any such subsequent consumer notices regarding the Recall Program to  
2 CA AG at the time such notices are distributed to affected Eligible Owners or Eligible Lessees.

3 44. Vehicle Labeling. Defendants must permanently affix the labels described in this  
4 Paragraph 44 and in the form approved by EPA, in consultation with CARB, to each and every vehicle  
5 that receives the Approved Emissions Modification. Such labels must: (1) not cover any previously  
6 affixed labels; (2) inform potential vehicle purchasers and potential lessees that the vehicle has received  
7 the Approved Emissions Modification, in accordance with Section VI.A; (3) conform to the  
8 requirements of the recall label required under 40 C.F.R. Part 85, Subpart S; and (4) identify any  
9 emissions control components installed or modified in accordance with the Approved Emissions  
10 Modification.

11 45. Warranty Obligations.

12 a. Extended Warranty. Defendants shall provide an extended warranty for each  
13 Subject Vehicle that receives the Approved Emissions Modification. Such warranty, known as the  
14 “Extended Warranty,” shall be as described in Appendix E and shall cover all components, parts, and  
15 associated labor as listed therein. Defendants shall not impose on consumers any fees or charges (and  
16 must pay any fees or charges imposed on consumers by any Dealer in accordance with the applicable  
17 franchise agreements with such Dealers) related to the warranty service. Defendants shall take all  
18 measures necessary to reimburse Eligible Owners and Eligible Lessees in the event that the scope of  
19 warranty coverage described in this Consent Decree and in Appendix E is limited by any service writer’s  
20 discretion. Notwithstanding the foregoing, an Eligible Owner or Eligible Lessee of a Canadian Subject  
21 Vehicle shall receive an Extended Warranty for such vehicle only after the vehicle has been registered  
22 with FCA US LLC by providing FCA proof of state registration, proof of ownership or lease, and the  
23 current mileage/kilometers on the vehicle.



1           b.     Modification of the Extended Warranty. In addition to the warranty coverage  
2 described in Appendix E, Defendants shall expand the warranty coverage to include additional parts or  
3 service associated with the Approved Emissions Modification if alterations or updates are made to the  
4 Approved Emissions Modification either in accordance with Paragraph 31 or through a modification of  
5 this Consent Decree in accordance with Section XVII (Modification). Defendants reserve the right to  
6 invoke Dispute Resolution under Section X (Dispute Resolution) of this Decree if, after consultation  
7 with EPA and CARB, the Parties are unable to agree on the need for or scope of any modification of the  
8 Extended Warranty under this Paragraph. In the event that the Extended Warranty is modified pursuant  
9 to this Paragraph, the modified Extended Warranty shall apply to all affected Subject Vehicles that have  
10 received or will receive the Approved Emissions Modification.

11           c.     Extended Warranty Period. For all Eligible Vehicles that receive the Approved  
12 Emissions Modification on or before the Recall Target Deadline, the Extended Warranty Period shall be  
13 the greater of: (i) 10 years from the date of initial sale or 120,000 actual miles on the vehicle odometer,  
14 whichever comes first; and (ii) 4 years or 48,000 miles, from date and mileage of installing the  
15 Approved Emissions Modification on the vehicle, whichever comes first. For any Subject Vehicle that  
16 receives the Approved Emissions Modification after the Recall Target Deadline, the Extended Warranty  
17 Period shall be as described in the previous sentence, but in no event shall the Extended Warranty apply  
18 to or provide any coverage for the Subject Vehicle after May 1, 2029. In the event that a Subject Vehicle  
19 that has received the Approved Emissions Modification is re-sold, the remaining Extended Warranty  
20 Period, if any, is transferable to subsequent purchasers and shall continue through the date or mileage  
21 determined in this Paragraph for the benefit of such subsequent purchasers. The Extended Warranty  
22 Period shall continue in full force and effect after Termination of the Consent Decree. Defendants may  
23 move for Termination of the Consent Decree pursuant to the requirements of Consent Decree Section  
24  
25



1 XVIII (Termination) even though the warranty obligations imposed by the Extended Warranty Period  
2 shall remain in full force and effect.

3 d. Buyback and Lease Termination Remedies. In addition to any protections  
4 provided by applicable law (including those referenced in Paragraph 45.e below), Defendants must  
5 provide a Buyback or Lease Termination to any Eligible Owner or Eligible Lessee of an Eligible  
6 Vehicle that receives the Approved Emissions Modification in the event that, during the 18 months or  
7 18,000 miles (whichever comes first) following the completion of the Approved Emissions Modification  
8 (the “Remedy Period”), Defendants fail to repair or remedy a confirmed failure or malfunction covered  
9 by the Extended Warranty and associated with the Approved Emissions Modification (a “Warrantable  
10 Failure”) after the Eligible Owner or Eligible Lessee physically presents the Subject Vehicle to a Dealer  
11 for repair of the Warrantable Failure; and (i) the Warrantable Failure is unable to be remedied after  
12 making 4 separate service visits to the same Dealer for the same Warrantable Failure during the Remedy  
13 Period; or (ii) the Subject Vehicle with the Warrantable Failure is out-of-service due to the Warrantable  
14 Failure for a cumulative total of 30 days during the Remedy Period, not including any days when the  
15 Dealer returns or otherwise tenders the Subject Vehicle to the customer while the Dealer awaits  
16 necessary parts and such vehicle remains Operable.

17 e. Preservation of Remedies. The Extended Warranty shall be subject to any  
18 remedies provided by state or federal laws, such as the Magnuson-Moss Warranty Act, that provide  
19 consumers with protections, including without limitation “Lemon Law” protections, with respect to  
20 warranties.

21 f. Warranty Database for Consumers. For 10 years following the Effective Date,  
22 Defendants shall maintain a database by which users, including Eligible Owners, Eligible Lessees, and  
23 prospective purchasers, may conduct a free-of-charge search by vehicle VIN to determine whether the  
24 vehicle has received an Approved Emissions Modification and whether the Extended Warranty and any  
25

1 Additional Warranty Extension(s) apply to the specific vehicle. Defendants must provide the VINs for  
2 all such vehicles to EPA/CARB within 15 days of EPA/CARB's request.

3 g. Warranty Database for Dealers. For 20 years following the Effective Date,  
4 Defendants shall maintain a database or other communications system that includes all Subject Vehicles,  
5 by which Dealers may search by vehicle VIN to determine whether the Extended Warranty and any  
6 Additional Warranty Extensions apply to a specific Subject Vehicle. Defendants shall establish  
7 procedures such that the vehicle VIN shall dictate component or system coverage. Such procedures  
8 shall include a feature by which Dealers may enter an identification number or other code for any part  
9 pertaining to a Subject Vehicle and determine whether such part is covered by the Extended Warranty.

10 h. Continued Service for Unmodified Vehicles. For Eligible Owners and Eligible  
11 Lessees who decline to receive the Approved Emissions Modification for an Eligible Vehicle,  
12 Defendants must continue to service such Eligible Vehicle in accordance with existing applicable  
13 federal and state law warranty provisions (including any exclusions for modified parts, components, and  
14 software), provided that if service of the ECU or TCU is needed: (i) in no event may Defendants  
15 introduce any configuration of software or calibrations that contains a Defeat Device, and (ii)  
16 Defendants may decline to service the ECU or TCU if servicing the ECU or TCU would require  
17 Defendants to install or reflash any configuration other than the Approved Emissions Modifications.  
18 Such requirements, and the potential effect on Eligible Owners and Eligible Lessees must be clearly  
19 described in the Vehicle Recall Program Disclosure Statement required under Paragraph 43.b.

20 46. Export, Sale, and Resale of Subject Vehicles.

21 a. Defendants are hereby permanently enjoined from selling, re-selling, leasing, or  
22 re-leasing or causing the sale, resale, lease, or re-lease of any Subject Vehicle that has not received the  
23 Approved Emissions Modification.

1           b. Defendants may not export or arrange for the export of any Subject Vehicle  
2 unless either: (i) the Subject Vehicle has received the Approved Emissions Modification; or (ii)  
3 Defendants have received prior written authorization from EPA, in consultation with CARB, to export  
4 unmodified vehicles and have identified to EPA and CARB the vehicle(s) to be exported by VIN, the  
5 anticipated date of export, and the reason for export.

6           c. Defendants, their agents, contractors, Dealers, successors, and assigns are  
7 required to install or cause to be installed the Approved Emissions Modification on all unmodified  
8 Operable Subject Vehicles that are returned to the custody and control of Dealers or Defendants and that  
9 are not owned or leased by Eligible Owners or Eligible Lessees. This obligation extends without  
10 limitation to all Operable Subject Vehicles that return to the custody or control of Dealers following a  
11 completed lease term or vehicle trade-in.

12           d. Subject to applicable law, Defendants shall use all reasonable efforts to ensure  
13 that Dealers do not sell, re-sell, lease, or re-lease any Subject Vehicle unless that vehicle has first  
14 received the Approved Emissions Modification. For all Subject Vehicles that are sold, re-sold, leased,  
15 or re-leased by Defendants or Dealers following the Effective Date, Defendants, subject to applicable  
16 law, must perform or use all reasonable efforts to cause Dealers to perform the following prior to the  
17 sale, resale, lease, or re-lease of the Subject Vehicles:

18           i. Execute all emissions-related service actions and repairs required to bring  
19 the vehicle into compliance with the terms of this Consent Decree;

20           ii. Label the vehicle in accordance with the requirements of Paragraph 44 of  
21 the Decree; and

22           iii. Make all disclosures to prospective vehicle owners and lessees as required  
23 by Paragraph 43.b of this Consent Decree. All consumers who purchase or lease a Subject  
24  
25

1 Vehicle from Defendants or a Dealer must be given a written copy of a disclosure that contains  
2 the information attached to this Decree as Appendix D.

3 47. Recall Program Reporting and Monitoring. Defendants shall provide separate status  
4 reports on the Recall Program to EPA, and to CARB and the CA AG as set forth below. The first and  
5 subsequent reports shall be due on a quarterly basis as set forth in Paragraph 70, with the final report due  
6 the first quarter following the Recall Target Deadline. Of the information required below, Defendants  
7 shall submit to EPA only the information required by Paragraphs 47.a, 47.d, and 47.e, or as EPA  
8 requests below. Such status reports shall be certified in accordance with the requirements of Section VII  
9 (Reporting Requirements) and shall include, at a minimum, the following elements:

10 a. A review of Defendants' progress toward reaching the Recall Participation  
11 Targets required by Paragraph 41;

12 b. To CARB/CA AG only, each Eligible Vehicle, listed by VIN, model, and year,  
13 that has received an Approved Emissions Modification and the date of such modification;

14 c. To CARB/CA AG only, each Eligible Vehicle, listed by VIN, model, and year,  
15 that, based on current information available to Defendants, has been sold, re-sold, exported, rendered  
16 inoperable, or destroyed, and the date of such resale, export, rendering, or destruction;

17 d. A summary showing rates and trends of all warranty claims made and claims  
18 honored under Paragraph 45, together with notice of any Eligible Owner or Eligible Lessee who has  
19 become eligible for Buyback or Lease Termination under Paragraph 45.d;

20 e. A report regarding any instances in which an Approved Emissions Modification  
21 was not installed or unable to be performed for any reason, including any instances in which an  
22 Approved Emissions Modification was not performed for reasons pursuant to Paragraph 38.e;

1 f. To CARB/CA AG only, a compilation of all notices regarding the Recall Program  
2 widely distributed to Eligible Owners or Eligible Lessees since the last report submitted by Defendants  
3 under this Paragraph, including email notices and any updates to the Recall Program web page; and

4 g. To CARB/CA AG only, a summary or copy of all bulletins, notices, or other  
5 similar communications sent to Dealers regarding the Recall Program, including information regarding  
6 Warranty Obligations under Paragraph 45.

7 h. Additionally, Defendants shall provide EPA, CARB, and the CA AG with any  
8 documents, accounting, or other information reasonably requested by such agency and in the possession  
9 of Defendants related to Defendants' compliance with the Recall Program requirements within 30 days  
10 of the request by the agencies, or longer with the requesting party's agreement.

11 48. Related Class Action Settlement. Defendants may satisfy all consumer-facing  
12 obligations under Paragraphs 37, 38, 43, and 45 of this Consent Decree by fulfilling the parallel  
13 obligations under a related Class Action Settlement provided the following requirements are satisfied:

14 a. The Class Action Settlement must provide for the establishment, administration,  
15 and monitoring of a recall program for all Eligible Vehicles, with such program lasting at least two years  
16 from the Effective Date of this Decree;

17 b. The United States and California must send notice to Defendants that the Class  
18 Action Settlement satisfies the requirements of Paragraphs 37, 38, 43, and 45 of this Consent Decree;

19 c. Defendants agree that, to the extent the Class Action Settlement contains terms  
20 for warranty coverage that are more favorable to Eligible Owners and Eligible Lessees, the Class Action  
21 Settlement's more favorable warranty provisions shall control;

22 d. The Class Action Settlement must be filed in this action, *In re Chrysler-Dodge-*  
23 *Jeep "Ecodiesel,"* MDL No. 2777 (N.D. Cal.), and lodged or filed with this Court no later than January  
24  
25

1 10, 2019. With the agreement of all parties to this Consent Decree, this deadline may be extended by  
2 order of the Court to a date not later than January 31, 2019; and

3 e. The Class Action Settlement must be entered as a final judgment by this Court  
4 without such judgment being delayed, reversed, or vacated by an appellate court. If such judgment is  
5 delayed, reversed, or vacated for any reason, Defendants shall abide by all terms of this Consent Decree.

6 49. Modifications to this Decree Contingent on Related Class Action Settlement. If the  
7 United States and California send to Defendants the notice provided for under Paragraph 48.b and the  
8 Class Action Settlement is entered as a final judgment pursuant to Paragraph 48.e, the following  
9 modified terms of this Consent Decree shall become operative without further amendment to this Decree  
10 or action by the Court. All other terms of the Consent Decree shall remain in full force and effect.

11 a. Recall Program Reporting Obligations. Defendants are relieved of their  
12 obligation to make reports to the United States and California regarding the Recall Program, as required  
13 by Paragraph 47 (and are likewise relieved of any potential liability for associated applicable stipulated  
14 penalties), provided that: (1) the Claims Administrator in the Class Action Settlement is required to  
15 make regular reports to the Court regarding Defendants' progress toward the Recall Participation  
16 Targets required by Paragraph 41; and (2) Defendants comply with the requirements of this Paragraph  
17 49.a. Defendants are still required to maintain records of all information listed in Paragraphs 47.a  
18 through 47.g through the duration of the Recall Program, and such records must be produced to the  
19 United States or California upon request. In addition, Defendants must submit a single report in  
20 accordance with the notice requirements of Section XIV (Notices) within 30 days following the Recall  
21 Target Deadline (or Extended Recall Target Deadline pursuant to Paragraph 42.c, if applicable). Such  
22 report must contain an assessment by Defendants as to whether Defendants have met the 85% Recall  
23 Targets required by Paragraph 41, both nationally and in California. Such report must also contain a list,

1 by VIN, of every Subject Vehicle that Defendants assert has received an AEM under the terms of this  
2 Consent Decree.

3           b.     Call Center, Online Support, and Notices. Defendants are relieved of their  
4 obligation to maintain a call center and online support as required by Paragraph 38.c, and are relieved of  
5 their obligation to disseminate an Initial Program Notice under Paragraph 43.a (and are likewise relieved  
6 of any potential liability for associated applicable stipulated penalties) to the extent that such duties will  
7 be fulfilled by third parties pursuant to the Class Action Settlement.

8           c.     Stipulated Penalty for Failure to Honor Warranties. Defendants shall not be liable  
9 for any stipulated penalties under Paragraph 87.j unless and until the Class Action Settlement claims  
10 review committee adjudicates a warranty claim dispute and finds in favor of the Eligible Owner or  
11 Eligible Lessee, in which case EPA and CARB may assess a stipulated penalty under Paragraph 87.j for  
12 failure to honor warranties with regard to the particular Eligible Vehicle at issue.

13           d.     Stipulated Penalty for Failure to Provide Disclosures. Defendants shall not be  
14 liable for any stipulated penalties under Paragraph 87.g for failure to provide disclosures to any Eligible  
15 Owner or Eligible Lessee who receives such disclosures as part of a Class Action Settlement long form  
16 notice.

17           e.     Stipulated Penalty for Failure to Timely Install the Approved Emissions  
18 Modification. Defendants shall not be liable for any stipulated penalties under Paragraph 87.b unless  
19 and until the Class Action Settlement claims administrator determines that, through the fault of  
20 Defendants, an Eligible Owner or Eligible Lessee was required to wait more than 75 days to receive the  
21 Approved Emissions Modification after scheduling such modification with Defendants or a Dealer, in  
22 which case EPA and CARB may assess a stipulated penalty under Paragraph 87.b for failure to timely  
23 install the Approved Emissions Modification.

1           **C.    Corporate Compliance Requirements**

2           50.   Culture of Integrity, Business Ethics, and Compliance.

3           a.       Defendants have developed or revised and are implementing various corporate  
4 governance policies and practices in the areas of integrity, business ethics, and compliance. Their  
5 efforts include (1) an updated Code of Conduct; (2) an improved whistleblower system, known as the  
6 “Ethics Helpline”; and (3) a “Leave No Doubt” campaign.

7           b.       Code of Conduct. Defendants issued an updated Code of Conduct, dated  
8 February 2018, which requires employees to report violations of law, regulations, or company policy.  
9 Defendants shall: continue to implement and maintain their Code of Conduct; require all salaried  
10 employees and all new bargaining unit employees to certify they reviewed and understand the Code of  
11 Conduct; require all employees covered by project TC1 of the Improvement Plan also to certify they are  
12 in compliance with the Code of Conduct; and, at least annually, conduct training related to the Code of  
13 Conduct for all salaried employees.

14          c.       Ethics Helpline. Defendants have implemented an improved whistleblower  
15 system, known as the “Ethics Helpline,” which allows employees, contractors, suppliers, and dealers to  
16 submit anonymously concerns regarding: (1) ethics, and (2) vehicle safety, emissions, and regulatory  
17 compliance issues, including vehicle emissions certification. The Business Practices Office within  
18 Internal Audit reviews the ethics concerns raised via the Ethics Helpline, and the results of those  
19 investigations are reviewed by the Ethics and Compliance Committee (“ECC”). The Vehicle Safety and  
20 Regulatory Compliance (“VSRC”) case screener reviews the vehicle safety, emissions, certification, and  
21 regulatory compliance concerns raised via the Ethics Helpline, and performs an investigation based on  
22 the concern. The Technical Compliance Committee (“TCC”) reviews the investigation results from the  
23 VSRC case screener. The ECC and TCC escalate concerns to the Audit Committee for resolution, or for  
24  
25



1 further referral for resolution, if deemed necessary. Defendants shall continue to implement and  
2 maintain the Ethics Helpline and its associated procedures.

3 d. Leave No Doubt Campaign. Defendants shall continue to implement and  
4 maintain, or refresh annually, their “Leave No Doubt Campaign,” which was initiated in October 2017  
5 and is described in the Leave No Doubt Frequently Asked Questions document dated October 2, 2017,  
6 or a similar initiative, to encourage employees, contractors, suppliers, and dealers to report issues  
7 concerning vehicle safety, emissions, or regulatory compliance through the Ethics Helpline.

8 e. Annual Assessment. Defendants shall annually assess the effectiveness of the  
9 Code of Conduct, Ethics Helpline, Leave No Doubt Campaign, associated training, and their other  
10 efforts to instill a culture of integrity and compliance. Based on this assessment, Defendants shall  
11 develop and implement an action plan to implement improvements or additional measures they  
12 determine necessary to improve the culture of integrity and compliance.

13 f. Reporting. In the annual report required pursuant to Paragraph 61, Defendants  
14 shall submit:

15 i. A report, with a certification in accordance with Paragraph 79, regarding  
16 case tracking of all concerns relating to violations of United States and California environmental  
17 protection laws or regulations raised through the Ethics Helpline and stored in the Case Tracking  
18 System; and for such concerns raised by any other means, case tracking from the point that the  
19 concern is brought to an investigator in the VSRC to be entered into the Case Tracking System  
20 for review and resolution;

21 ii. The annual assessment required by Paragraph 50.e; and

22 iii. A summary of training provided pursuant to Paragraph 50.b.

1           51.    Corporate Governance.

2           a.    Corporate Reorganization. Defendants reorganized their corporate structure to  
3 ensure that employees involved in certification testing and monitoring for purposes of vehicle  
4 certification under the Clean Air Act and California law are organizationally separate from product  
5 development. The Corporate Governance and Organization Structure and Capability sections of the  
6 Improvement Plan identify these projects, which include, among other things, the establishment of the  
7 Vehicle Environmental Compliance Group within the Vehicle Safety and Regulatory Compliance  
8 Group, (1) to ensure independent and effective management of all vehicle emissions certification, OBD  
9 compliance, and environmental regulatory compliance activities, and (2) to add senior management level  
10 oversight to emissions and certification compliance and completion of identified Improvement Plan  
11 projects.

12           b.    Implementation. Defendants shall implement and maintain the revised  
13 governance structure, including providing personnel performing the certification, testing, and  
14 monitoring functions access to technical expertise independent from product development personnel.

15           52.    Technical Training.

16           a.    AECD and Defeat Device Training. Defendants are developing annual enhanced  
17 AECD and Defeat Device training for employees and suppliers as provided in project TC1 of the  
18 Improvement Plan, including, but not limited to: Powertrain, Product Development, and VSRC  
19 employees, to improve comprehension and global awareness of AECD and Defeat Device regulatory  
20 provisions. The training content shall require participants to answer questions designed to demonstrate  
21 comprehension. After the employees and suppliers have received the initial training, Defendants shall  
22 provide annual refresher training. Defendants shall make the initial training available to the required  
23 personnel by March 31, 2019, and the required personnel shall complete the initial training by May 31,  
24 2019.

1           **b.     Emissions Certification and Compliance Training.** Defendants are developing  
2 enhanced annual Emissions Certification and Compliance Training as provided in project TC3 of the  
3 Improvement Plan for all applicable Product Development and VSRC employees to improve and test  
4 their knowledge of emissions certification regulations and processes. The training content shall require  
5 participants to answer questions designed to demonstrate comprehension. After the employees and  
6 suppliers have received the initial training, Defendants shall provide annual refresher training.  
7 Defendants shall make the initial training available to the required personnel by October 31, 2019 and  
8 the required personnel shall complete the training by January 31, 2020.

9           **c.     Reporting.** In the annual report required pursuant to Paragraph 61, Defendants  
10 shall submit a summary of training provided pursuant to Paragraphs 52.a and 52.b.

11           53.    Risk Assessment.

12           **a.**     Defendants shall establish and maintain a Risk Assessment Process, which is led  
13 by VSRC, that, at least annually, shall: (1) identify compliance risks relating to emissions and  
14 certification processes; (2) assign a risk rating based on probability and significance; (3) link existing  
15 policies, processes and controls Defendants rely on to detect and prevent noncompliance (“risk  
16 response”); (4) assess residual risk based on the design and operating effectiveness of Defendants’ risk  
17 response; and (5) develop a plan and reasonable timeline to implement and improve controls to mitigate  
18 any unacceptable levels of residual risk. Within 180 days of the Effective Date, Defendants shall  
19 perform their initial Risk Assessment, including developing an improvement plan, if necessary; and  
20 annually thereafter, they shall complete a Risk Assessment within 90 days of the next anniversary of the  
21 Effective Date.

22           **b.     Reporting.** In the annual report required pursuant to Paragraph 61, Defendants  
23 shall submit a summary of the results of the risk assessment performed pursuant to Paragraph 53.a,  
24  
25

1 including a summary of the plan to improve controls to mitigate any unacceptable levels of residual risk,  
2 and a discussion of the measures that Defendants have taken to implement the plan(s).

3 54. New Product Development and Vendor/Third Party Projects.

4 a. Defendants are enhancing new product development and vendor/third-party  
5 policies, processes, and controls to improve compliance with certification, OBD, and other related  
6 regulatory requirements. The New Product Development (“PD”) and Vendors/Third-Parties (“TP”)  
7 sections of the Improvement Plan identify these projects, which include processes relating to emissions  
8 robustness, identifying and evaluating AECDs and emissions-related parts, enhanced documentation  
9 from suppliers, and other related processes.

10 b. Defendants shall implement these enhancement projects in accordance with, and  
11 within the timeline set forth in, the Improvement Plan, and (except for Improvement Plan project PD 3,  
12 which shall be completed by February 28, 2020) no later than August 31, 2019.

13 55. Certification Processes.

14 a. Defendants are developing and implementing enhancements to the certification  
15 and Executive Order processes to improve compliance with applicable regulatory requirements. The  
16 Certification Process section of the Improvement Plan identifies these projects, which include processes  
17 and controls for improving AECD, OBD, and emissions-related certification activities and improving  
18 communications and data management during the certification process.

19 b. Defendants shall implement these enhancement projects within the timeline set  
20 forth in the Improvement Plan, and no later than December 31, 2019.

21 56. Post-Certification Processes.

22 a. Defendants are enhancing their post-certification processes regarding in-use  
23 vehicles to improve compliance with regulatory requirements. The Post-Certification Process section of  
24  
25

1 the Improvement Plan identifies these projects, which include projects improving the evaluation and  
2 reporting of field fixes and running changes, warranty, and other in-use vehicle data.

3           b. Defendants shall implement these enhancements in accordance with, and within  
4 the timeline set forth in, the Improvement Plan, and no later than July 31, 2019.

5           57. Modification of Procedures and Projects. In consultation with DOJ and California,  
6 Defendants' (1) may make reasonable revisions to their Code of Conduct, Ethics Helpline, Leave No  
7 Doubt Campaign, Corporate Governance structure, and Improvement Plan projects set forth in  
8 Paragraphs 54-56, and (2) may add additional projects to the Improvement Plan as appropriate to further  
9 compliance. Where such revisions modify any of the requirements set forth in this Section VI.C, the  
10 modification shall be made in accordance with Paragraphs 136-137, concerning non-material  
11 modifications.

12           58. Internal Audit.

13           a. Within 9 months of the Effective Date, Defendants shall complete an internal  
14 audit to assess the implementation of internal procedures relating to the corporate compliance  
15 requirements of Paragraphs 50-56. The internal audit shall also assess the effectiveness of the internal  
16 procedures that have been implemented as of the time of the audit. Defendants shall recommend any  
17 corrective actions necessary to improve the effectiveness of the procedures. Defendants shall implement  
18 those corrective actions.

19           b. Defendants shall submit the results of the audit to DOJ, California, and the  
20 Independent Compliance Auditor within 30 days of the audit's completion.

21           59. PEMS Testing.

22           a. Defendants shall test certain MY 2019, 2020, and 2021 light-duty motor vehicles  
23 using portable emissions measurement system ("PEMS") testing. For MY 2019, Defendants shall test  
24 Ram and Jeep brands; for MYs 2020 and 2021, Defendants shall test across all FCA brands. For each  
25

1 model year, Defendants shall perform PEMS testing on 33% of Defendants' EPA-certified test groups  
2 within that model year ("Test Groups"). For purposes of determining the number of Test Groups  
3 comprising 33%, Defendants shall round up or down to the nearest whole Test Group number closest to  
4 33%. EPA, in consultation with CARB, may select the Test Groups for testing under this Paragraph  
5 59.a pursuant to the following schedule: for MY 2019, by no later than February 1, 2019; for MY 2020,  
6 by no later than December 31, 2019, or at the annual certification meeting with EPA, whichever is  
7 earlier; and for MY 2021, by no later than December 31, 2020, or at the annual certification meeting  
8 with EPA, whichever is earlier. If EPA, in consultation with CARB, does not select the Test Groups  
9 pursuant to the schedule set forth in this Paragraph 59.a, then Defendants shall select the Test Groups for  
10 PEMS testing. Defendants shall select the Test Groups for MY 2019, MY 2020, and MY 2021 that will  
11 cover, in the aggregate, the full range of configurations of emission control systems on their light-duty  
12 vehicles for those model years, and shall not select a Test Group that was certified using carryover  
13 emissions data from another Test Group that has already been tested pursuant to this Paragraph (unless  
14 necessary to meet the 33% requirement). All testing under this Paragraph 59.a for MY 2019 shall be  
15 completed by December 31, 2019. All testing under this Paragraph 59.a for MYs 2020 and 2021 shall  
16 be completed by September 30 of the calendar year for which the applicable model year is named,  
17 except that Defendants and the United States, in consultation with CARB, may agree to a later date  
18 sufficient to enable Defendants to complete PEMS testing of the selected model year, but in no case later  
19 than December 31 of the applicable model year. Defendants may, but are not required to, use the Third-  
20 Party Emissions Tester required by Paragraph 59.b to conduct the testing required by this Paragraph  
21 59.a.

22           b.       In addition to the requirements of Paragraph 59.a, Defendants shall retain an  
23 independent third-party emissions tester ("Third-Party Emissions Tester"). No attorney-client  
24 relationship shall exist or be formed between any Defendant and the Third-Party Emissions Tester. For  
25

1 each MY 2019, 2020, and 2021, Defendants shall ensure that the Third-Party Emissions Tester conducts  
2 PEMS testing on a vehicle from each of two Test Groups. Testing under this Paragraph 59.b does not  
3 count toward the testing required under Paragraph 59.a. The Test Groups selected for testing under this  
4 Paragraph 59.b shall be the Test Groups with the highest projected sales for the model year at the time of  
5 certification, or, if applicable, the Test Groups selected by EPA, in consultation with CARB, by letter to  
6 Defendants, pursuant to Section XIV (Notices). Any such letters shall be provided no later than June 30  
7 of the year for which the model year is named. Defendants shall ensure that the Third-Party Emissions  
8 Tester completes all testing under this Paragraph 59.b by December 31 of the calendar year for which  
9 the applicable model year is named.

10 c. Defendants shall satisfy the testing required by Paragraph 59.a as follows, and  
11 shall ensure that the Third-Party Emissions Tester satisfies the testing required by Paragraph 59.a and b  
12 as follows:

13 i. Test a Test Group by testing one sample vehicle procured at random from  
14 the series production vehicles from that selected Test Group;

15 ii. Perform the required third-party PEMS testing on private and public  
16 roads in the United States, and perform all PEMS testing under real-world driving conditions  
17 over a range of ambient temperatures and pressures (including conditions not represented on the  
18 Federal Test Procedure) to measure the NO<sub>x</sub>, THC, NMHC, CO, and CO<sub>2</sub> emissions that are  
19 detectable on a serial vehicle via PEMS; and

20 iii. Conduct the required PEMS testing according to test methods recorded  
21 before the testing commences. The Third-Party Emissions Tester shall use test methods  
22 independently from Defendants.

1 d. Within 120 days after the Effective Date, Defendants shall submit to EPA and  
2 CARB for review and approval in accordance with Section V (Approval of Submissions) a plan for  
3 PEMS testing under this Paragraph. Such plan shall include:

- 4 i. A list of those Test Groups Defendants will test for MY 2019;
- 5 ii. A written statement of qualifications for the proposed Third-Party  
6 Emissions Tester including its name, affiliation, and address, its experience in conducting PEMS  
7 testing, and a description of previous contracts or financial relationships of the proposed Third-  
8 Party Emissions Tester with Defendants;
- 9 iii. A list of all emissions and vehicle and engine parameters Defendants will  
10 measure and record during each PEMS test they perform under this Paragraph;
- 11 iv. A description of the test methods Defendants propose to use including the  
12 routes and ambient conditions over which the vehicles shall be tested;
- 13 v. A template for Defendants' summary report as described below; and
- 14 vi. A description of how Defendants intend to satisfy all requirements of this  
15 Paragraph.

16 e. For each model year, for the PEMS testing required by Paragraph 59.a,  
17 Defendants shall provide the test data, a detailed statement of all test methods used, and an executive  
18 summary of the data and methods (that includes measuring the vehicle's NO<sub>x</sub>, THC, NMHC, CO, and  
19 CO<sub>2</sub> emissions) for all tests Defendants performed under this Paragraph for that model year  
20 (Defendants' Summary Report) to EPA and CARB as specified in Section XIV (Notices). Defendants'  
21 Summary Report for MY 2019 shall be due no later than March 1, 2020. Defendants' Summary Report  
22 for MYs 2020 and 2021 shall be due no later than November 30 of the calendar year for which the  
23 model year is named, unless Defendants and the United States, in consultation with California, agree to  
24 a later date. Within 21 days following submission of Defendants' Summary Report to EPA and CARB,  
25



1 Defendants shall post their Summary Report (redacted of any CBI or PII, the disclosure of which is  
2 restricted by applicable law, provided that no emissions test methods and results may be claimed as  
3 CBI) on the public website required by Paragraph 78.

4 f. For each model year for the PEMS testing required by Paragraph 59.b,  
5 Defendants shall ensure that the Third-Party Emissions Tester prepares one or more “Third-Party  
6 Emissions Tester Summary Reports” including the test data, a detailed statement of all test methods  
7 used, and an executive summary of the data and methods (that includes measuring the vehicle’s NOx,  
8 THC, NMHC, CO, and CO2 emissions) for all testing the Third-Party Emissions Tester performed  
9 under this Paragraph for that model year. Defendants shall provide the Third-Party Emissions Tester  
10 Summary Report to EPA and CARB as specified in Section XIV (Notices) by no later than March 1 of  
11 the calendar year immediately after the calendar year for which the model year is named. Within 30  
12 days following submission of the Third-Party Emissions Tester Summary Report to EPA and CARB,  
13 Defendants shall post the Third-Party Emissions Tester Summary Report (redacted of any CBI or PII the  
14 disclosure of which is restricted by applicable law, provided that no emissions test methods and results  
15 may be claimed as CBI) to the public website required by Paragraph 78.

16 g. Data Format and Summary. Defendants shall provide all raw data from the  
17 PEMS unit for speed and load in a .dat format and all second-by-second raw data for NOx, THC,  
18 NMHC, CO, and CO2 in a CSV format that can be imported into a spreadsheet or database. In addition,  
19 using this data, Defendants shall create and submit a summary file containing calculated average  
20 emissions results for NOx, THC, NMHC, CO, and CO2 for each vehicle route.

21 h. The Parties agree and acknowledge that neither United States nor California law  
22 sets forth a standard by which PEMS testing can be used to determine compliance for purposes of  
23 certification under Title II of the Clean Air Act.

1           60.    Data Collection.

2           a.       Within 120 days after the Effective Date and continuing on a quarterly basis  
3 thereafter as specified in Paragraph 70.c until the quarterly report due 30 days after the third anniversary  
4 of the Effective Date, Defendants shall provide to EPA and California a summary of the top 10  
5 diagnostic trouble codes (“DTCs”) recorded from the Subject Vehicles through the SQDF system, i.e.,  
6 the ten most frequently occurring DTCs that have resulted in a MIL, reported by model year and vehicle  
7 type (Grand Cherokee or Ram).

8           b.       Within 120 days after the Effective Date, Defendants shall establish a test fleet  
9 comprised of a minimum of 12 customer owned or leased Subject Vehicles instrumented with high  
10 speed data recorders. Commencing on the 30th day after the end of the first full quarter following  
11 establishment of this test fleet, and continuing quarterly thereafter as specified in Paragraph 70.c until  
12 the quarterly report due 30 days after the third anniversary of the Effective Date, Defendants shall  
13 provide to EPA and California a summary of the vehicles’ reported regeneration frequency, tailpipe  
14 NOx (in grams/mile), and recorded DTCs. Defendants shall include a minimum of 12 vehicles in this  
15 test fleet, and shall seek to include four vehicles from each MY 2014-2016; however, the parties  
16 recognize that the exact composition of this fleet may vary as it depends upon consumer willingness to  
17 participate and their continued ownership or leasing of Subject Vehicles.

18           c.       In transmission of data to EPA and California, Defendants shall take any steps  
19 necessary to ensure that no PII is disclosed.

20           61.    Annual Reporting Requirements for Corporate Compliance Requirements.

21           a.       In accordance with the timing for annual reports required by Paragraph 70.a, and  
22 until the submission of the final annual report due after completion of implementation of this Section  
23 VI.C as set forth in Paragraph 62, Defendants shall send an annual report to DOJ (but not EPA),  
24 California, and the Independent Compliance Auditor concerning corporate compliance requirements of  
25

1 this Section VI.C, that includes: (1) the information required by Paragraphs 50.f, 52.c, and 53.b; and (2)  
2 except as provided below, a description of the measures that they have implemented to promote  
3 compliance with the requirements of this Section VI.C (except for Paragraphs 63-65), together with an  
4 assessment of the effectiveness of those measures in promoting compliance with United States and  
5 California environmental law concerning vehicle emissions and certification and any corrective actions  
6 Defendants have undertaken to improve their effectiveness. For the first annual report, Defendants do  
7 not need to assess the effectiveness of additional measures taken. The information required to be  
8 provided in the annual reports pursuant to this Paragraph shall be certified in accordance with Paragraph  
9 79.

10 b. Of the reports and other information required by this Section VI.C, Defendants  
11 shall submit to EPA only the reports and other information required by Paragraphs 59 and 60.

12 62. Implementation Time Frame. Defendants shall continue to implement the ongoing  
13 requirements of this Section VI.C for 3 years from the Effective Date, or until August 31, 2022,  
14 whichever is later, and shall thereafter continue to comply with Paragraphs 64-65 as necessary until the  
15 completion of all requirements therein.

#### 16 **Independent Compliance Auditor**

17 63. Retention of Independent Compliance Auditor. Defendants shall retain, upon approval  
18 by the United States, after consultation with California, a person or entity to serve as the Independent  
19 Compliance Auditor for the oversight of Defendants' obligations under this Section VI.C (Corporate  
20 Compliance Requirements). Defendants shall retain the Auditor for a period of at least 3 years and until  
21 the Auditor has submitted the third Final Audit Report under Paragraph 64.d.ii below.

22 a. Recommendation of Candidates for the Independent Compliance Auditor. Within  
23 30 days after the Effective Date, Defendants shall submit to the United States and California a list of  
24 three candidates for the position of the Independent Compliance Auditor. Defendants shall:  
25

1                   i.           Submit a resume, biographical information, and any relevant material  
2 concerning each of the candidate’s competence and qualifications to serve as Independent  
3 Compliance Auditor;

4                   ii.           Describe any past, present, or future business or financial relationship that  
5 the candidate has with Defendants, EPA, or CARB. A candidate may not be an employee or an  
6 agent of Defendants, Defendants’ subsidiaries, the United States or California, nor may the  
7 candidate be currently engaged in any work for, or in representation of, Defendants;

8                   iii.           Verify that, to Defendants’ best knowledge and based on the reasonably  
9 available information, either the candidate has no conflicts of interest with regard to this matter  
10 or any actual or apparent conflict has been waived by Defendants and the United States, after  
11 consultation with California;

12                   iv.           Verify that the candidate has agreed not to be employed by Defendants, or  
13 their subsidiaries, for a minimum of 2 years after the termination of their term as the Independent  
14 Compliance Auditor; and

15                   v.           Accompany all of the information listed above in Paragraphs 63.a.i  
16 through 63.a.iv with a certification in accordance with Paragraph 79.

17           b.           Selection and Retention of the Independent Compliance Auditor. After receiving  
18 the list of candidates from Defendants, the United States, after consultation with California, will select  
19 an Independent Compliance Auditor from among the candidates and notify Defendants of such  
20 selection. Within 30 days after notification by the United States of its selection, or within 45 days of the  
21 Effective Date, whichever is later, Defendants shall retain the selected candidate to serve as the  
22 Independent Compliance Auditor and shall notify the United States and California of such. The date of  
23 Defendants’ retention of the Independent Compliance Auditor is the Retention Date. If the United  
24  
25

1 States selects none of the candidates submitted by Defendants, the process under Paragraph 63.a shall be  
2 repeated until the Independent Compliance Auditor is selected.

3 c. Vacancy in the Position of the Independent Compliance Auditor. In the event that  
4 the Independent Compliance Auditor, once selected, is unable or unwilling to fulfill its duties as the  
5 Independent Compliance Auditor, the processes under Paragraphs 63.a. and b. shall be used to select a  
6 new Independent Compliance Auditor. If this vacancy and re-selection procedure prevents the new  
7 Independent Compliance Auditor from meeting the deadlines set forth in Paragraph 64, the Parties will  
8 negotiate revised deadlines as non-material modifications in accordance with Paragraphs 136-137 as  
9 necessary.

10 d. Replacement of the Independent Compliance Auditor for Good Cause.

11 i. Defendants may replace the Independent Auditor for good cause shown  
12 and with the consent of the United States, in consultation with California, such consent not to be  
13 unreasonably withheld; provided, however, that Defendants shall first give written notice to the  
14 Independent Compliance Auditor, with a copy to the United States and California, outlining their  
15 concerns and providing a sufficient process and period of time to attempt to resolve them. If the  
16 concerns are not resolved, Defendants shall notify the United States and California, describing  
17 the efforts and the results of those efforts, and requesting the required consent.

18 ii. The United States, in consultation with California, may require  
19 Defendants to replace the Internal Compliance Auditor for good cause shown and with the  
20 consent of Defendants, such consent not to be unreasonably withheld. In such case, the United  
21 States, in consultation with California, will first give written notice to the Independent  
22 Compliance Auditor, with a copy to Defendants, outlining the concerns and providing a process  
23 and period of time to attempt to resolve them. If the concerns are not resolved, United States, in  
24  
25

1 consultation with California, will notify Defendants, describing the efforts and the results of  
2 those efforts, and requesting the required consent.

3 iii. If consent to terminate is granted pursuant to Paragraph 63.d.i or 63.d.ii,  
4 the processes under Paragraphs 63.a and 63.b. shall be used to select a new Independent  
5 Compliance Auditor. If this termination and re-selection procedure prevents the new  
6 Independent Compliance Auditor from meeting the deadlines set forth in Paragraph 64, the  
7 Parties will negotiate revised deadlines as non-material modifications in accordance with  
8 Paragraphs 136-137 as necessary.

9 64. Duties and Access Rights of the Independent Compliance Auditor.

10 a. In General. The Independent Compliance Auditor shall monitor implementation  
11 to verify Defendants' compliance with this Section VI.C, and, as part of the annual audits, assess the  
12 effectiveness of Defendants' processes and controls in promoting compliance with United States and  
13 California environmental law governing vehicle emissions and certification. The Independent  
14 Compliance Auditor shall owe a duty to the United States to provide objective and fair assessments of  
15 Defendants' compliance with the Consent Decree. The Independent Compliance Auditor shall carry out  
16 its duties based on: (1) review of relevant documents and procedures; (2) on-site observation of selected  
17 systems and procedures at sample Defendants' sites, including internal controls, record-keeping, and  
18 internal audit procedures; (3) meetings and interviews; (4) analyses, studies, and testing of Defendants'  
19 compliance program and associated processes; and (5) other reasonable audit procedures as may be  
20 necessary to verify Defendants' compliance with Section VI.C (Corporate Compliance Requirements).  
21 The Auditor may rely on the product of Defendants' processes, such as the results of studies, reviews,  
22 sampling and testing methodologies, audits, and analyses conducted by or on behalf of Defendants, as  
23 well as Defendants' internal resources (e.g., legal, compliance, and internal audit), including the internal  
24  
25

1 audit required by Paragraph 58, which can assist the Auditor in carrying out the audit through increased  
2 efficiency and Defendants-specific expertise.

3           b.     Audit Plan. Within 60 days after the Retention Date, the Independent Compliance  
4 Auditor shall develop and submit to DOJ, California, and Defendants for comment a draft audit plan that  
5 includes a checklist of relevant compliance requirements, procedures for the exchange of any documents  
6 and information that the Independent Compliance Auditor needs to perform its duties, and any other  
7 terms that the Independent Compliance Auditor may deem necessary to effectuate its duties. By 30 days  
8 after the annual anniversary of the Retention Date of each of the next 2 years, the Independent  
9 Compliance Auditor shall develop and submit to DOJ, California, and Defendants for comment a draft  
10 audit plan for its annual audit activities. The Independent Compliance Auditor shall take into  
11 consideration any comments received from DOJ, California, or Defendants in developing each of the  
12 final audit plans. Defendants shall provide any such comments to DOJ and California at the same time  
13 it provides them to the Independent Compliance Auditor.

14           c.     Information and Access Rights Accorded to Independent Compliance Auditor,  
15 and Independent Compliance Auditor Notice of Non-Compliance. Defendants shall cooperate fully with  
16 the Independent Compliance Auditor in any and all matters relating to the Auditor's duties as set forth in  
17 this Paragraph 64, and the Auditor shall have the authority to take steps necessary to be fully informed  
18 about Defendants' compliance with this Section VI.C. Defendants shall provide the Independent  
19 Compliance Auditor with information and documents the Auditor needs to fulfill the duties listed in this  
20 Paragraph 64. Defendants shall designate an environmental compliance representative to liaise directly  
21 with the Independent Compliance Auditor regarding issues of information and access rights. Defendants  
22 shall facilitate the Independent Compliance Auditor's access to Defendants' documents, databases, and  
23 facilities where compliance testing or certification of Defendants' vehicles occur. Defendants shall use:

1           i.       best efforts to make their employees, directors, or contractors available;  
2       and

3           ii.       all reasonable efforts to make their former employees, directors, or  
4       contractors (with knowledge of events occurring after the lodging of and relevant to the Consent  
5       Decree) available to answer questions or provide information that the Independent Compliance  
6       Auditor may need in the fulfillment of its duties. In the event that Defendants seek to withhold  
7       from the Independent Compliance Auditor access to information, documents, records, facilities,  
8       or current or willing and able former employees, directors or contractors of Defendants that may  
9       be subject to a claim of attorney-client privilege or to the attorney work product doctrine, or  
10       where Defendants reasonably believe production or providing access would otherwise be  
11       inconsistent with applicable law, Defendants shall work cooperatively with the Independent  
12       Compliance Auditor to resolve the matter to the satisfaction of the Independent Compliance  
13       Auditor consistent with applicable law. If the Independent Compliance Auditor believes  
14       Defendants have violated the requirements of this Paragraph 64, the Independent Compliance  
15       Auditor shall promptly notify DOJ and California, and the notice shall include a description of  
16       the alleged violations and supporting documentation as necessary.

17           d.       Auditor Annual Reports. Consistent with the Audit Plan developed pursuant to  
18       Paragraph 64.b, the Independent Compliance Auditor shall audit Defendants' compliance with their  
19       obligations under Section VI.C (Corporate Compliance Requirements) of this Consent Decree, and shall  
20       thereafter provide three annual draft and final reports to DOJ and California as follows:

21           i.       Draft Reports. The first draft annual report is due 30 days after the first  
22       anniversary of the Retention Date, and it shall cover the period from the Effective Date through  
23       the first anniversary of the Retention Date. The second draft annual report is due 30 days after  
24       the second anniversary of the Retention Date, and it shall cover the period from the day after the  
25



1 first anniversary of the Retention Date through the second anniversary of the Retention Date.  
2 The third draft annual report is due 30 days after the third anniversary of the Retention Date, and  
3 it shall cover the period from the day after the second anniversary of the Retention Date through  
4 the third anniversary of the Retention Date. Among other things, in each draft annual report, the  
5 Independent Compliance Auditor shall include (1) as applicable, findings that identify any  
6 noncompliance by Defendants with the requirements of Section VI.C (Corporate Compliance  
7 Requirements), and recommendations for actions for Defendants to take to achieve compliance;  
8 and (2) an assessment of the effectiveness of Defendants' Improvement Plan's measures in  
9 promoting compliance with United States and California environmental law concerning vehicle  
10 emissions and certification, and any additional recommendations for actions to improve their  
11 effectiveness. The Independent Compliance Auditor shall also monitor Defendants'  
12 implementation of any action plan submitted pursuant to Paragraph 65, and shall indicate in the  
13 second and third draft annual reports the status of any corrective action. The Independent  
14 Compliance Auditor shall concurrently provide a copy of each draft annual report to Defendants.  
15 Within 30 days after receipt of each draft annual report, Defendants shall provide their  
16 comments, if any, to the Independent Compliance Auditor.

17 ii. Final Reports. The Independent Compliance Auditor may consider and  
18 reflect Defendants' comments in its final annual reports to the extent that the Independent  
19 Compliance Auditor deems appropriate in the exercise of its independent judgment. The  
20 Independent Compliance Auditor shall provide each final annual report to DOJ, California, and  
21 Defendants within 60 days after submission of each draft annual report. To the extent the  
22 Independent Compliance Auditor makes material changes to the findings or recommendations  
23 after providing Defendants a draft report, the Independent Compliance Auditor will provide  
24 Defendants advance notice and a reasonable opportunity to comment on the additions or changes  
25

1 before it issues each final annual report. All final annual reports from the Independent  
2 Compliance Auditor (redacted of any CBI or PII the disclosure of which is restricted by  
3 applicable law, provided that no emissions test methods and results may be claimed as CBI) shall  
4 be posted by Defendants on the public website required by Paragraph 78 within 21 days after  
5 issuance.

6 iii. After consultation with Defendants, the Independent Compliance Auditor  
7 may extend the time period for the issuance of the draft or final reports with prior written  
8 approval of DOJ, in consultation with California.

9 e. Compensation of the Independent Compliance Auditor. Defendants shall be  
10 responsible for compensating the Independent Compliance Auditor for the performance of duties in  
11 accordance with the terms agreed upon by Defendants and the selected Independent Compliance  
12 Auditor. Such terms of agreement shall clarify that the Independent Compliance Auditor is not an  
13 employee or an agent of Defendants, and the Independent Compliance Auditor's work is not subject to  
14 Defendants' assertion of attorney-client or work product privileges. Upon DOJ's or California's  
15 request, any agreements between Defendants and the Independent Compliance Auditor shall be made  
16 available for DOJ's and California's review.

17 65. Defendants' Response to Independent Compliance Auditor's Report.

18 a. Action Plan. Within 60 days after receiving any final annual report from the  
19 Independent Compliance Auditor containing a finding of noncompliance, Defendants shall submit to  
20 DOJ and California a response to the Independent Compliance Auditor's findings and recommendations  
21 for corrective action. Defendants' response shall include, as applicable, an action plan to implement  
22 corrective measures as expeditiously as practicable, or an explanation of why corrective measures are  
23 not being implemented. After Defendants have completed implementation of the corrective measures, if  
24  
25

1 any, Defendants shall provide a report to DOJ and California with a certification, in accordance with  
2 Paragraph 79, that the work has been completed.

3 b. Annual Meeting. Within 90 days after receiving each annual report from the  
4 Independent Compliance Auditor, Defendants shall meet with DOJ and California, in person or by  
5 telephone, to discuss the Independent Compliance Auditor’s final annual report and any suggestions,  
6 comments, or improvements that Defendants may wish to discuss.

7 **D. Mitigation Program**

8 **United States Mitigation Program**

9 66. Mitigation Program. When installed catalytic converters fail or are beyond their useful  
10 life, and are no longer under warranty, and light duty vehicle owners seek to replace them with  
11 aftermarket catalytic converters in states that do not require high-efficiency catalytic converters, the  
12 performance criteria for aftermarket catalytic converters in these states are addressed by EPA’s 1986  
13 policy, Sale and Use of Aftermarket Catalytic Converters, and these catalytic converters are  
14 significantly less effective than high-efficiency catalysts, such as those required in California and certain  
15 other states. As further set forth in this Section, Defendants shall mitigate NOx emissions from Subject  
16 Vehicles (other than NOx emissions from Subject Vehicles in California), by implementing a program  
17 to improve the efficiency of aftermarket catalytic converters installed on light duty vehicles in states  
18 nationwide that do not already require high-efficiency catalytic converters (“Program”). Defendants  
19 shall ensure that, by no later than July 1, 2020, 200,000 after-market catalytic converters containing  
20 improved catalysts are manufactured and shipped to First-Tier Customers who order them. Defendants  
21 shall provide evidence of the manufacture, ordering, and shipment of these catalysts and endeavor to  
22 collect and provide reasonably available Invoiced Transaction Data as set forth in Paragraph 67.  
23 Defendants’ implementation of this Mitigation Program is intended to fully mitigate the total lifetime  
24  
25

1 excess NOx emissions from Subject Vehicles in the United States, excluding California, as claimed by  
2 the United States.

3           a. Defendants shall ensure that the catalyst bricks installed in the aftermarket  
4 catalytic converters manufactured for the Program have equivalent washcoats and precious metal  
5 loading to, and are of the same construction and similar total surface area and volume as, catalysts  
6 required in light duty vehicle catalytic converters that have received an Executive Order (“EO”) by  
7 CARB pursuant to California Vehicle Code Sections 27156, 38391, and 38395 and Title 13, California  
8 Code of Regulations Section 2222(h)(2) (“Improved Catalytic Converters”). The Parties agree that the  
9 Improved Catalytic Converters are not legal for sale in states that require CARB-EO or similar high-  
10 efficiency catalytic converters.

11           b. Defendants, in their sole discretion, shall decide: (1) which manufacturer(s), if  
12 any, they will work with, provided that any such manufacturer has a distribution network that is national  
13 in scope; and (2) which models of catalytic converters they will manufacture in implementing the  
14 Program, provided that such catalytic converters collectively must be capable of being installed in a  
15 variety of makes and models of light duty vehicles and not only in Defendants’ vehicles. Defendants  
16 may use one or more suppliers, contractors, or consultants in planning and implementing the Program,  
17 but Defendants remain responsible for ensuring the manufacture and shipment to First-Tier Customers  
18 who order them, of the specified number of Improved Catalytic Converters.

19           c. In any contract with catalyst manufacturer(s), Defendants shall require each  
20 manufacturer to ensure, to the extent feasible, that the Improved Catalytic Converters in the Program, as  
21 produced, are not clearly distinguishable from unimproved catalytic converters made or marketed by  
22 that manufacturer for installation in the same vehicles.

1           67.    Reporting Requirements.

2           a.       Defendants shall enter into a contract with at least one third-party to collect  
3 reasonably available information pertaining to Improved Catalytic Converter part numbers that have  
4 been reported by geographically-dispersed vehicle repair/service facilities relating to vehicle servicing  
5 or repair and/or the sale of the Improved Catalytic Converter part numbers (“Invoiced Transactions”).  
6 Under any such contract, the third-party shall endeavor to collect and provide to Defendants the  
7 following information, to the extent reasonably available, pertaining to Invoiced Transactions: (1) the  
8 part numbers of the Improved Catalytic Converters identified in such Invoiced Transaction, (2) the date  
9 of such Invoiced Transaction, and (3) the state of such Invoiced Transaction (collectively, “Invoiced  
10 Transaction Data”). Defendants shall not submit to the United States any PII with respect to consumers  
11 who purchased the Improved Catalytic Converters.

12           b.       Defendants shall submit quarterly reports, in accordance with Paragraph 70.c, to  
13 the United States that:

14           i.       Provide information identifying the quantity of each part number of  
15 Improved Catalytic Converters manufactured, ordered by First-Tier Customers, and shipped by  
16 the manufacturer(s) to First-Tier Customers in accordance with the requirements of Paragraph 66  
17 and the “ship to” state for each such catalytic converter;

18           ii.       Provide all reasonably available information concerning the sales of the  
19 Improved Catalytic Converters by the First-Tier Customers that such First-Tier Customers  
20 provide to the Improved Catalytic Converter manufacturer(s);

21           iii.       Provide Invoiced Transaction Data that Defendants have obtained from  
22 the third-party in accordance with Paragraph 67.a; and

23           iv.       Include a certification in accordance with Paragraph 79 that the Improved  
24 Catalytic Converters conform to the technical requirements specified in Paragraph 66.a.  
25



1 claimed by California. That agreement is set forth in a separate proposed consent decree between  
2 Defendants and California that has been lodged contemporaneously with this Consent Decree.

3 **VII. REPORTING REQUIREMENTS**

4 70. Timing of Reports. Unless otherwise specified in this Consent Decree, or the Parties  
5 otherwise agree in writing, Defendants shall submit reports required under this Consent Decree as  
6 follows:

7 a. Annual reports are due one month after the one-year anniversaries of the Effective  
8 Date.

9 b. Semi-annual reports are due one month after each 6-month anniversary of the  
10 Effective Date.

11 c. Quarterly reports are due one month after each 3-month anniversary of the  
12 Effective Date.

13 d. Except as specified elsewhere in the Consent Decree, reporting shall continue  
14 until termination of the Consent Decree in accordance with Section XVIII (Termination).

15 71. Reporting of Violations.

16 a. Except as otherwise provided in Paragraph 71.c, if Defendants reasonably believe  
17 they have violated, or that they may violate, any requirement of this Consent Decree, Defendants shall  
18 notify EPA, CARB, and the CA AG of such violation and its likely duration, in writing, within 10  
19 business days of the day Defendants first reasonably believe that a violation has occurred or may occur,  
20 with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to  
21 prevent or minimize such violation. If Defendants believe the cause of a violation cannot be fully  
22 explained at the time the report is due, Defendants shall so state in the report. Defendants shall  
23 investigate the cause of the violation and shall then submit an amendment to the report, including a full  
24 explanation of the cause of the violation, within 30 days after the day on which Defendants reasonably  
25

1 believe they have determined the cause of the violation. Nothing in this Paragraph or the following  
2 Paragraph relieves Defendants of their obligation to provide the notice required by Section IX (Force  
3 Majeure).

4           b. Defendants shall report information about potential violations of Paragraphs 38.b  
5 (Scheduling) and 44 (Vehicle Labeling) as provided in this Paragraph 71.b in lieu of complying with  
6 Paragraph 71.a. Each report required by Paragraph 47 (Recall Program Reporting and Monitoring) shall  
7 include information about potential violations of Paragraphs 38.b and 44 occurring between the date of  
8 the prior report and 10 business days prior to the day the report is submitted. If Defendants believe the  
9 cause of a violation cannot be fully explained at the time the report is due under Paragraph 47,  
10 Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall  
11 then submit an amendment to the report, including a full explanation of the cause of the violation, within  
12 30 days after the day on which Defendants reasonably believe they have determined the cause of the  
13 violation.

14           c. Semi-Annual Report of Violations. On January 31st and July 31st of each year,  
15 Defendants shall submit a summary to the United States and California of any violations of the Decree  
16 that occurred during the preceding 6 months (or potentially shorter period for the first semi-annual  
17 report), and that are required to be reported pursuant to Paragraph 71.a, including the date of the  
18 violation, the date the notice of violation was sent, and a brief description of the violation.

19           72. Reporting of Threats. Whenever Defendants reasonably believe any violation of this  
20 Consent Decree or any other event affecting Defendants' performance under this Decree may pose an  
21 immediate threat to the public health or welfare or the environment, Defendants shall notify EPA and  
22 California by email and also California AG by phone (voicemail being sufficient) in accordance with  
23 Section XIV (Notices) as soon as possible, but no later than 24 hours after Defendants first reasonably  
24  
25



1 believe the violation or event may pose an immediate threat to the public health or welfare or the  
2 environment. This procedure is in addition to the requirements set forth in Paragraph 71.

3 73. Reporting Requirements for Section VI.A. Defendants shall comply with the reporting  
4 requirements set forth in Paragraph 36.

5 74. Reporting Requirements for Section VI.B. Defendants shall comply with the reporting  
6 requirements set forth in Paragraph 47 or 49.a, as applicable.

7 75. Reporting Requirements for Section VI.C. Defendants shall comply with the reporting  
8 requirements set forth in Paragraph 61.

9 76. Reporting Requirements for Section VI.D. Defendants shall comply with the reporting  
10 requirements set forth in Paragraph 67.

11 77. Defendants shall submit reports to the persons designated to receive them, and in  
12 accordance with the methods and to the addresses required by Section XIV (Notices).

13 78. All plans, reports, and other information required to be posted to a public web page by  
14 this Consent Decree shall be accessible on the public web page that Defendants use to administer the  
15 Emissions Modification Recall Program pursuant to Paragraph 38.c, and a link to such web page shall be  
16 accessible from Defendants' primary consumer website in the United States.

17 79. Each report submitted by Defendants under this Section, or required elsewhere to be  
18 certified in accordance with this Paragraph, shall be signed by an official of the submitting party and  
19 include the following certification:

20 I certify under penalty of perjury under the laws of the United States of America and the State of  
21 California that this document and all attachments were prepared under my direction or  
22 supervision in accordance with a system designed to assure that qualified personnel properly  
23 gather and evaluate the information submitted. Based on my inquiry of the person or persons  
24 who manage the system, or those persons directly responsible for gathering the information, the  
25 information submitted is, to the best of my knowledge and belief, true, correct, and complete. I  
have no personal knowledge, information or belief that the information submitted is other than  
true, correct, and complete. I am aware that there are significant penalties for submitting false  
information, including the possibility of fine and imprisonment for knowing violations.

1 80. Defendants agree that the certification required by Paragraph 79 is subject to 18 U.S.C.  
2 §§ 1001(a) and 1621, and California Penal Code §§ 115, 118, and 132.

3 81. The certification requirement in Paragraph 79 does not apply to emergency or similar  
4 notifications where compliance would be impractical.

5 82. The reporting requirements of this Consent Decree do not relieve Defendants of any  
6 reporting obligations required by the Act or implementing regulations, or by any other federal, state, or  
7 local law, regulation, permit, or other requirement.

8 83. Any information provided pursuant to this Consent Decree may be used by the United  
9 States or California in any proceeding to enforce the provisions of this Consent Decree and as otherwise  
10 permitted by law.

11 **VIII. STIPULATED PENALTIES**

12 84. Defendants shall be liable for stipulated penalties to the United States and California for  
13 violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure).  
14 A violation includes failing to perform any obligation required by the terms of this Decree, including  
15 any work plan or schedule approved under this Decree, according to all applicable requirements of this  
16 Decree and within the specified time schedules established by or approved under this Decree.

17 85. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalties required to be  
18 paid under Section IV (Civil Penalty) when due, Defendants shall pay to each Plaintiff for which  
19 payment is late stipulated penalties as follows:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$50,000	1st through 30th day
\$100,000	31st through 45th day
\$200,000	46th day and beyond

1           86.    Violations of Section VI.A (Modification of Subject Vehicles and Post-Entry Compliance  
2 Testing).

3                   a.    Failure to Comply with Prohibition on Defeat Devices. If Defendants modify, or  
4 cause to be modified, a Subject Vehicle after the Effective Date by updating such vehicle with a  
5 configuration of software and calibrations that contains a Defeat Device, Defendants must pay a  
6 stipulated penalty to the United States and CARB of \$20,000,000 for each Defeat Device (but not for  
7 each vehicle that contains such Defeat Device).

8                   b.    Failure to Disclose AECDs. If the Approved Emissions Modification includes an  
9 AECD that Defendants have not listed and described in the AECD Disclosure Document as of the  
10 Effective Date, Defendants shall pay the following stipulated penalties, unless Defendants update the  
11 AECD Disclosure Document within 180 days of the Effective Date to include such AECD and do so  
12 voluntarily before EPA and CARB discover the undisclosed AECD:

13                           i.       \$1,000,000 for each undisclosed AECD that reduces the effectiveness of  
14 the emission control system under conditions which may reasonably be expected to be  
15 encountered in normal vehicle operation and use, and

16                           ii.       \$100,000 for each undisclosed AECD that is wholly emissions neutral or  
17 that improves the effectiveness of the emission control system under conditions which may  
18 reasonably be expected to be encountered in normal vehicle operation and use.

19                   c.    Failure to Comply with Approved Emissions Modifications. Except as otherwise  
20 allowed or approved under this Consent Decree, if Defendants modify, or cause to be modified, a  
21 Subject Vehicle after the Effective Date by making changes to the vehicle that do not comply with the  
22 Approved Emissions Modification, Defendants must pay a stipulated penalty to EPA and CARB of  
23 \$5,000 for each nonconformance with the Approved Emissions Modifications and for each Subject  
24 Vehicle that contains a nonconformance.

1           d.     Failure to Comply with OBD Summary Table. Except as otherwise allowed or  
 2 approved under this Consent Decree, if Defendants modify, or cause to be modified, a Subject Vehicle  
 3 after the Effective Date by making changes to the vehicle that do not comply with the OBD System and  
 4 functionality described in the OBD Summary Table, as required by Paragraph 22.b, Defendants must  
 5 pay a stipulated penalty to EPA and CARB of \$2,500 for each nonconformance with the Summary  
 6 Table and for each Subject Vehicle updated with the Approved Emissions Modification.

7           e.     Failure to Comply with Procedures for Post-Entry Modifications relating to  
 8 Critical Emissions Controls, Thermal Management Strategies, or the OBD System. If, after  
 9 implementing the Approved Emissions Modification, Defendants fail to follow the procedures in  
 10 Paragraph 25 for modifying the Critical Emissions Systems, Thermal Management Strategies, or the  
 11 OBD Systems in Subject Vehicles updated with the Approved Emissions Modification, Defendants shall  
 12 pay to the United States and CARB a stipulated penalty of:

13                   i.         \$900,000 for each failure to submit an Application in accordance with the  
 14 requirements in Paragraph 25.a;

15                   ii.        \$500,000 for each failure to submit a Recall Report to EPA and CARB in  
 16 accordance with the requirement of Paragraph 25.b; and

17                   iii.        \$30,000 for each failure to provide notice of a NHTSA Recall in  
 18 accordance with the requirement of Paragraph 25.c.

19           f.     Failure to Complete Post-Entry Testing Requirements. If Defendants fail to  
 20 complete Aging Testing or In-Use Testing in accordance with Paragraphs 29 or 30, Defendants shall pay  
 21 to the United States and CARB a stipulated penalty for each day of such failure:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 14th day
\$20,000	15th through 30th day
\$50,000	31st day and beyond.

1           g.     Failure to Submit Root-Cause Evaluation Reports. If Defendants fail to submit a  
 2 report concerning Root-Cause Evaluations in accordance with Paragraph 29.c.vi or Paragraph 31.a, 31.b,  
 3 or 31.c, Defendants shall pay to the United States and CARB a stipulated penalty for each day of such  
 4 failure:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 14th day
\$10,000	15th through 30th day
\$15,000	31st day and beyond.

8           h.     Failure to Comply with OBD Testing. If Defendants fail to complete OBD  
 9 Testing in accordance with Paragraph 33, Defendants shall pay to the United States and CARB a  
 10 stipulated penalty for each day of such failure:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 14th day
\$10,000	15th through 30th day
\$20,000	31st day and beyond.

14           i.     Failure to Submit Remedial Plan. If Defendants fail to submit a remedial plan in  
 15 accordance with Paragraph 31.f, Defendants shall be subject to the following stipulated penalties:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 14th day
\$10,000	15th through 30th day
\$20,000	31st day and beyond.

19           j.     Failure to Comply with Emissions Standards. If, as determined in accordance  
 20 with Paragraph 31.e (Determination of Non-Compliance) or Paragraph 31.h (Remedy Failure), Subject  
 21 Vehicles updated with the Approved Emissions Modification or the Amended Approved Emissions  
 22 Modification fail to meet one or more emissions standards referenced in Paragraph 28, Defendants shall  
 23 pay a stipulated penalty equal to the total number of vehicles that exceed such standards multiplied by  
 24 the applicable “per vehicle” penalty shown in the chart below. For those Subject Vehicles that exceed  
 25

1 more than one emissions standard, the applicable “per vehicle” penalty shall be based upon the  
 2 exceedance that results in the greatest “per vehicle” penalty. The percentage of the exceedance shall be  
 3 calculated by: (i) summing the test result with any Applicable Adjustment Factors, (ii) rounding the  
 4 result to the same number of decimal places as the applicable standard from Paragraph 28, (iii)  
 5 subtracting the applicable emissions standard from the result, (iv) dividing the result by the applicable  
 6 standard, and (v) multiplying by 100 and rounding to the nearest percentage point.

Percentage by Which Subject Vehicles Exceed Emissions Standard	“Per Vehicle” Penalty
1-15%	\$25
16% – 20%	\$45
21% – 30%	\$75
31% to 40%	\$105
41% to 50%	\$135
51% to 60%	\$165
61% to 70%	\$195
71% to 80%	\$225
81% to 90%	\$255
91% to 100%	\$285
Greater than 100%	\$315

15 k. Failure to Comply with OBD Requirements. If EPA and CARB determine that  
 16 one or more Subject Vehicles fail to comply with the OBD requirements under Paragraph 32, and if such  
 17 failure is not a Pre-Approved OBD Deficiency, an Additional OBD Non-Compliance, or identified in  
 18 the Additional OBD and Inducement Disclosures, Defendants shall pay to the United States and CARB  
 19 a stipulated penalty of \$5,000,000 for OBD non-compliance. Additionally, for each OBD non-  
 20 compliance subject to stipulated penalties under this Paragraph, Defendants shall extend the warranty  
 21 periods in Section VI.B by 6 months and 6,000 miles.

22 l. Failure to Pay OBD Penalty. If Defendants fail to pay the penalty required under  
 23 Paragraph 34.c (Penalty Payment to CARB for Additional OBD Non-Compliances) when due,  
 24 Defendants shall, in addition to the penalty, pay stipulated penalties directly to CARB as follows:  
 25

	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
1		
2	\$4,000	1st through 14th day
3	\$10,000	15th through 30th day
4	\$20,000	31st day and beyond.

5 m. Failure to Report Emissions Test Results and Emissions Test Data. If Defendants  
 6 fail to submit Emissions Test Results or other Emissions Test Data in accordance with Paragraphs 29  
 7 (Aging Testing), 30 (In-Use Verification and In-Use Confirmatory Testing), 31 (Root-Cause Evaluation  
 8 and Remedial Procedures for Subject Vehicles), 33 (OBD Testing), and 35 (Information Sharing with  
 9 EPA and CARB), Defendants shall pay to the United States and CARB a stipulated penalty for each day  
 10 of such failure:

	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
11	\$2,000	1st through 14th day
12	\$3,000	15th through 30th day
13	\$10,000	31st day and beyond.

14 87. Violations of Section VI.B (Emissions Modification Recall Program).

15 a. Failure to Establish Recall Program. If Defendants fail to timely initiate the  
 16 Emissions Modification Recall Program with respect to all Eligible Owners and Eligible Lessees as  
 17 required by Paragraph 38.a (that is, if Defendants fail to make the Approved Emissions Modification  
 18 available to Eligible Owners and Eligible Lessees within 15 days of the Effective Date under Paragraph  
 19 38.a, unless such time is extended in writing by EPA/CARB, Defendants shall pay the following  
 20 Stipulated Penalty for each day the offer is delayed:

	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
21	\$10,000	1st through 14th day
22	\$20,000	15th through 30th day
23	\$35,000	31st day and beyond.

24 b. Failure to Timely Install the Approved Emissions Modification. For any Eligible  
 25 Owner or Eligible Lessee who has scheduled the installation of an Approved Emissions Modification at

1 a Dealer and is required to wait more than 75 days to receive the Approved Emissions Modification in  
 2 violation of Paragraph 38.b, Defendants shall pay the following Stipulated Penalty for each day  
 3 thereafter that the Eligible Owner or Eligible Lessee is required to wait to receive the Approved  
 4 Emissions Modification. Notwithstanding the foregoing, Defendants' liability for stipulated penalties  
 5 under this Paragraph shall not accrue until and unless there have been 100 instances of action or inaction  
 6 that would give rise to a stipulated penalty. Once the threshold number of instances is reached,  
 7 Defendants shall be liable for each and every instance.

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day per affected vehicle
\$1,000	15th through 30th day per affected vehicle
\$2,000	31st day and beyond per affected vehicle, to a cumulative maximum of \$100,000 per affected vehicle.

11 In assessing stipulated penalties under this Paragraph, any delay in installing the Approved Emissions  
 12 Modification that is attributable to an Eligible Owner or Eligible Lessee shall not count against the 75-  
 13 day time requirement in Paragraph 38.b. In no event shall Defendants be required to pay a penalty for a  
 14 vehicle under this Paragraph 87.b for the same conduct that forms the basis for a Stipulated Penalty  
 15 demand under Paragraph 87.a.

16 **c. Failure to Establish and Maintain Recall Program Call Center and Online Support.**

17 If Defendants fail to timely establish and thereafter maintain a Recall Program Call Center and online  
 18 support website as required by Paragraph 38.c, Defendants shall pay the following Stipulated Penalty for  
 19 each day that the call center and/or online support website is not operative.

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 10th day
\$4,000	11th through 30th day
\$15,000	31st day and beyond.



1           d.     Unauthorized Waiver or Release or Other Consideration in Exchange for  
 2 Performing Approved Emissions Modification. If Defendants require any release of liability for any  
 3 legal claims that an Eligible Owner or Eligible Lessee may have against Defendants or any other person  
 4 solely in exchange for receiving the Approved Emissions Modification, or if Defendants require any  
 5 consideration whatsoever from an Eligible Owner or Eligible Lessee in connection with the installation  
 6 of the Approved Emissions Modification, in violation of Paragraph 38.d of the Decree, Defendants shall  
 7 pay a Stipulated Penalty of \$7,500 per affected vehicle.

8           e.     Premature Termination of Recall Program. If, at any time prior to the 18th  
 9 anniversary of the Effective Date, Defendants prematurely terminate the Recall Program with respect to  
 10 any class of Eligible Vehicle or Vehicles, in violation of the requirements of Paragraph 39, Defendants  
 11 shall pay the following Stipulated Penalty for each day until the Recall Program is reinstated.

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 30th day
\$10,000	31st through 60th day
\$20,000	61st day and beyond.

12           f.     Failure to Provide Recall Program Notices. If Defendants fail to timely provide  
 13 the notices required by Paragraph 43 regarding the Recall Program to Eligible Owners, Eligible Lessees,  
 14 and Dealers, in accordance with the requirements of Paragraph 43.a, 43.c, and 43.d, Defendants shall  
 15 pay the following Stipulated Penalties for each day that the complete and accurate notice is not timely  
 16 provided.  
 17  
 18  
 19

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$5,000	15th through 30th day
\$10,000	31st day and beyond.

20           g.     Failure to Provide Approved Emissions Modification Disclosures. If Defendants  
 21 fail to timely provide a complete and accurate disclosure to Eligible Owners and Eligible Lessees before  
 22 the installation of the Approved Emissions Modification on the owner or lessee's Eligible Vehicle in  
 23  
 24  
 25

1 accordance with the requirements of Paragraph 43.b, Defendants shall pay the following Stipulated  
 2 Penalty for each day that the disclosure is not provided.

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day per affected vehicle
\$1,000	15th through 30th day per affected vehicle
\$5,000	31st day and beyond per affected vehicle, to a cumulative maximum of \$100,000 per affected vehicle.

6 h. Misleading Notices or Advertisements. If Defendants provide any materially  
 7 misleading or inaccurate notice to any Eligible Owner or Eligible Lessee regarding the individual owner  
 8 or lessee’s rights or available remedies under the Recall Program, including, but not limited to, any  
 9 rights or available remedies under the Warranty provisions set forth in Paragraphs 45.a–45.d,  
 10 Defendants shall have 30 days to correct such notice after EPA, CARB, or the CA AG advise  
 11 Defendants that the notice is materially misleading or inaccurate. If Defendants fail to correct the notice  
 12 within 30 days, the following stipulated penalty shall apply per day the notice is not corrected:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$10,000	1st through 14th day
\$25,000	15th through 30th day
\$50,000	31st day and beyond.

16 i. Failure to Properly Label Modified Vehicles. If Defendants fail to affix a label to  
 17 each and every Eligible Vehicle that receives the Approved Emissions Modification at the time such  
 18 Approved Emissions Modification is applied to the vehicle and in accordance with the requirements of  
 19 Paragraph 44, Defendants shall pay a Stipulated Penalty of \$1,000 per label per vehicle, provided that no  
 20 stipulated penalty shall accrue for the first 15 days that the label is not affixed.

21 j. Failure to Honor Warranties. If Defendants fail to honor or cause any Dealer to  
 22 fail to honor the Extended Warranty described in Paragraph 45, including (i) the terms of the warranty  
 23 coverage described in Paragraph 45.a, as well as any modification of the Extended Warranty made  
 24 pursuant to Paragraph 45.b, (ii) the Extended Warranty period required by Paragraph 45.c, and (iii) the  
 25

1 Buyback and Lease Termination remedies required by Paragraph 45.d, Defendants shall pay a Stipulated  
 2 Penalty of \$20,000 for each vehicle for which the Extended Warranty was not properly honored. In  
 3 addition, Defendants shall also reimburse the affected Eligible Owner or Eligible Lessee any amount  
 4 paid by the Eligible Owner or Eligible Lessee to Defendants or a Dealer as a result of the failure to  
 5 honor the Extended Warranty. Notwithstanding the foregoing, Defendants' liability for stipulated  
 6 penalties under this Paragraph shall not accrue until and unless there have been 100 instances of action  
 7 or inaction that would give rise to a stipulated penalty. Once the threshold number of instances is  
 8 reached, Defendants shall be liable for each and every instance.

9 k. Failure to Maintain a VIN-Searchable Database with the required Emissions  
 10 Modification Disclosures and Specifying Warranty Coverage. If Defendants fail to maintain an accurate  
 11 and complete database specifying the warranty coverage for each Subject Vehicle in accordance with the  
 12 requirements of Paragraphs 45.f and 45.g, Defendants shall pay the following Stipulated Penalties for  
 13 each day the database is not maintained, and for each covered part omitted:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$10,000	15th through 30th day
\$50,000	31st day and beyond.

17 l. Penalties for Export, Sale, or Re-Sale of Unmodified Vehicles. If, after the  
 18 Effective Date of this Decree, Defendants sell, re-sell, lease, re-lease, export, or cause or arrange for any  
 19 Dealer or other entity to do any of the preceding for any Subject Vehicle that has not first received the  
 20 Approved Emissions Modification in violation of the requirements in Paragraph 46, Defendants shall  
 21 pay a stipulated penalty of \$25,000 for each Subject Vehicle that is sold, re-sold, leased, re-leased, or  
 22 exported. Likewise, if, after the Effective Date of this Decree, Defendants sell or cause or arrange for  
 23 any Dealer or other entity to sell any Subject Vehicle that has not first received the Approved Emissions  
 24 Modification in violation of the requirements in Paragraph 27 (Prohibition of Sales of Vehicles that  
 25

1 Have Not Entered into Commerce), Defendants shall pay a stipulated penalty of \$25,000 for each sale of  
 2 a Subject Vehicle.

3 88. Violations of Section VI.C (Corporate Compliance Requirements).

4 a. Ethics Helpline and Corporate Governance. Defendants shall pay the stipulated  
 5 penalties set forth below for each day that the maintenance or implementation of the Ethics Helpline or  
 6 Corporate Governance projects is not in accordance with the requirements of Paragraph 50.c or 51.a, as  
 7 applicable. However, these stipulated penalties shall not accrue if, during the period of noncompliance  
 8 alleged by the United States: Defendants (1) took reasonable and substantial measures to comply with  
 9 the obligation; and (2) had an objectively reasonable belief that they had complied with the obligation,  
 10 which shall be established by a certification pursuant to Paragraph 79 and any other evidence  
 11 Defendants may submit. Such certification and evidence shall be submitted by Defendants to the United  
 12 States within 30 days of receiving the United States’ stipulated penalty demand together with a  
 13 description of the measures Defendants are taking to address the noncompliance identified in the United  
 14 States’ demand. The United States shall evaluate the evidence submitted by Defendants to determine  
 15 whether to modify or withdraw the United States’ stipulated penalty demand. If the United States, after  
 16 reviewing such evidence, elects to impose stipulated penalties on Defendants, Defendants have the right  
 17 to invoke the Dispute Resolution procedures set forth in Section X (Dispute Resolution).

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$10,000	15th through 30th day
\$50,000	31st day and beyond.

21 b. Technical Training. Defendants shall pay stipulated penalties per day for each  
 22 day that Defendants fail to meet the deadlines for the training requirements of Paragraphs 52.a and 52.b,  
 23 as follows:  
 24  
 25

1	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
2	\$1,000	1st through 14th day
3	\$2,500	15th through 30th day
	\$10,000	31st day and beyond.

4           c.    Risk Assessment. Defendants shall pay stipulated penalties per day for each day  
5 that the risk assessment is overdue or is otherwise not in accordance with the requirements set forth in  
6 Paragraph 53, as follows:

7	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
8	\$1,000	1st through 14th day
9	\$2,500	15th through 30th day
	\$10,000	31st day and beyond.

10           d.    Internal Audit. Defendants shall pay stipulated penalties per day for each day that  
11 the internal audit is overdue or is otherwise not in accordance with the requirements set forth in  
12 Paragraph 58, as follows:

13	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
14	\$1,000	1st through 14th day
15	\$2,500	15th through 30th day
	\$10,000	31st day and beyond.

16           e.    PEMS Testing. Defendants shall pay stipulated penalties for each day that the  
17 PEMS testing program is overdue or is otherwise not in accordance with the requirements set forth in  
18 Paragraph 59, as follows:

19	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
20	\$2,000	1st through 14th day
21	\$5,000	15th through 30th day
	\$10,000	31st day and beyond.

22           f.    Data Collection. Defendants shall pay stipulated penalties per day for each day  
23 that they fail to comply with the requirements concerning the submission of data collected, as forth in  
24 Paragraph 60, as follows:

25

1	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
2	\$1,000	1st through 14th day
3	\$2,500	15th through 30th day
4	\$10,000	31st day and beyond.

5           g.     Independent Compliance Auditor. Defendants shall pay stipulated penalties per  
6 day for each day on which the list of candidates, the retaining of the Independent Compliance Auditor,  
7 the posting of the final annual reports on Defendants’ website or the response/action plan for proposed  
8 corrective measures, is overdue or is otherwise not in accordance with the requirements set forth in  
9 Paragraphs 63.a, 63.b, 64.d.ii, or 65.a, as follows:

9	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
10	\$1,000	1st through 14th day
11	\$5,000	15th through 30th day
12	\$10,000	31st day and beyond.

13           h.     Implementation of Corrective Measures. Defendants shall pay stipulated  
14 penalties per day for each day on which the report and certification of implementation of corrective  
15 measures is overdue or is otherwise not in accordance with the requirements set forth in Paragraph 65.a,  
16 as follows:

16	<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
17	\$2,000	1st through 30th day
18	\$10,000	31st through 60th day
19	\$25,000	61st day and beyond.

20           i.     Independent Compliance Auditor Information and Access. If the United States  
21 believes that Defendants are in violation of the requirements set forth in Paragraph 64.a or 64.c (relating  
22 to information and access rights for the Independent Compliance Auditor), the United States may  
23 provide notice of such violations pursuant to Section XIV (Notices) to Defendants. Defendants shall  
24 have 30 days from receipt of the notice to address the alleged violations or invoke Dispute Resolution  
25 pursuant to Section X. If after 30 days following receipt by Defendants of the United States’ notice, the

1 United States believes Defendants are in violation of the requirements set forth in Paragraph 64.a or  
 2 64.c, then Defendants shall be subject to stipulated penalties, as follows:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 45th day
\$5,000	46th through 60th day
\$10,000	61st day and beyond.

6 89. Violations of Section VI.D (Mitigation Program).

7 a. Failure to meet Catalytic Converter Requirements. Defendants shall be subject to  
 8 stipulated penalties of:

9 i. \$400 per catalytic converter if Defendants fail to meet the requirements of  
 10 Paragraphs 66, 66.a or 66.c to manufacture and ship to First-Tier Customers who order them,  
 11 200,000 Improved Catalytic Converters that meet the technical requirements of Paragraph 66.a  
 12 and, as produced and to the extent feasible, are not clearly distinguishable from unimproved  
 13 catalytic converters as required by Paragraph 66.c by no later than July 1, 2020, and

14 ii. An additional \$50 per catalytic converter per month for each month after  
 15 July 1, 2020, that Defendants continue to fail to meet the requirements of Paragraphs 66, 66.a, or  
 16 66.c, to manufacture and ship to First-Tier Customers who order them, 200,000 Improved  
 17 Catalytic Converters that meet the technical requirements of Paragraph 66.a and, as produced  
 18 and to the extent feasible, are not clearly distinguishable from unimproved catalytic converters as  
 19 required by Paragraph 66.c, unless and until the manufacture and sale of the Improved Catalytic  
 20 Converters becomes prohibited as set forth in Paragraph 67.c.

21 b. Failure to Contract for Invoiced Transaction Data. Defendants shall be subject to  
 22 a stipulated penalty of \$5,000,000 if they fail to comply with the requirements in Paragraph 67.a to enter  
 23 into a contract with at least one third-party to collect sales and installation data as required by Paragraph  
 24 67.a.

90. Violations of Section VII (Reporting Requirements).

a. Reporting of Violations. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Paragraph 71:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$5,000	15th through 30th day
\$10,000	31st day and beyond.

b. Compliance Reporting. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements set forth in Paragraph 36 of Section VI.A, Paragraph 47 or 49.a, as applicable, of Section VI.B, Paragraph 61 of Section VI.C, and Paragraph 67 of Section VI.D:

<u>Penalty per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$5,000	15th through 30th day
\$10,000	31st day and beyond.

c. Certification Requirements. For each violation of the certification requirements of Paragraph 79, except for false statements as described in Paragraph 90.d, below, for which the stipulated penalty shall be as provided therein, Defendants shall have a grace period of 15 days to self-correct the violation, after which time, Defendants shall pay a stipulated penalty of \$200,000 for each violation.

d. False Statements. Defendants shall pay a stipulated penalty of \$1,000,000 for each report or Submission required to be submitted pursuant to this Consent Decree that contains a knowingly false, fictitious, or fraudulent statement or representation of material fact.

91. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until



1 performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue  
2 simultaneously for separate violations of this Consent Decree.

3 92. The United States, in consultation with CARB, will issue any demand for stipulated  
4 penalties. Defendants shall pay any stipulated penalties to the United States/CARB within thirty 30 days  
5 of receiving the United States' written demand, unless Defendants invoke the dispute resolution  
6 procedures under Section X (Dispute Resolution) within the thirty (30) day period. Defendants shall pay  
7 75 percent of the total stipulated penalty amount due to the United States and 25 percent to CARB,  
8 except for (1) Paragraphs 86.d (Failure to Comply with OBD Summary Table), 86.h (Failure to Comply  
9 with OBD Testing), 86.k (Failure to Comply with OBD Requirements), 87.g (Failure to Provide AEM  
10 Disclosures), 87.j (Failure to Honor Warranties), and 87.k (Failure to Maintain VIN Searchable  
11 Database) for which Defendants shall pay 50 percent of the total stipulated penalty amount due to the  
12 United States and 50 percent to CARB; (2) Paragraph 86.l (Failure to Pay OBD Penalty) for which  
13 Defendants shall pay 100 percent of the total to CARB; and (3) Paragraph 89 (Violations of Section  
14 VI.D – Mitigation) for which Defendants shall pay 100 percent of the total to the United States.

15 93. Either the United States or CARB may, in the unreviewable exercise of its discretion,  
16 reduce or waive stipulated penalties otherwise due it under this Consent Decree. However, no action by  
17 either the United States or CARB may reduce or waive stipulated penalties due the other.

18 94. Stipulated penalties continue to accrue as provided in Paragraph 91 during any dispute  
19 resolution period, but need not be paid until the following:

20 a. If the dispute is resolved by agreement of the Parties or by a decision of  
21 EPA/CARB that is not appealed to the Court, Defendants shall pay accrued penalties determined to be  
22 owing, together with interest as provided in Paragraph 97, to the United States/CARB within 30 days  
23 after the effective date of the agreement or the receipt of EPA's/CARB's decision or order.

1           b.       If the dispute is appealed to the Court and the United States/California prevail(s)  
2 in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing,  
3 together with interest as provided in Paragraph 97, to the United States/CARB, within 60 days of  
4 receiving the Court's decision or order, except as provided in Paragraph 94.c, below.

5           c.       If any Party appeals the District Court's decision, Defendants shall pay all  
6 accrued penalties determined to be owing, together with interest as provided in Paragraph 97, to the  
7 United States/CARB, within 15 days of receiving the final appellate court decision.

8           95.     Defendants shall pay stipulated penalties owing to the United States in the manner set  
9 forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall  
10 state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are  
11 being paid.

12           96.     Defendants shall pay stipulated penalties owing to CARB by check, accompanied by a  
13 Payment Transmittal Form (which CARB will provide to the addressee listed in Paragraph 10 after the  
14 Effective Date), with each check mailed to:

15           Air Resources Board, Accounting Branch  
16           P.O. Box 1436  
16           Sacramento, CA 95812-1436;

17 or by wire transfer, in which case Defendants shall use the following wire transfer information and send  
18 the Payment Transmittal Form to the above address prior to each wire transfer:

19           State of California Air Resources Board  
20           c/o Bank of America, Inter Branch to 0148  
20           Routing No. 0260-0959-3 Account No. 01482-80005  
21           Notice of Transfer: Yogeeta Sharma Fax: (916) 322-9612.

21 Defendants are responsible for any bank charges incurred for processing wire transfers. Except as  
22 otherwise provided by this Consent Decree, stipulated penalties paid to CARB shall be deposited into  
23 the Air Pollution Control Fund and used by CARB to carry out its duties and functions.  
24  
25



1 Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts  
2 to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and  
3 best efforts to address the effects of any potential force majeure event: (a) as it is occurring and (b)  
4 following the potential force majeure, such that the delay and any adverse effects of the delay are  
5 minimized. "Force Majeure" does not include Defendants' financial inability to perform any obligation  
6 under this Consent Decree.

7           101. If any event occurs or has occurred that may delay the performance of any obligation  
8 under this Consent Decree, for which Defendants intend or may intend to assert a claim of force  
9 majeure, whether or not caused by a force majeure event, Defendants shall provide notice to EPA and  
10 CARB in accordance with Section XIV (Notices) within 7 days of when Defendants first knew that the  
11 event might cause a delay. Within 14 days thereafter, Defendants shall provide in writing to EPA and  
12 CARB an explanation and description of the reasons for the delay; the anticipated duration of the delay;  
13 all actions taken or to be taken to prevent or minimize the delay or the effect of the delay; a schedule for  
14 implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;  
15 Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a  
16 claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute  
17 to an endangerment to public health, welfare, or the environment. Defendants shall include with any  
18 notice all available documentation supporting the claim that the delay was attributable to a force  
19 majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any  
20 claim of force majeure for that event for the period of time of such failure to comply, and for any  
21 additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of  
22 which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have  
23 known.



1 respect to this Consent Decree. Failure by Defendants to seek resolution of a dispute under this Section  
2 shall preclude Defendants from raising any such issue as a defense to an action by the United States or  
3 California to enforce any obligation of Defendants arising under this Decree.

4 106. Informal Dispute Resolution. Any dispute subject to dispute resolution under this  
5 Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to  
6 have arisen when Defendants send the United States and California a written Notice of Dispute. Such  
7 Notice of Dispute shall state clearly the matter in dispute, including, where applicable, whether the  
8 dispute arises from a decision made by EPA and CARB jointly, or EPA or CARB individually. The  
9 period of informal negotiations shall not exceed 30 days after the dispute arises, unless that period is  
10 modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the  
11 position advanced by the United States/California shall be considered binding unless, within 30 days  
12 after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution  
13 procedures as set forth below.

14 107. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution  
15 procedures, within the time period provided in the preceding Paragraph, by serving on the United  
16 States/California a written Statement of Position regarding the matter in dispute. The Statement of  
17 Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting  
18 Defendants' position and any supporting documentation relied upon by Defendants.

19 108. The United States/California shall serve its/their Statement of Position within 45 days of  
20 receipt of Defendants' Statement of Position. The United States'/California's Statement of Position  
21 shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position  
22 and any supporting documentation relied upon by the United States/California. The United States'  
23 Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial  
24 review of the dispute in accordance with the following Paragraph.

1           109. Defendants may seek judicial review of the dispute by filing with the Court and serving  
2 on the United States/California, in accordance with Section XIV (Notices), a motion requesting judicial  
3 resolution of the dispute. The motion must be filed within 30 days of receipt of the United  
4 States'/California's Statement of Position pursuant to the preceding Paragraph. The motion shall  
5 contain a written statement of Defendants' position on the matter in dispute, including any supporting  
6 factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any  
7 schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

8           110. The United States/California shall respond to Defendants' motion within the time period  
9 allowed by the Local Rules of this Court. Defendants may file a reply memorandum to the extent  
10 permitted by the Local Rules.

11           111. Standard of Review.

12           a. Disputes Concerning Matters Accorded Record Review. In any dispute arising  
13 under Section VI.A brought under Paragraph 109, Defendants shall have the burden of demonstrating,  
14 based on the administrative record, that EPA's/CARB's action, determination, or position is arbitrary  
15 and capricious or otherwise not in accordance with law based on the administrative record. For  
16 purposes of this Paragraph, EPA/CARB will maintain an administrative record of the dispute, which will  
17 contain all statements of position, including supporting documentation, submitted pursuant to this  
18 Section. Prior to the filing of any motion, the Parties may submit additional materials to be part of the  
19 administrative record pursuant to applicable principles of administrative law.

20           b. Other Disputes. Except as otherwise provided in this Consent Decree, in any  
21 other dispute brought under Paragraph 109, Defendants shall bear the burden of demonstrating by a  
22 preponderance of the evidence that their actions were in compliance with this Consent Decree.

23           112. In any disputes brought under this Section, it is hereby expressly acknowledged and  
24 agreed that this Consent Decree was jointly drafted in good faith by the United States, California, and  
25

1 Defendants. Accordingly, the Parties hereby agree that any and all rules of construction to the effect  
2 that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the  
3 terms, meaning, or interpretation of this Consent Decree.

4 113. The invocation of dispute resolution procedures under this Section shall not, by itself,  
5 extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless  
6 and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed  
7 matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed  
8 pending resolution of the dispute as provided in Paragraph 94. If Defendants do not prevail on the  
9 disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated  
10 Penalties).

11 **XI. INFORMATION COLLECTION AND RETENTION AND CBI**

12 114. The United States, California, and their representatives, including attorneys, contractors,  
13 and consultants (“Agency Representatives”), shall have the right of entry, upon presentation of  
14 credentials, at all reasonable times into any of Defendants’ offices, plants, or facilities:

- 15 a. To monitor the progress of activities required under this Consent Decree;
- 16 b. To verify any data or information submitted to the United States or California in  
17 accordance with the terms of this Consent Decree;
- 18 c. To inspect records related to this Consent Decree;
- 19 d. To conduct testing related to this Consent Decree, whereupon a representative of  
20 Defendant shall be given the opportunity to accompany the Agency Representatives conducting such  
21 testing;
- 22 e. To obtain documentary evidence, including photographs and similar data, related  
23 to this Consent Decree;
- 24 f. To assess Defendants’ compliance with this Consent Decree; and  
25



1           g. For other purposes as set forth in 42 U.S.C. § 7542(b) and Cal. Gov't Code §  
2 11180.

3           115. Upon request, and for purposes of evaluating compliance with the Consent Decree,  
4 Defendants shall promptly provide to EPA and California or their authorized representatives at locations  
5 to be designated by EPA and California:

6           a. A reasonable number of vehicles, in specified configurations, for emissions  
7 testing;

8           b. A reasonable number of engine control units for vehicles of specified  
9 configurations;

10           c. Specified software and related documentation for vehicles of specified  
11 configurations;

12           d. Reasonable requests for English translations of software documents; or

13           e. Other items or information that could be requested pursuant to 42 U.S.C.  
14 § 7542(a) or Cal. Gov't Code § 11180.

15           116. Until 3 years after the termination of this Consent Decree, Defendants shall retain, and  
16 shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records,  
17 or other information (including documents, records, or other information in electronic form) (hereinafter  
18 referred to as "Records") in their or their contractors' or agents' possession or control, or that come into  
19 their or their contractors' or agents' possession or control, relating to Defendants' performance of their  
20 obligations under this Consent Decree (except that Defendants are not required to retain copies or  
21 images of military identification cards to the extent that retention of such copies or images would violate  
22 applicable law, including 18 U.S.C. § 701). This information-retention requirement shall apply  
23 regardless of any contrary corporate or institutional policies or procedures. At any time during this  
24 information-retention period, upon request by the United States or California, Defendants shall provide  
25

1 copies of any Records required to be maintained under this Paragraph. Nothing in this Paragraph shall  
2 apply to any documents in the possession, custody, or control of any outside legal counsel retained by  
3 Defendants in connection with this Consent Decree or of any contractors or agents retained by such  
4 outside legal counsel solely to assist in the legal representation of Defendants.

5 117. At the conclusion of the information-retention period provided in the preceding  
6 Paragraph, Defendants shall notify the United States and California at least 90 days prior to the  
7 destruction of any Records subject to the requirements of the preceding Paragraph and, upon request by  
8 the United States or California, Defendants shall deliver any such Records to EPA or California.

9 118. Defendants may assert that certain Records are privileged or protected as provided under  
10 federal or California law. If Defendants assert such a privilege or protection, they shall provide the  
11 following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of each author of  
12 the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the  
13 Record; and (f) the privilege or protection asserted by Defendants. However, Defendants may make no  
14 claim of privilege or protection regarding: (1) any data regarding the Subject Vehicles or compliance  
15 with this Consent Decree; or (2) the final version of a portion of any Record that Defendants are  
16 required to create or generate pursuant to this Consent Decree.

17 119. Confidential Business Information. Defendants may assert that Records required to be  
18 provided under this Consent Decree are protected as CBI under 40 C.F.R. Part 2. As to any Record that  
19 Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2  
20 or comparable California law. Records that Defendants claim to be CBI and submit to the United States  
21 and/or California will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B, or comparable  
22 California law, as applicable. If no claim of confidentiality accompanies Records when they are  
23 submitted to EPA and/or California, the public may be given access to the Records without further  
24 notice to Defendants. If EPA or California has notified Defendants that it has determined that the  
25

1 Records are not entitled to confidential treatment under the standards of 40 C.F.R. Part 2, Subpart B, or  
2 comparable California law, as applicable, Defendants may appeal such determination. If Defendants are  
3 unsuccessful in an appeal of this determination or further proceedings regarding the CBI status of these  
4 Records, the public may be given access to such Records in accordance with 40 C.F.R. Part 2,  
5 Subpart B, or comparable California law, as applicable.

6 120. This Consent Decree in no way limits or affects any right of entry and inspection, or any  
7 right to obtain information, held by the United States or California pursuant to applicable federal or state  
8 laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain  
9 Records imposed by applicable federal or state laws, regulations, or permits.

## 10 **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

11 121. Upon the Effective Date, and subject to the reservations in Paragraph 123, this Consent  
12 Decree shall resolve and settle all of the United States' Clean Air Act civil claims for civil penalties and  
13 injunctive relief against Defendants, their successors, and all affiliates, parents, or subsidiaries of  
14 Defendants identified in Appendix F, and any present or former directors, officers, or employees of  
15 Defendants or their affiliates, parents, or subsidiaries identified in Appendix F, provided that such  
16 persons were acting within the scope of their employment, for: (a) the violations alleged in the U.S.  
17 Complaint, (b) violations arising from or relating to the Original Configuration of the emission control  
18 system for the Subject Vehicles, (c) violations arising from or relating to the adjustment factor for  
19 infrequent regeneration of the DPF System in the Subject Vehicles, and (d) violations arising from or  
20 relating to Defendants' applications for a certificate of conformity for the Subject Vehicles in MYs 2014  
21 to 2016 and any information provided to EPA for the purpose of securing such certificates.

22 122. Upon the Effective Date, and subject to the reservations in Paragraph 124, this Consent  
23 Decree shall resolve and settle California's civil claims, asserted by and through CARB, for injunctive  
24 relief pursuant to the Clean Air Act, and for injunctive relief and civil penalties pursuant to California  
25

1 Health and Safety Code §§ 43016, 43017, 43151, 43152, 43153, 43154, 43205, 43211, and 43212; 13  
2 C.C.R. §§ 1961, 1961.2, 1965, 1968.2, and 2037 and the 40 C.F.R. sections incorporated therein by  
3 reference, against Defendants, their successors, and all affiliates, parents, or subsidiaries of Defendants  
4 identified in Appendix F, and any present or former directors, officers, or employees of Defendants or  
5 their affiliates, parents, or subsidiaries identified in Appendix F, provided that such persons were acting  
6 within the scope of their employment for: (a) the violations alleged in the California Complaint,  
7 (b) violations arising from or relating to the Original Configuration of the emission control system for  
8 the Subject Vehicles, (c) violations arising from or relating to the adjustment factor for infrequent  
9 regeneration of the DPF System in the Subject Vehicles, and (d) violations arising from or relating to  
10 Defendants' applications for an Executive Order for the Subject Vehicles in MYs 2014 to 2016 and any  
11 information provided to CARB for the purpose of securing such Executive Orders. In addition, upon the  
12 Effective Date, and subject to the reservations in Paragraph 124, this Consent Decree shall resolve and  
13 settle California's claims pursuant to California Code of Civil Procedure § 1021.8(a) for costs of  
14 investigating and prosecuting Defendants' violations of Health and Safety Code §§ 43016, 43017, and  
15 43154. In addition, upon the Effective Date and subject to the reservations in Paragraph 124, this  
16 Consent Decree shall resolve and settle California's claims for costs of litigation pursuant to 42 U.S.C.  
17 § 7604(d).

18 123. The United States reserves, and this Consent Decree is without prejudice to, all claims,  
19 rights, and remedies against Defendants with respect to all matters not expressly resolved in Paragraph  
20 121. Notwithstanding any other provision of this Decree, the United States reserves all claims, rights,  
21 and remedies against Defendants with respect to:

- 22 a. Enforcement of the terms of this Consent Decree;
  - 23 b. All rights reserved by Paragraph 99 (Non-Exclusivity of Remedy);
- 24  
25

1 c. Violations relating to the Subject Vehicles that first occur after the Date of  
2 Lodging, including, but not limited to, the installation of a Defeat Device in the Subject Vehicles;

3 d. Emissions-Related Defects in the Subject Vehicles that do not relate to the  
4 Approved Emissions Modification;

5 e. All rights reserved by Paragraph 31.h (Remedy Failure) of Section VI.A with  
6 respect to Subject Vehicles updated with the Approved Emissions Modification that fail to meet the  
7 emission standards referenced in Paragraph 28 after the completion of testing under Paragraph 29  
8 (Aging Testing) or Paragraph 30 (In-Use Verification and In-Use Confirmatory Testing);

9 f. Any criminal liability; and

10 g. Any claim(s) of the United States or an agency of the United States, other than  
11 EPA, concerning the Subject Vehicles.

12 124. California reserves, and this Consent Decree is without prejudice to, all claims, rights,  
13 and remedies against Defendants with respect to all matters not expressly resolved in Paragraph 122.  
14 Notwithstanding any other provision of this Decree, California reserves all claims, rights, and remedies  
15 against Defendants with respect to:

16 a. Enforcement of the terms of this Consent Decree;

17 b. All rights reserved by Paragraph 99 (Non-Exclusivity of Remedy);

18 c. Violations relating to the Subject Vehicles that first occur after the Date of  
19 Lodging, including, but not limited to, the installation of a Defeat Device in the Subject Vehicles;

20 d. Emissions-Related Defects in the Subject Vehicles that do not relate to the  
21 Approved Emissions Modification;

22 e. All rights reserved by Paragraph 31.h (Remedy Failure) of Section VI.A of the  
23 Consent Decree with respect to Subject Vehicles updated with the Approved Emissions Modification  
24  
25

1 that fail to meet the emission standards referenced in Paragraph 28 after the completion of testing under  
2 Paragraph 29 (Aging Testing) or Paragraph 30 (In-Use Verification and In-Use Confirmatory Testing);

3 f. Further injunctive relief pursuant to the California Health and Safety Code as  
4 alleged in the California Complaint to mitigate the total lifetime excess emissions in California from the  
5 Subject Vehicles, which injunctive relief is fully set forth in the First California Partial Consent Decree,  
6 lodged simultaneously with this Consent Decree;

7 g. All claims for relief based on Defendants' violations of California Business and  
8 Professions Code sections 17200 et seq., 17500 et seq., and 17580.5 as alleged in the California  
9 Complaint, including civil penalties, injunctive relief other the injunctive relief provided for in this  
10 Consent Decree, and relief to consumers (including without limitation claims for restitution), which  
11 claims are proposed to be released in exchange for the further injunctive relief and monetary relief set  
12 forth in the Second California Partial Consent Decree, lodged simultaneously with this Consent Decree;

13 h. Cost and attorneys' fees other than those released in Paragraph 122 above;

14 i. Any criminal liability;

15 j. Any part of any claims for violations of securities laws or the California False  
16 Claim Act, California Government Code §§ 12650 et seq.;

17 k. Any other claims held by any agency or officer of the State of California other  
18 than CARB; and

19 l. Any claims held by individual consumers.

20 125. This Consent Decree shall not be construed to limit the rights of the United States or  
21 California to obtain penalties or injunctive relief under the Act or implementing regulations, or under  
22 other federal or state laws, regulations, or permit conditions, except as specifically provided in  
23 Paragraphs 121-122. The United States and California further reserve all legal and equitable remedies to  
24 address any imminent and substantial endangerment to the public health or welfare or the environment  
25

1 arising at any of Defendants' facilities, or posed by Defendants' Subject Vehicles, whether related to the  
2 violations addressed in this Consent Decree or otherwise.

3       126. In any subsequent administrative or judicial proceeding initiated by the United States or  
4 California for injunctive relief, civil penalties, other appropriate relief relating to Defendants' violations,  
5 Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of  
6 waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other  
7 defenses based upon any contention that the claims raised by the United States or California in the  
8 subsequent proceeding were or should have been brought in the instant case, except with respect to  
9 claims that have been specifically resolved pursuant to Paragraphs 121 and 122.

10       127. This Consent Decree is not a permit, or a modification of any permit, under any federal,  
11 State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete  
12 compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants'  
13 compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such  
14 laws, regulations, or permits, except as set forth herein. The United States and California do not, by  
15 their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants'  
16 compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act,  
17 or with any other provisions of federal, State, or local laws, regulations, or permits.

18       128. This Consent Decree does not limit or affect the rights of Defendants or of the United  
19 States or California against any third parties not party to this Consent Decree, nor does it limit the rights  
20 of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by  
21 law.

22       129. This Consent Decree shall not be construed to create rights in, or grant any cause of  
23 action to, any third party not party to this Consent Decree.

1 **XIII. COSTS**

2 130. The Parties shall bear their own costs of this action, including attorneys' fees, except that  
3 the United States and California shall be entitled to collect the costs (including attorneys' fees) incurred  
4 in any action necessary to collect any portion of the civil penalty or any stipulated penalties due under  
5 this Consent Decree but not paid by Defendants.

6 **XIV. NOTICES**

7 131. Unless otherwise specified in this Decree, Materials shall be accompanied by a cover  
8 letter and submitted electronically as described below, unless such notices are unable to be uploaded to  
9 the CDX electronic system (in the case of EPA) or transmitted by email (in the case of any other party).  
10 For all notices to EPA, Defendants shall register for the CDX electronic system and upload such notices  
11 at [https://cdx.epa.gov/epa\\_home.asp](https://cdx.epa.gov/epa_home.asp). Any notice that cannot be uploaded or transmitted via email shall  
12 be provided in writing (and if any attachment is voluminous, it shall be provided on a disk, hard drive, or  
13 other equivalent successor technology) to the addresses below:

14 As to the United States: DOJ at the email, or if necessary, the mail addresses below  
15 **and**  
16 EPA (via CDX or the mail and/or email address below if  
CDX is not possible)

17 As to DOJ by email: eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-2-1-11607

18 As to DOJ by mail: EES Case Management Unit  
19 Environment and Natural Resources Division  
20 U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ # 90-5-2-1-11607

21 As to EPA by email: Caballero.Kathryn@epa.gov

22 As to EPA by mail: Director, Air Enforcement Division  
23 1200 Pennsylvania Avenue NW  
24 William J. Clinton South Building  
MC 2242A  
25 Washington, DC 20460



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

As to California: CARB **and** CA AG at the email or mail addresses below, as applicable

As to CARB by email: ellen.peter@arb.ca.gov

As to CARB by mail: Chief Counsel  
California Air Resources Board  
Legal Office  
1001 I Street  
Sacramento, CA 95814

As to CA AG by email: judith.fiorentini@doj.ca.gov  
jon.worm@doj.ca.gov

As to CA AG by mail: Judith Fiorentini  
Supervising Deputy Attorney General  
Consumer Law Section  
California Department of Justice  
600 West Broadway, Suite 1800  
San Diego, CA 92101

Senior Assistant Attorney General  
Natural Resources Section  
Office of the Attorney General  
P.O. Box 944255  
Sacramento, CA 94244-2550

As to CA AG by phone: Judith Fiorentini  
619-738-9343

As to Defendants:

As to one or more of the Defendants by email: Robert J. Giuffra, Jr.  
Scott D. Miller  
Granta Y. Nakayama  
[giuffrar@sullcrom.com](mailto:giuffrar@sullcrom.com)  
[millersc@sullcrom.com](mailto:millersc@sullcrom.com)  
[gnakayama@kslaw.com](mailto:gnakayama@kslaw.com)

1 As to one or more of the  
2 Defendants by mail:

Robert J. Giuffra, Jr.  
Scott D. Miller  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004

3  
4  
5 Granta Y. Nakayama  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
6 Washington, DC 20006

7 132. Any Party may, by written notice to the other Parties, change its designated notice  
8 recipient or notice address provided above.

9 133. Materials submitted pursuant to this Section shall be deemed submitted upon uploading  
10 electronically, emailing, or mailing as required, except as provided elsewhere in this Consent Decree or  
11 by mutual agreement of the Parties in writing.

12 **XV. EFFECTIVE DATE**

13 134. The Effective Date of this Consent Decree shall be the date upon which this Consent  
14 Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs  
15 first, as recorded on the Court's docket.

16 **XVI. RETENTION OF JURISDICTION**

17 135. The Court shall retain jurisdiction over this case until termination of this Consent Decree,  
18 for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree,  
19 pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

20 **XVII. MODIFICATION**

21 136. Except as otherwise set forth in Paragraph 57 (Modifications of Procedures and Projects)  
22 in Section VI.C (Corporate Compliance Requirements), the terms of this Consent Decree, including any  
23 attached appendices and documents incorporated by reference, may be modified only by a subsequent  
24  
25

1 written agreement signed by all the Parties. Where the modification constitutes a material change to this  
2 Decree, it shall be effective only upon approval by the Court.

3 137. The United States or California, as applicable, will file any non-material modifications  
4 with the Court. Once the non-material modification has been filed, Defendants shall post the filed  
5 version (with ECF stamp) on the website required by Paragraph 78.

6 138. Any disputes concerning modification of this Decree shall be resolved pursuant to  
7 Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by  
8 Paragraph 111, the Party seeking the modification bears the burden of demonstrating that it is entitled to  
9 the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

10 **XVIII. TERMINATION**

11 139. After Defendants have completed the requirements of Section VI (Injunctive Measures),  
12 except for Paragraphs 39 (No End Date for Emissions Modification Recall) and 45.c (Extended  
13 Warranty Period) and associated requirements, have complied with all other requirements of this  
14 Consent Decree, and have paid the civil penalty and any accrued stipulated penalties as required by this  
15 Consent Decree, Defendants may serve upon the United States and California a Request for  
16 Termination, stating that Defendants have satisfied those requirements, together with all necessary  
17 supporting documentation.

18 140. Following receipt by the United States and California of Defendants' Request for  
19 Termination, the Parties shall confer informally concerning the Request and any disagreement that the  
20 Parties may have as to whether Defendants have satisfactorily complied with the requirements for  
21 termination of this Consent Decree. If the United States, after consultation with California, agrees that  
22 the Decree may be terminated, the United States will file a motion to terminate the Decree, provided,  
23 however, that the provisions associated with effectuating and enforcing Paragraphs 39 and 45.c shall  
24 continue in full force and effect indefinitely.

1 141. If the United States, after consultation with California, does not agree that the Decree  
2 may be terminated, Defendants may invoke Dispute Resolution under Section X. However, Defendants  
3 shall not seek Dispute Resolution of any dispute regarding termination until 45 days after service of their  
4 Request for Termination.

5 **XIX. PUBLIC PARTICIPATION**

6 142. This Consent Decree shall be lodged with the Court for a period of not less than 30 days  
7 for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the  
8 right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or  
9 considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. California  
10 reserves the right to withdraw or withhold its consent if the United States does so. Defendants consent  
11 to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of  
12 this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States  
13 has notified Defendants in writing that it no longer supports entry of the Decree.

14 **XX. SIGNATORIES/SERVICE**

15 143. Each undersigned representative of Defendants and California and the Assistant Attorney  
16 General for the Environment and Natural Resources Division of the DOJ certifies that he or she is fully  
17 authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind  
18 the Party he or she represents to this document.

19 144. This Consent Decree may be signed in counterparts, and its validity shall not be  
20 challenged on that basis. For purposes of this Consent Decree, a signature page that is transmitted  
21 electronically (e.g., by facsimile or e-mailed “PDF”) shall have the same effect as an original.

22 **XXI. INTEGRATION**

23 145. This Consent Decree constitutes the final, complete, and exclusive agreement and  
24 understanding among the Parties with respect to the settlement embodied in the Decree and supersedes  
25

1 all prior agreements and understandings, whether oral or written, concerning the settlement embodied  
2 herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree,  
3 the Parties acknowledge that there are no representations, agreements, or understandings relating to the  
4 settlement other than those expressly contained in this Consent Decree.

5 **XXII. 26 U.S.C. § 162(f)(2)(A)(ii) IDENTIFICATION**

6 146. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal  
7 Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 6;  
8 Section V (Approval of Submissions; U.S./California Decision-Making), Paragraphs 17; Section VI.A  
9 (Modification of Subject Vehicles and Post-Entry Compliance Testing, Paragraphs 22-25, 27-30, 31  
10 (except for Paragraphs 31.d, 31.e, and 31.h), 32-33, 35-36; Section VI.B (Emissions Modification Recall  
11 Program), Paragraphs 37-41 (except for any payments made pursuant to Paragraph 41), 42-48, 49.a-  
12 .49.b; Section VI.C (Corporate Compliance Requirements), Paragraphs 50-65; Section VI.D (Mitigation  
13 Program), Paragraphs 66, 67.a-67.c; Section VII (Reporting Requirements), Paragraphs 70-71, 73-79;  
14 Section XI (Information Collection and Retention and CBI), Paragraphs 114-117; and related appendices  
15 and documents set forth in Section XXIV (Appendices and Documents Incorporated By Reference), is  
16 restitution or required to come into compliance with law.

17 **XXIII. FINAL JUDGMENT**

18 147. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall  
19 constitute a final judgment of the Court as to the United States, California, and Defendants. The Court  
20 finds that there is no just reason for delay and therefore enters this judgment as a final judgment under  
21 Fed. R. Civ. P. 54 and 58.

1           **XXIV. APPENDICES AND DOCUMENTS INCORPORATED BY REFERENCE**

2           148. The following Appendices are attached to and part of this Consent Decree:

- 3           a. Appendix A is the Adjustment Factors;
- 4           b. Appendix B is the CVN and CALID for Final Carryback Configuration;
- 5           c. Appendix C consists of documents related to the MY 2014 Field Fix;
- 6           d. Appendix D is the Approved Emissions Modification Disclosure;
- 7           e. Appendix E is the Extended Warranty description; and
- 8           f. Appendix F is the List of Defendants' affiliates, parents, and subsidiaries for the

9 purposes of Section XII (Effect of Settlement/Reservation of Rights).

10          149. The following documents are incorporated into this Consent Decree by reference:

- 11          a. AECD Disclosure Document;
- 12          b. Code of Conduct;
- 13          c. ECU Data Parameters List;
- 14          d. Final Carryback Configuration;
- 15          e. Final Carryback Configuration Description Document;
- 16          f. Improvement Plan;
- 17          g. MY 2018 Mileage Accumulation Method;
- 18          h. OBD Demonstration ECU Data Parameters List;

- i. OBD Summary Table; and
- j. Test Protocol.

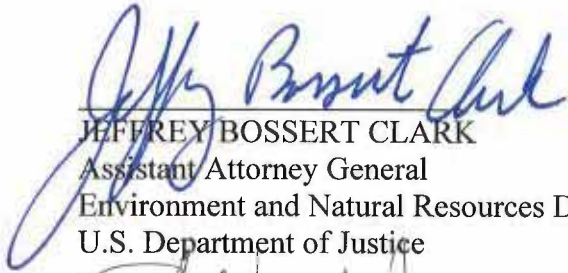
Dated and entered this \_\_ day of \_\_\_\_\_, 2019.

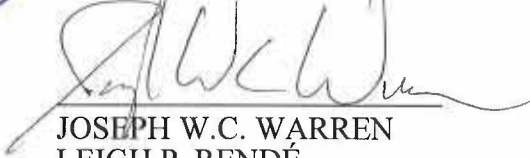
---

EDWARD M. CHEN  
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

119119  
Date

  
JEFFREY BOSSERT CLARK  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

  
JOSEPH W.C. WARREN

LEIGH P. RENDÉ  
LESLIE ALLEN  
NIGEL COONEY  
ANNA GRACE  
LAUREN D. GRADY  
ANDREW W. KEIR  
ZACHARY N. MOOR  
EMILY C. POWERS  
BRANDON J. ROBERS  
JEFFREY A. SPECTOR  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



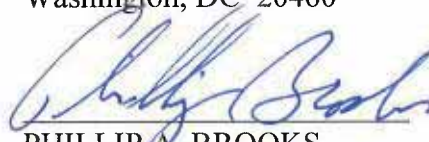
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



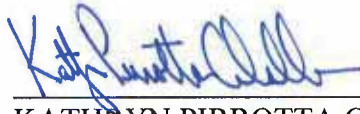
SUSAN PARKER BODINE  
Assistant Administrator  
PATRICK D. TRAYLOR  
Deputy Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460



ROSEMARIE KELLEY *by PAS*  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460



PHILLIP A. BROOKS  
Director, Air Enforcement Division  
EVAN BELSER  
Chief, Vehicle and Engine Enforcement Branch  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460



KATHRYN PIRROTTA CABALLERO  
CAITLIN MEISENBACH  
Air Enforcement Division, Office of Civil  
Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

1 FOR THE PEOPLE OF THE STATE OF CALIFORNIA BY AND THROUGH THE  
2 CALIFORNIA AIR RESOURCES BOARD AND XAVIER BECERRA, ATTORNEY GENERAL OF  
3 THE STATE OF CALIFORNIA:

4 

5 JUDITH A. FIORENTINI  
6 Supervising Deputy Attorney General  
7 JON F. WORM  
8 LAUREL M. CARNES  
9 Deputy Attorneys General  
10 California Department of Justice  
11 Office of the Attorney General  
12 600 West Broadway, Suite 1800  
13 San Diego, CA 92101

*Attorneys for the People of the State of California*

1/9/2019  
Date



MARY D. NICHOLS  
Chair  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814



RICHARD W. COREY  
Executive Officer  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

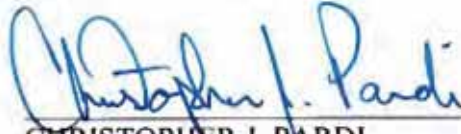


ELLEN M. PETER  
Chief Counsel  
D. ARON LIVINGSTON  
Assistant Chief Counsel  
DIANE KIYOTA  
Senior Attorney  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

1 FOR FCA US LLC:

2

3



CHRISTOPHER J. PARDI  
NAFTA General Counsel and Secretary

4

5

6

FOR FIAT CHRYSLER AUTOMOBILES N.V.:

7

8

9

---

GIORGIO FOSSATI  
Corporate General Counsel and Secretary

10

11

12

FOR V.M. MOTORI S.P.A.:

13

14

15

---

GIORGIO FOSSATI  
Attorney-in-Fact

16

17

18 FOR V.M. NORTH AMERICA, INC.:

19

20

---

GIORGIO FOSSATI  
Attorney-in-Fact

21

22

23

24

25

1 FOR FCA US LLC:

2

3

CHRISTOPHER J. PARDI  
NAFTA General Counsel and Secretary

4

5

6

FOR FIAT CHRYSLER AUTOMOBILES N.V.:

7

8

  
GIORGIO FOSSATI  
Corporate General Counsel and Secretary

9

10


11

12

FOR V.M. MOTORI S.P.A.:

13

14

  
GIORGIO FOSSATI  
Attorney-in-Fact

15


16

17

18 FOR V.M. NORTH AMERICA, INC.:

19

20

  
GIORGIO FOSSATI  
Attorney-in-Fact

21

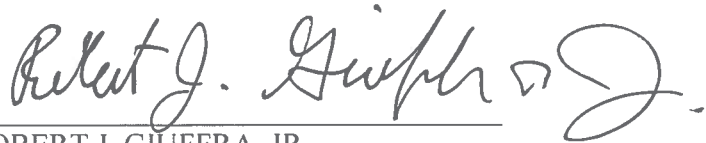
22

23

24

25

1 COUNSEL FOR FCA US LLC, FIAT CHRYSLER AUTOMOBILES N.V., V.M. MOTORI S.P.A.,  
and V.M. NORTH AMERICA, INC.

2  
3  
4 

5 ROBERT J. GIUFFRA, JR.  
6 SCOTT D. MILLER  
7 C. MEGAN BRADLEY  
8 Sullivan & Cromwell LLP  
9 125 Broad Street  
10 New York, New York 10004  
11 giuffrar@sullcrom.com  
12 millersc@sullcrom.com  
13 bradleyc@sullcrom.com

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

GRANTA Y. NAKAYAMA  
JOSEPH A. EISERT  
ILANA S. SALTZBART  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006  
gnakayama@kslaw.com  
jeisert@kslaw.com  
isaltzbart@kslaw.com

1 COUNSEL FOR FCA US LLC, FIAT CHRYSLER AUTOMOBILES N.V., V.M. MOTORI S.P.A.,  
2 and V.M. NORTH AMERICA, INC.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

ROBERT J. GIUFFRA, JR.  
SCOTT D. MILLER  
C. MEGAN BRADLEY  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
giuffrar@sullcrom.com  
millerse@sullcrom.com  
bradleyc@sullcrom.com



---

GRANTA Y. NAKAYAMA  
JOSEPH A. EISERT  
ILANA S. SALTZBART  
King & Spalding LLP  
1700 Pennsylvania Ave., N.W., Suite 200  
Washington, DC 20006  
gnakayama@kslaw.com  
jeisert@kslaw.com  
isaltzbart@kslaw.com

**APPENDIX A  
ADJUSTMENT FACTORS**



## Appendix A

## ADJUSTMENT FACTORS

The table below contains the upward adjustment factors to be added to the Emission Test Results for FTP, US06, HWFET, and SC03 emission tests performed pursuant to this Consent Decree. These adjustment factors, submitted by FCA as part of the application for the 2017 MY Certificate of Conformity for the Jeep Grand Cherokee and Ram 1500 motor vehicles, account for the emissions associated with (1) regeneration of the DPF; and (2) AECD #14 SCR Dosing Operation Mode, also known as SCR Adaptation.

Adjustment Factors as Submitted for 2017 MY Certification Application						
Infrequent Regeneration Adjustment Factor (IRAF)	NMHC (Non-methane Hydrocarbons)	CO (Carbon Monoxide)	NOx (Oxides of Nitrogen)	CH4 (Methane)	THC (Total Hydrocarbons)	N <sub>2</sub> O (Nitrous Oxide)
	<b>0.001</b>	<b>0.01</b>	<b>0.006</b>	<b>0.0007</b>	<b>0.0015</b>	<b>0.001</b>
Selective Catalyst Reduction Adjustment Factor (SCRAF)	NMHC (Non-methane Hydrocarbons)	CO (Carbon Monoxide)	NOx (Oxides of Nitrogen)	NMHC + NOx (Non-methane Hydrocarbons + Oxides of Nitrogen)		
	<b>0.00005</b>	<b>0.00045</b>	<b>0.001</b>	<b>0.001</b>		

**APPENDIX B  
CVN AND CALID FOR FINAL CARRYBACK  
CONFIGURATION**

FILES PROVIDED			
MY/VEH/AXLE/MODULE	CALIBRATION FILES	CVN	CALID
2014 MY DS 355_ECM	EAD4JUW295XX005_2BA9_14MY_DS_ECM_355_A&RWD.hex	F9 EE 7E 81	12507680DS
2014 MY DS 355_TCM	14MY_DS_TCM_355_AWD.efd	01 56 9A 76 29	RO13SC2F42
2014 MY DS 355_TCM	68234054AF_14MY_DS_TCM_355_RWD.efd	01 EF 2F 33 8F	68234054AF
2014 MY DS 392_ECM	EAD4JUW295XX009_2BA9_14MY_DS_ECM_392_A&RWD.hex	B0 4F E6 A7	12507680DS
2014 MY DS 392_TCM	68234058AF_14MY_DS_TCM_392_RWD.efd	01 DC 2C FD 69	68234058AF
2014 MY DS 392_TCM	68234059AF_14MY_DS_TCM_392_AWD.efd	01 AA EE 1A FE	68234059AF
2014 MY WK 345_ECM	68307635ZW_14MY_WK_ECM_345_A&RWD.hex	CB E2 10 B0	68307635ZW
2014 MY WK 345_TCM	52108927AI_14MY_WK_TCM_345_AWD.efd	01 F8 BA B9 B6	52108927AI
2014 MY WK 345_TCM	52108929AI_14MY_WK_TCM_345_RWD.efd	01 09 95 67 4F	52108929AI
2015 MY DS 355_ECM	EADSF5T5W295XX00DDXN_2BA9_15MY_DS_ECM_355_A&RWD.hex	F2 82 F9 81	12507680DS
2015 MY DS 355_TCM	15MY_DS_TCM_355_AWD.efd	01 1A 2D C0 82	RP15SC2F33
2015 MY DS 355_TCM	68245317AH_15MY_DS_TCM_355_RWD.efd	01 05 3B F4 FA	68245317AH
2015 MY DS 392_ECM	EADSF5T5W295XX00LDXN_2BA9_15MY_DS_ECM_392_A&RWD.hex	6F CA 4B 35	12507680DS
2015 MY DS 392_TCM	68245318AH_15MY_DS_TCM_392_AWD.efd	01 08 A0 52 E9	68245318AH
2015 MY DS 392_TCM	68245319AH_15MY_DS_TCM_392_RWD.efd	01 4D A4 71 46	68245319AH
2015 MY WK 345_ECM	68294460ZW_15MY_WK_ECM_345_A&RWD.hex	DA 6B B9 3C	68294460ZW
2015 MY WK 345_TCM	68245311AI_15MY_WK_TCM_345_RWD.efd	01 99 A5 32 5C	68245311AI
2015 MY WK 345_TCM	68245312AI_15MY_WK_TCM_345_AWD.efd	01 A6 E6 54 4A	68245312AI
2016 MY DS 355_ECM	EADSG5T5W295XX00DDXN_16MY_DS_ECM_355_A&RWD.hex	3B 4C 5A 06	12507680DS
2016 MY DS 355_TCM	16MY_DS_TCM_355_AWD.efd	01 0A 0B 29 FA	RQ17SC2F44
2016 MY DS 355_TCM	68282283AH_16MY_DS_TCM_355_RWD.efd	01 54 A9 DE 02	68282283AH
2016 MY DS 392_ECM	EADSG5T5W295XX00LDXN_16MY_DS_ECM_392_A&RWD.hex	B6 C1 C3 0E	12507680DS
2016 MY DS 392_TCM	16MY_DS_TCM_392_AWD.efd	01 C8 5A 0F F3	RQ17SC2G44
2016 MY DS 392_TCM	68282293AI_16MY_DS_TCM_392_RWD.efd	01 BC E6 6D 05	68282293AI
2016 MY WK 345_ECM	68290792ZY_16MY_WK_ECM_345_A&RWD.hex	36 33 D5 86	68290792ZY
2016 MY WK 345_TCM	68260705AI_16MY_WK_TCM_345_RWD.efd	01 AA E0 93 B2	68260705AI
2016 MY WK 345_TCM	68260706AI_16MY_WK_TCM_345_AWD.efd	01 73 6B 6F 91	68260706AI
A2L for WK & DS all MYs_ECM	W295_VM_CV_customer_patch_mm3.a2l	NA	NA

2014-2016 MY 3.0 DIESEL RAM 1500 and JEEP GRAND CHEROKEE VEHICLE CONFIGURATIONS and POWERTRAIN CALIBRATION FILE COMBINATIONS									
#	MY	VEH	AXLE	DRIVE	Engine Cal	Trans Cal			
1	2014	DS	355	RWD	EAD4JUW295XX005_2BA9_14MY_DS_ECM_355_A&RWD.hex	68234054AF_14MY_DS_TCM_355_RWD.efd			
2	2014	DS	355	AWD	EAD4JUW295XX005_2BA9_14MY_DS_ECM_355_A&RWD.hex	14MY_DS_TCM_355_AWD.efd			
3	2014	DS	392	RWD	EAD4JUW295XX005_2BA9_14MY_DS_ECM_392_A&RWD.hex	68234058AF_14MY_DS_TCM_392_RWD.efd			
4	2014	DS	392	AWD	EAD4JUW295XX005_2BA9_14MY_DS_ECM_392_A&RWD.hex	68234059AF_14MY_DS_TCM_392_AWD.efd			
5	2015	DS	355	RWD	EADSFST5W295XX00XDDXN_2BA9_15MY_DS_ECM_355_A&RWD.hex	68245317AH_15MY_DS_TCM_355_RWD.efd			
6	2015	DS	355	AWD	EADSFST5W295XX00XDDXN_2BA9_15MY_DS_ECM_355_A&RWD.hex	15MY_DS_TCM_355_AWD.efd			
7	2015	DS	392	RWD	EADSFST5W295XX00XLDXN_2BA9_15MY_DS_ECM_392_A&RWD.hex	68245319AH_15MY_DS_TCM_392_RWD.efd			
8	2015	DS	392	AWD	EADSFST5W295XX00XLDXN_2BA9_15MY_DS_ECM_392_A&RWD.hex	68245318AH_15MY_DS_TCM_392_AWD.efd			
9	2016	DS	355	RWD	EADSGST5W295XX00XDDXN_16MY_DS_ECM_355_A&RWD.hex	68282283AH_16MY_DS_TCM_355_RWD.efd			
10	2016	DS	355	AWD	EADSGST5W295XX00XDDXN_16MY_DS_ECM_355_A&RWD.hex	16MY_DS_TCM_355_AWD.efd			
11	2016	DS	392	RWD	EADSGST5W295XX00XLDXN_16MY_DS_ECM_392_A&RWD.hex	68282293AI_16MY_DS_TCM_392_RWD.efd			
12	2016	DS	392	AWD	EADSGST5W295XX00XLDXN_16MY_DS_ECM_392_A&RWD.hex	16MY_DS_TCM_392_AWD.efd			
13	2014	WK	345	RWD	68307635ZW_14MY_WK_ECM_345_A&RWD.hex	52108929AI_14MY_WK_TCM_345_RWD.efd			
14	2014	WK	345	AWD	68307635ZW_14MY_WK_ECM_345_A&RWD.hex	52108927AI_14MY_WK_TCM_345_AWD.efd			
15	2015	WK	345	RWD	68294460ZW_15MY_WK_ECM_345_A&RWD.hex	68245311AI_15MY_WK_TCM_345_RWD.efd			
16	2015	WK	345	AWD	68294460ZW_15MY_WK_ECM_345_A&RWD.hex	68245312AI_15MY_WK_TCM_345_AWD.efd			
17	2016	WK	345	RWD	68290792ZY_16MY_WK_ECM_345_A&RWD.hex	68260705AI_16MY_WK_TCM_345_RWD.efd			
18	2016	WK	345	AWD	68290792ZY_16MY_WK_ECM_345_A&RWD.hex	68260706AI_16MY_WK_TCM_345_AWD.efd			

\* FCA tools are required to flash Transmission Control Module with the efd files provided

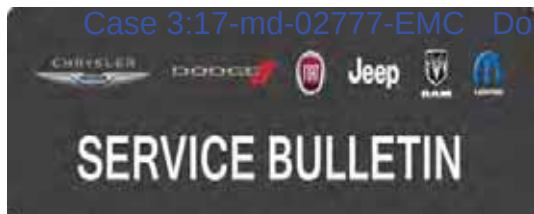
\* Hex Files cannot be used to flash Production Engine Control Modules using INCA - These hex files require Open Modules and additionally require FCA INCA ProF configurations to flash

**CONSENT DECREE**

**APPENDIX C**

**(Three Documents related to the MY 2014 Field Fix: C-1 to C-3)**

**APPENDIX C-1  
SERVICE BULLETIN  
RELATED TO REPLACING SCR**

**NUMBER:** 18-064-15**GROUP:** Vehicle Performance**DATE:** September 24, 2015

*This bulletin is supplied as technical information only and is not an authorization for repair. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, or otherwise, without written permission of FCA US LLC.*

**THIS BULLETIN SUPERSEDES SERVICE BULLETIN 18-045-14, DATED NOVEMBER 21, 2014, WHICH SHOULD BE REMOVED FROM YOUR FILES. ALL REVISIONS ARE HIGHLIGHTED WITH **\*\*ASTERISKS\*\*** AND INCLUDE ADDED RAPID RESPONSE TRANSMITTAL, OVERVIEW, DIAGNOSIS, REPAIR PROCEDURE AND LABOR OPERATION.**

**\*\*THIS SERVICE BULLETIN IS ALSO BEING RELEASED AS RAPID RESPONSE TRANSMITTAL (RRT) 15-093. ALL APPLICABLE SOLD AND UN-SOLD RRT VIN'S HAVE BEEN LOADED. TO VERIFY THAT THIS RRT SERVICE ACTION IS APPLICABLE TO THE VEHICLE, USE VIP OR PERFORM A VIN SEARCH IN TECHCONNECT. ALL REPAIRS ARE REIMBURSABLE WITHIN THE PROVISIONS OF WARRANTY.\*\***

**\*\*THE wITECH SOFTWARE IS REQUIRED TO BE AT THE LATEST RELEASE BEFORE PERFORMING THIS PROCEDURE.\*\***

***SUBJECT:***

P20EE SCR NOX Catalyst Efficiency Below Threshold Bank 1

***OVERVIEW:***

**\*\*This bulletin involves replacing the Selective Catalyst Reduction (SCR) Catalyst assembly.\*\***

***MODELS:***

2014	(DS)	Ram 1500 Pickup
2014	(WK)	Jeep Grand Cherokee

**NOTE: This bulletin applies to vehicles equipped with a 3.0L Diesel Engine (Sales Code EXF).**

***SYMPTOM/CONDITION:***

Customers may experience a Malfunction Indicator Lamp (MIL) illumination. Upon further investigation the Technician may find Diagnostic Trouble Code (DTC) P20EE SCR NOX Catalyst Efficiency Below Threshold Bank 1 set in the Powertrain Control Module (PCM) memory.

**DIAGNOSIS:**

Using a Scan Tool (wiTECH) with the appropriate Diagnostic Procedures available in TechCONNECT, verify all vehicle systems are functioning as designed. If DTCs other than the ones listed above are present record them on the repair order and repair as necessary before proceeding further with this bulletin.

**\*\*If a customer’s VIN is listed in VIP or your RRT VIN list, perform the repair. For all other customers that describe the symptom/condition listed above or if the technician finds the DTC, perform the Repair Procedure.\*\***

**PARTS REQUIRED:**

Qty.	Part No.	Description
1 (AR)	68243268AB	Converter, SCR Catalyst (WK 4WD only)
1 (AR)	68243267AB	Converter, SCR Catalyst (WK 2WD only)
1 (AR)	68263789AB	Converter, SCR Catalyst (DS vehicles with 140 inch wheelbase)
1 (AR)	68263790AB	Converter, SCR Catalyst (DS vehicles with 149 inch wheelbase)

**REPAIR PROCEDURE:**

**NOTE: The PCM must be at the latest calibration level before proceeding with this repair.**

1. Following all applicable published service bulletins, verify the PCM software is up to date.
2. **\*\*Replace the SCR catalyst. Refer to detailed service procedures available in DealerCONNECT/TechCONNECT, Service Info Section 11- Exhaust System> Catalyst, Selective Catalytic Reduction (SCR)> Removal/Installation.**
3. Did the vehicle have an active or stored P2BA9-00 - NOX Exceedence - Insufficient Reductant Quality and/or a “Service DEF” message displayed on the Electronic Vehicle Information Center (EVIC)?
  - a. Yes>>> Repair as necessary following normal warranty repair guidelines. Refer to detailed diagnostic procedures and SCR Healing steps found in DealerCONNECT/TechCONNECT, Service Info Section 28 - DTC-Based Diagnostics> Module, Powertrain Control (PCM), 3.0L Diesel NAFTA> Diagnosis and Testing> P2BA9-00 - NOX Exceedence - Insufficient Reductant Quality.
  - b. No>>> The bulletin is now complete. No further action is required.\*\*

**POLICY:**

Reimbursable within the provisions of the warranty.



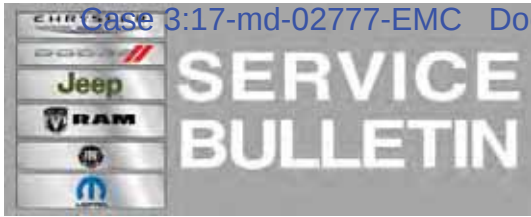
**TIME ALLOWANCE:**

<b>Labor Operation No:</b>	<b>Description</b>	<b>Skill Category</b>	<b>Amount</b>
**11-50-01-9J**	Test DEF System And Replace SCR Catalyst DS Vehicles Only (2 - Skilled)	10 - Diesel	1.0 Hrs
**11-50-01-9K**	Test DEF System And Replace SCR Catalyst WK Vehicles Only (2 - Skilled)	10 - Diesel	0.7 Hrs

**FAILURE CODE:**

ZZ	Service Action
----	----------------

**APPENDIX C-2  
SERVICE BULLETIN  
RELATED TO VERIFYING DEF OPERATION AND  
REPLACING SCR**



**NUMBER:** 18-045-14

**GROUP:** Vehicle Performance

**DATE:** November 21, 2014

*This bulletin is supplied as technical information only and is not an authorization for repair. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, or otherwise, without written permission of Chrysler Group LLC.*

**THE wiTECH SOFTWARE LEVEL MUST BE AT RELEASE **\*\*15.02\*\*** OR HIGHER TO PERFORM THIS PROCEDURE.**

**SUBJECT:**

P20EE SCR NOX Catalyst Efficiency Below Threshold Bank 1

**OVERVIEW:**

This bulletin involves verifying the proper operation of the Diesel Exhaust Fluid (DEF) system and, if necessary, replacing the Selective Catalyst Reduction (SCR) Catalyst assembly.

**MODELS:**

2014	(DS)	Ram 1500 Pickup
2014	(WK)	Grand Cherokee

**NOTE: This bulletin applies to vehicles equipped with a 3.0L diesel engine (sales code EXF).**

**SYMPTOM/CONDITION:**

A small number of customers may experience a Malfunction Indicator Lamp (MIL) illumination. Upon further investigation the Technician may find Diagnostic Trouble Code (DTC) P20EE SCR NOX Catalyst Efficiency Below Threshold Bank 1 set in the Powertrain Control Module (PCM) memory..

**DIAGNOSIS:**

Using a Scan Tool (wiTECH) with the appropriate Diagnostic Procedures available in TechCONNECT, verify all vehicle systems are functioning as designed. If DTCs other than the ones listed above are present record them on the repair order and repair as necessary before proceeding further with this bulletin.

**PARTS REQUIRED:**

Qty.	Part No.	Description
1 (AR)	68243268AB	Converter, SCR Catalyst (WK 4WD only)
1 (AR)	68243267AB	Converter, SCR Catalyst (WK 2WD only)
1 (AR)	68263789AB	Converter, SCR Catalyst (DS vehicles with 140 inch wheelbase)
1 (AR)	68263790AB	Converter, SCR Catalyst (DS vehicles with 149 inch wheelbase)

**REPAIR PROCEDURE:**

**NOTE: The PCM must be at the latest calibration level before proceeding with this repair.**

1. Following all applicable published service bulletins, verify the PCM software is up to date.

**NOTE: Diesel exhaust fluid will form white deposits around leaky fittings.**

2. Raise the vehicle on a suitable hoist and inspect all DEF hoses and hose connections for leaks or restrictions. If found, repair as necessary before continuing with this bulletin.
3. Perform a Diesel Exhaust Fluid Injector Quantity Test by performing the following steps
  - a. Remove the DEF Injector from the decomposition tube, leaving the electrical connector plugged in and injector connected to the supply hose.
  - b. Place the injector into a suitable container to capture the fluid that is sprayed during the injector quantity test.
  - c. Using the wiTECH, perform the "DEF Dosing Injection Quantity" test located in the PCM "System Tests".
  - d. Measure the amount of fluid sprayed after the test times out.

**NOTE: The following injector flow specifications may differ slightly from published service information and should be used for this procedure.**

4. Was the amount of fluid captured between 26 ml and 35 ml (1 oz and 1.2 oz)?
  - a. Yes>>> Proceed to [Step #7](#).
  - b. No>>> This bulletin does not apply. Further diagnosis of the DEF system is required.

**NOTE: DEF fluid dilution or contamination is not covered under normal warranty.**

5. Test and inspect the DEF fluid sample gathered in [Step #3](#) for signs of contamination. Refer to detailed service procedures available in DealerCONNECT/TechCONNECT, Service Info Section 25 - Emissions Control> Diesel Exhaust Fluid Emissions> Diagnosis And Testing> DIAGNOSIS AND TESTING - DIESEL EXHAUST FLUID. If found, repair as necessary following normal warranty repair guidelines regarding.

6. Were there any signs of DEF fluid contamination found?
  - a. Yes>>> Repair the source of the contamination as needed per current warranty repair guidelines.
  - b. No>>> Proceed to [Step #7](#).
7. Replace the SCR catalyst. Refer to detailed service procedures available in DealerCONNECT/TechCONNECT, Service Info Section 11- Exhaust System> Catalyst, Selective Catalytic Reduction (SCR)> Removal/Installation.
8. Did the vehicle have an active or stored P2BA9-00 - NOX Exceedence - Insufficient Reductant Quality and/or a "Service DEF" message displayed on the Electronic Vehicle Information Center (EVIC)?
  - a. Yes>>> Repair as necessary following normal warranty repair guidelines. Refer to detailed diagnostic procedures and SCR Healing steps found in DealerCONNECT/TechCONNECT, Service Info Section 28 - DTC-Based Diagnostics> Module, Powertrain Control (PCM), 3.0L Diesel NAFTA> Diagnosis and Testing> P2BA9-00 - NOX Exceedence - Insufficient Reductant Quality.
  - b. No>>> The bulletin is now complete. No further action is required.

**POLICY:**

Reimbursable within the provisions of the warranty.

**TIME ALLOWANCE:**

Labor Operation No:	Description	Skill Category	Amount
11-50-01-9F	Test DEF System Only (2 - Skilled)	10 - Diesel	0.5 Hrs.
11-50-01-9G	Test DEF System And Replace SCR Catalyst DS Vehicles Only (2 - Skilled)	10 - Diesel	1.1 Hrs.
11-50-01-9H	Test DEF System And Replace SCR Catalyst WK Vehicles Only (2 - Skilled)	10 - Diesel	0.9 Hrs.

**FAILURE CODE:**

ZZ	Service Action
----	----------------

**APPENDIX C-3  
DEALER SERVICE INSTRUCTIONS,  
EMISSIONS RECALL R69, SCR**



Revised July 2016

Dealer Service Instructions for:

## **Emissions Recall R69**

# **Selective Catalytic Reduction Catalyst**

**NOTE: Catalyst core return information has been added.**

**Effective immediately all repairs on involved vehicles are to be performed according to this recall. Service Bulletin 18-064-15 is no longer applicable for vehicles involved in this recall. Those vehicles that have already had this repair performed, as determined by our warranty records, have been excluded from this recall.**

### **Models**

2014 (WK) Jeep Grand Cherokee

2014 (DS) RAM Truck (1500 Series)

*NOTE: This recall applies only to the above vehicles equipped with a 3.0L diesel engine (sales code EXF)*

**IMPORTANT:** Some of the involved vehicles may be in Dealer vehicle inventory. Dealers should complete this recall service on these vehicles before retail delivery. Involved vehicles can be determined by using the VIP inquiry process.

### **Subject**

The Selective Catalytic Reduction (SCR) catalyst on about 11,400 of the above vehicles is experiencing washcoat degradation, which may lead to the exceedance of exhaust emission standards.

**Repair**

The SCR catalyst must be replaced.

**Parts Information**

**IMPORTANT: Due to the small number of involved vehicles, no parts will be distributed to involved dealers. Parts may be ordered as needed to support scheduled repairs.**

<u>Part Number</u>	<u>Description</u>
68243268AB	Converter, SCR Catalyst (WK 4WD only)
68243267AB	Converter, SCR Catalyst (WK 2WD only)
68263789AB	Converter, SCR Catalyst (DS vehicles with 140 inch wheelbase)
68263790AB	Converter, SCR Catalyst (DS vehicles with 149 inch wheelbase)
68160679AB	Gasket, SCR Catalyst
68234976AA	Gasket, Diesel Exhaust Fluid (DEF) Injector
06105052AA	Bolt, SCR Catalyst Fastener (Qty. 3)
06506619AA	Nut, SCR Catalyst Fastener (Qty. 3)

**Parts Return**

The catalyst has a \$200.00 core credit. Return the catalyst to the Mopar Core Return Center.



## Special Tools

The following special tools are required to perform this repair:

- NPN wiTECH VCI Pod Kit
- NPN Laptop Computer
- NPN wiTECH Software

## Service Procedure

### A. Replace The Selective Catalytic Reduction (SCR) catalyst

**WARNING:** If torches are used when servicing the exhaust system, do not allow any flame near the fuel lines or the fuel tank. Failure to follow these instructions may result in possible serious or fatal injury.

1. Disconnect and isolate the negative battery cable.
2. Raise and support the vehicle using a suitable lift.
  - For (WK) Jeep Grand Cherokee, continue with **Section B. (WK) Jeep Grand Cherokee.**
  - For (DS) RAM 1500 Pickup, continue with **Section C. (DS) RAM 1500 Pickup.**

## Service Procedure (Continued)

### B. (WK) Jeep Grand Cherokee

1. If equipped with an underbody splash shield, remove and save the fasteners and the shield (Figure 1).

**NOTE:** If equipped with a skid plate, removal process is similar.

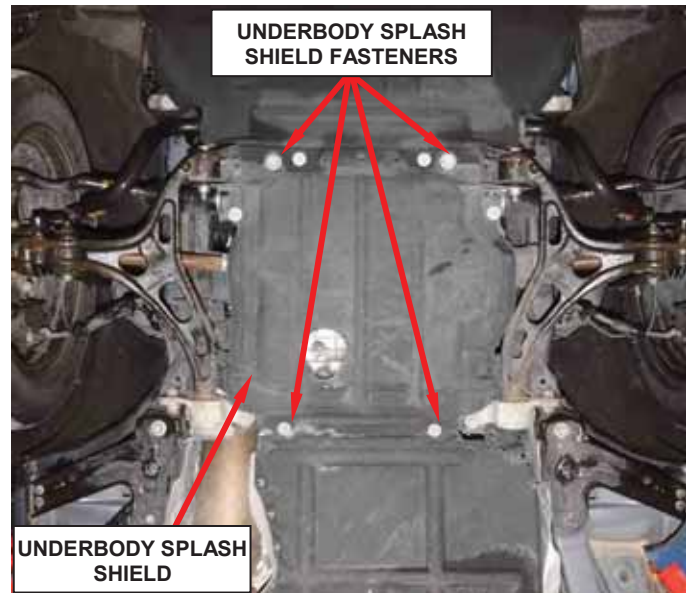


Figure 1 – Engine Closeout Panel

2. If equipped with a transmission closeout panel, remove and save the fasteners and the panel (Figure 2).

**NOTE:** If equipped with a skid plate, removal process is similar.

3. If equipped with a transfer case skid plate, remove and save the fasteners and skid plate.

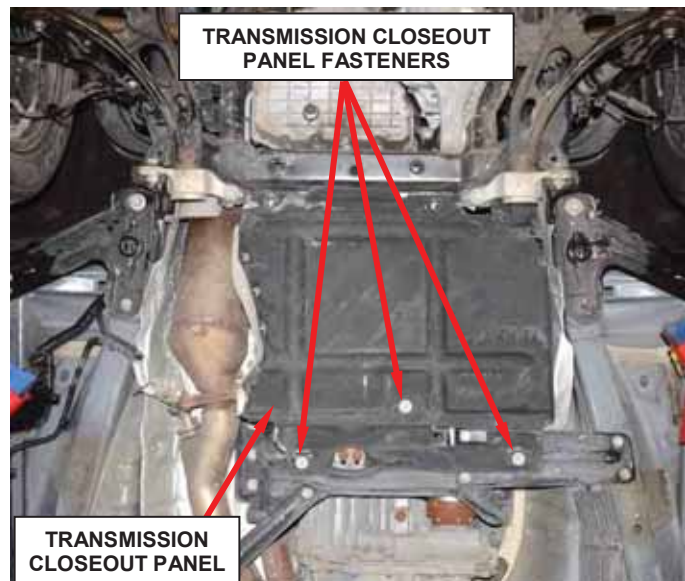


Figure 2 – Transmission Closeout Panel

**Service Procedure (Continued)**

4. Saturate exhaust system fasteners with MOPAR rust penetrating lubricant or equivalent before proceeding to provide adequate time for lubricant penetration before exhaust component removal. Be sure to saturate the SCR catalyst flange fasteners, Diesel Exhaust Fluid (DEF) injector clamp fastener, and tailpipe to SCR catalyst clamp (Figure 3).

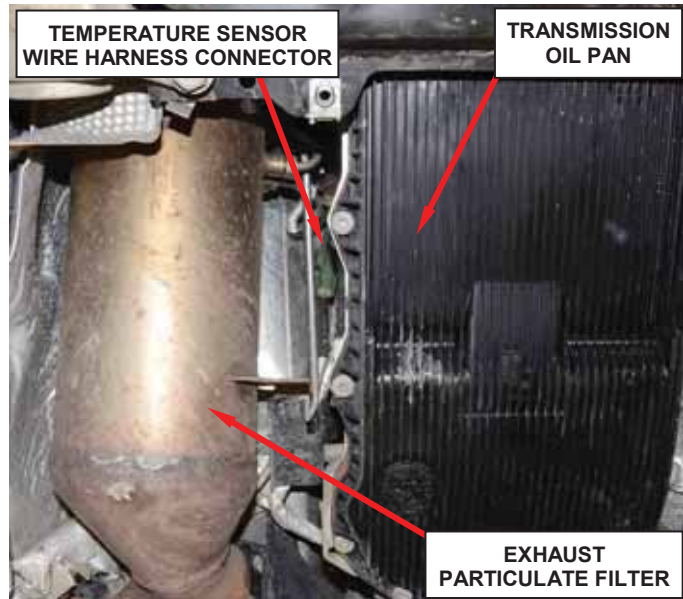


**Figure 3 – Saturate Exhaust Fasteners with Penetrating Lubricant**



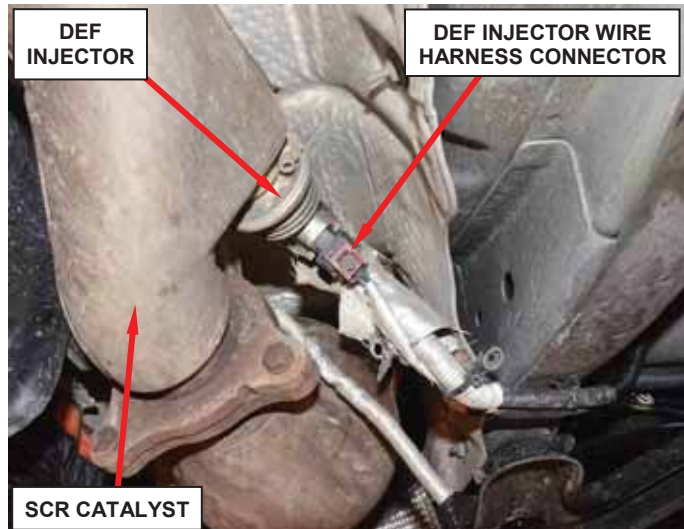
**Service Procedure (Continued)**

5. Disconnect the green SCR exhaust temperature sensor wire harness connector located between the exhaust particulate filter and the transmission (Figure 4).



**Figure 4 – Exhaust Temperature Sensor**

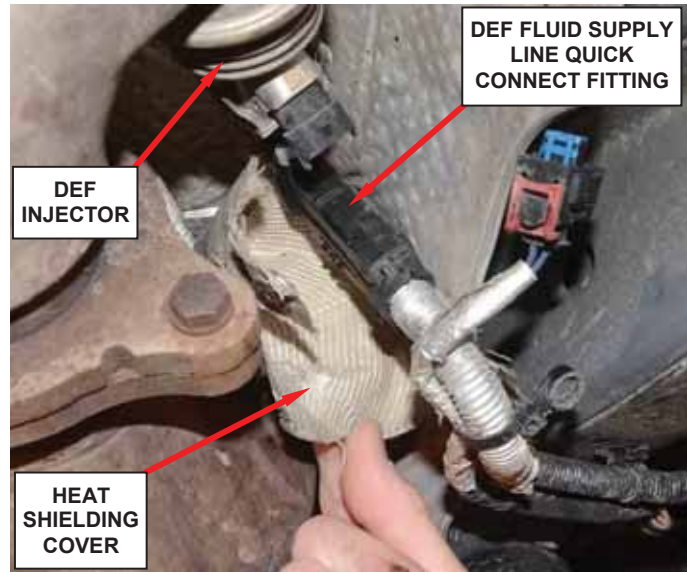
6. Disconnect the Diesel Exhaust Fluid (DEF) injector wire harness connector (Figure 5).



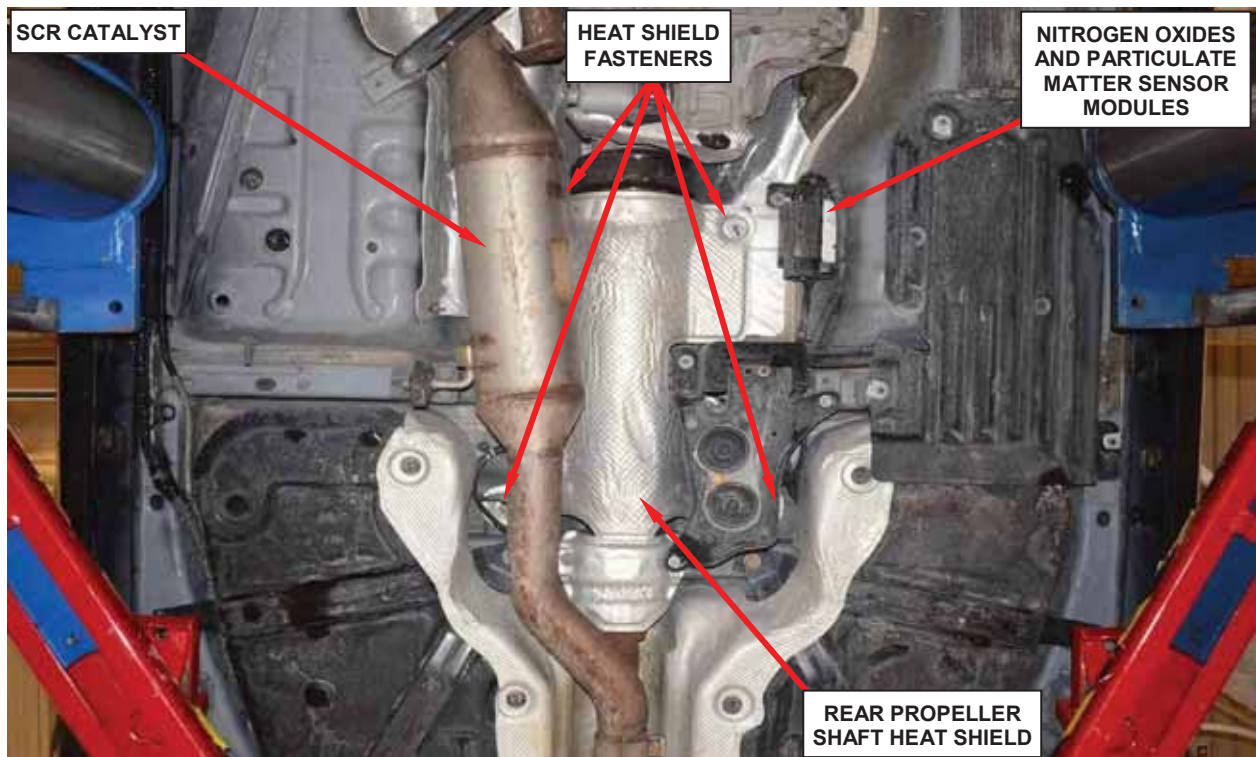
**Figure 5 – DEF Injector Harness**

**Service Procedure (Continued)**

7. Remove and save the heat shielding cover from the DEF fluid supply line fitting (Figure 6).
8. Disconnect the DEF fluid supply line quick connect fitting from the DEF injector (Figure 6).
9. Remove and save the four fasteners from the rear propeller shaft heat shield. Then remove and save the heat shield (Figure 7).



**Figure 6 – DEF Injector Fitting**



**Figure 7 – Rear Propeller Shaft Heat Shield**

### Service Procedure (Continued)

10. Remove and save the two nuts from the Oxides of Nitrogen (NOx) sensor module cover. Then remove and save the cover (Figure 8).

**NOTE: DO NOT disconnect the NOx sensor wire harness connector from the NOx sensor module. ONLY disconnect the vehicle wire harness from the NOx sensor module (Figure 9).**

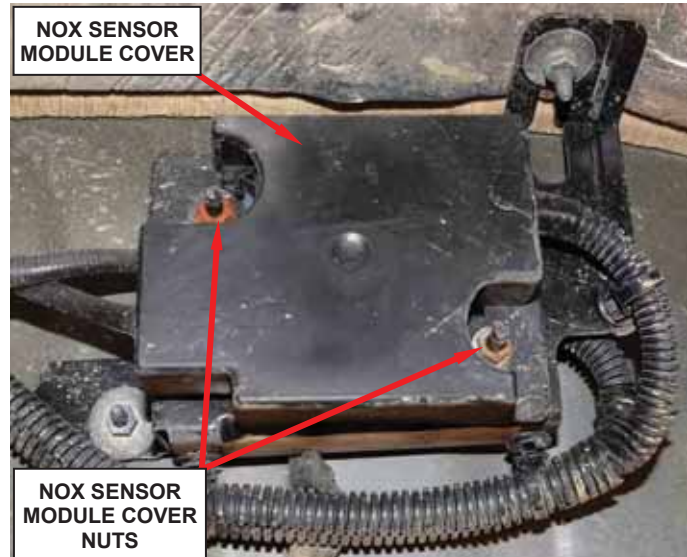


Figure 8 – NOx Sensor Module Cover

11. Disconnect the vehicle wire harness connector from the NOx sensor module. Then remove the module from the module bracket (Figure 9).
12. Remove and save the two nuts from the module bracket. Then remove the bracket from the vehicle frame (Figure 9).

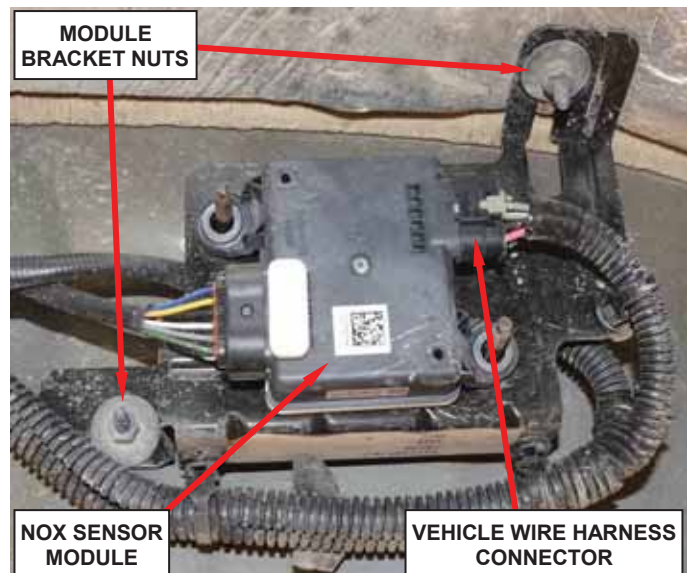


Figure 9 – NOx Sensor Module

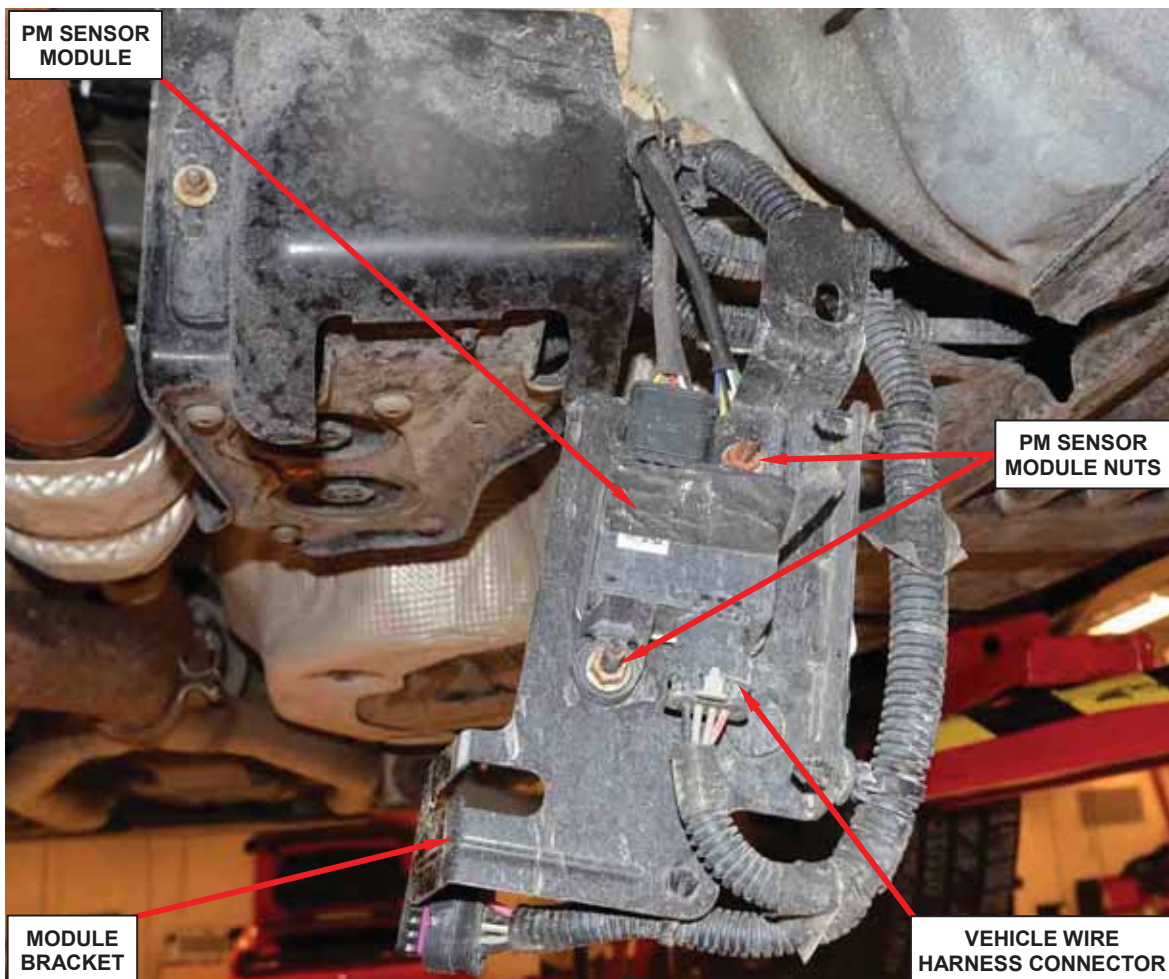


**Service Procedure (Continued)**

13. Disconnect the vehicle wire harness connector from the Particulate Matter (PM) sensor (Figure 10).

**NOTE: DO NOT disconnect the PM sensor wire harness connector from the PM sensor module. ONLY disconnect the vehicle wire harness from the PM sensor module (Figure 10).**

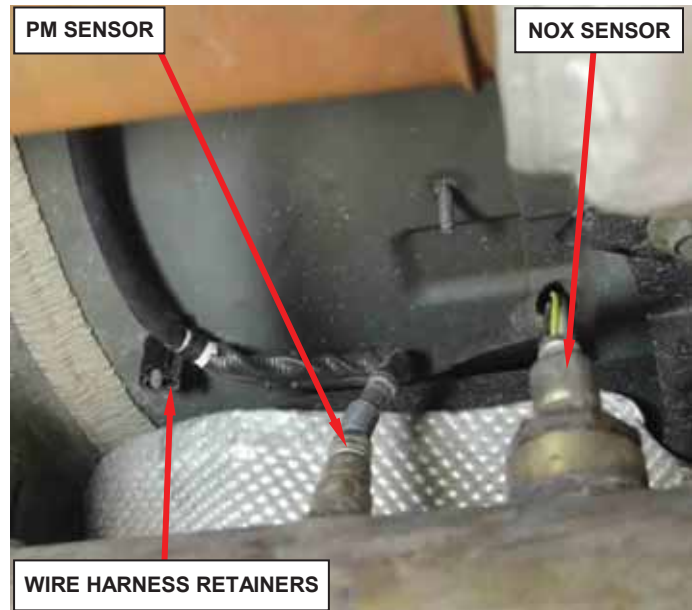
14. Remove and save the two nuts from the PM sensor module. Then remove the PM sensor module from the module bracket (Figure 10).



**Figure 10 – PM Sensor Module**

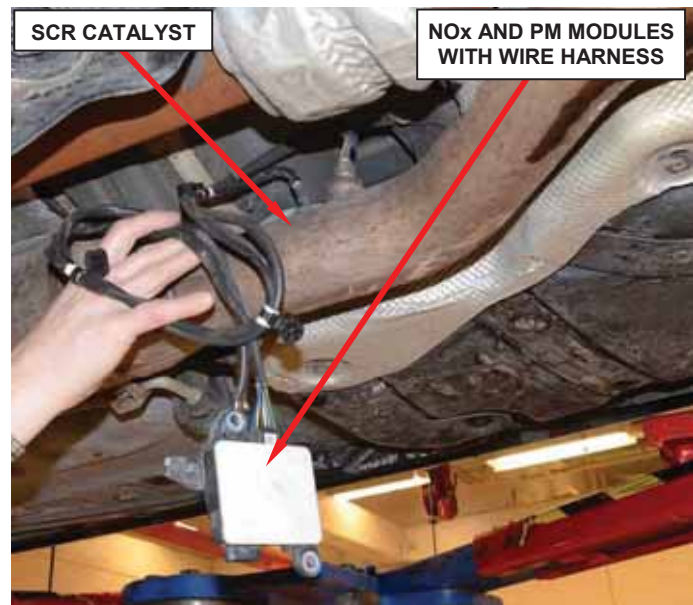
**Service Procedure (Continued)**

15. Release the three wire harness retainers that secure the PM sensor and NOx sensor wire harness to the vehicle body (Figure 11).



**Figure 11 – Wire Harness Retainers**

16. Route the PM sensor and NOx sensor modules over to the SCR catalyst and secure the wire harness and modules to the SCR catalyst for removal with SCR catalyst later in the procedure (Figure 12).



**Figure 12 – Wire Harness with Modules**

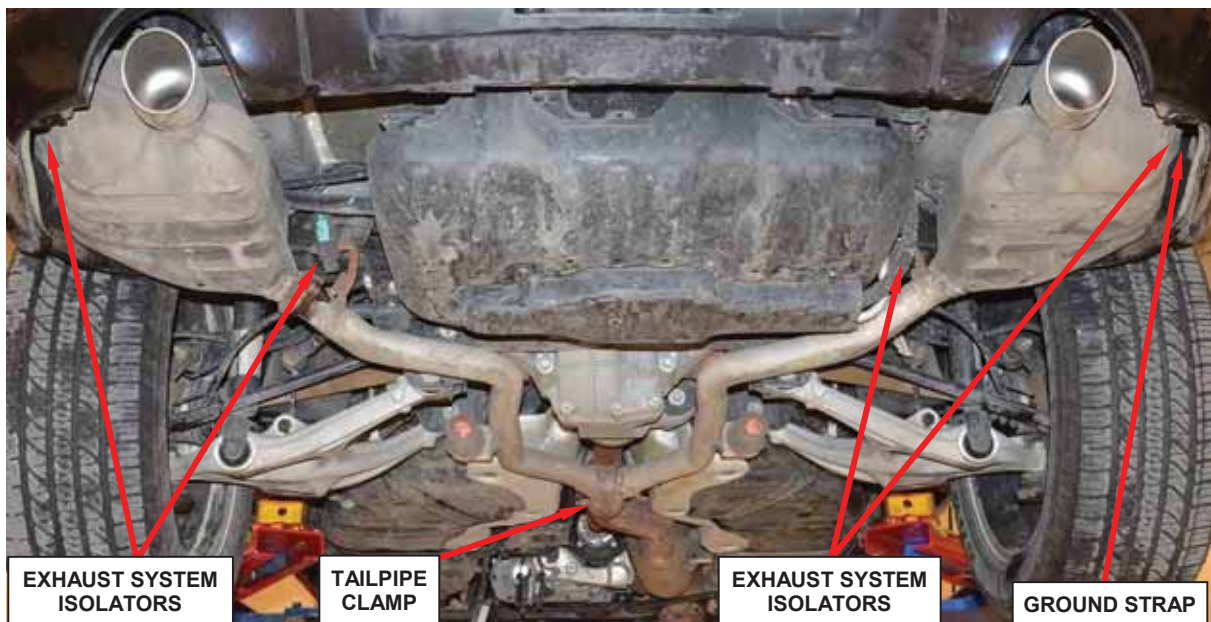


**Service Procedure (Continued)**

17. Loosen the tailpipe clamp (Figure 13).
18. Release the isolators and ground strap from the tailpipe and resonator assembly hanger rods (Figure 13).

**NOTE: Assistance with exhaust system component removal is recommended.**

19. Separate the tailpipe and resonator assembly from the SCR catalyst then remove and save the tailpipe and resonator assembly (Figure 13).



**Figure 13 – Tailpipe and Resonator Assembly**

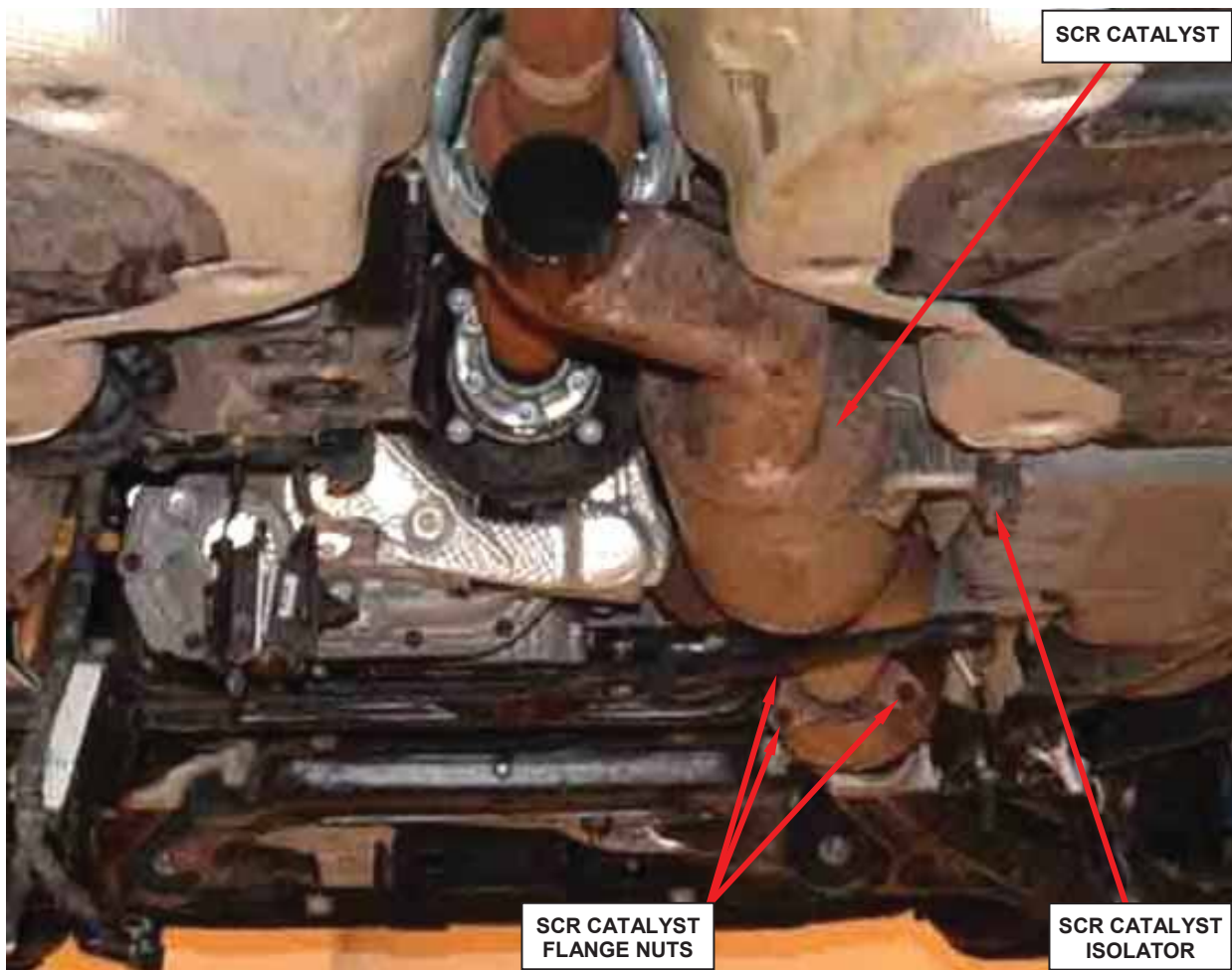
**Service Procedure (Continued)**

20. Remove and save the three SCR catalyst flange nuts (Figure 14).

**NOTE: If any of the three particulate filter studs break that secure the SCR catalyst, all three studs must be replaced with the bolts and nuts provided in the parts section of this recall.**

21. Release the isolator from the SCR catalyst hanger rod (Figure 14).

22. Remove the SCR catalyst from the vehicle and place on a suitable bench for sensor transfer (Figure 15).



**Figure 14 – SCR Catalyst Assembly**

**Service Procedure (Continued)**

23. Use the following procedure to transfer the Particulate Matter (PM) sensor with module from the original SCR catalyst to the **NEW** SCR catalyst (Figure 15).

**NOTE: DO NOT use a torch as a heat source.**

- a. Use a six sided crowfoot wrench to remove the PM sensor from the SCR catalyst
- b. If the PM sensor fails to loosen, use a torque wrench set to 118 ft. lbs. (160 N·m) and loosen the PM sensor.
- c. If the PM sensor is still not loose after applying 118 ft. lbs. (160 N·m), then use a heat gun to heat the PM sensor boss for 1 minute at 842° F (450° C).
- d. Install the PM sensor into the **NEW** SCR catalyst and tighten to 44 ft. lbs. (60 N·m).

24. Use the following procedure to transfer the NOx sensor with module from the original SCR catalyst to the **NEW** SCR catalyst (Figure 15).

**NOTE: DO NOT use a torch as a heat source.**

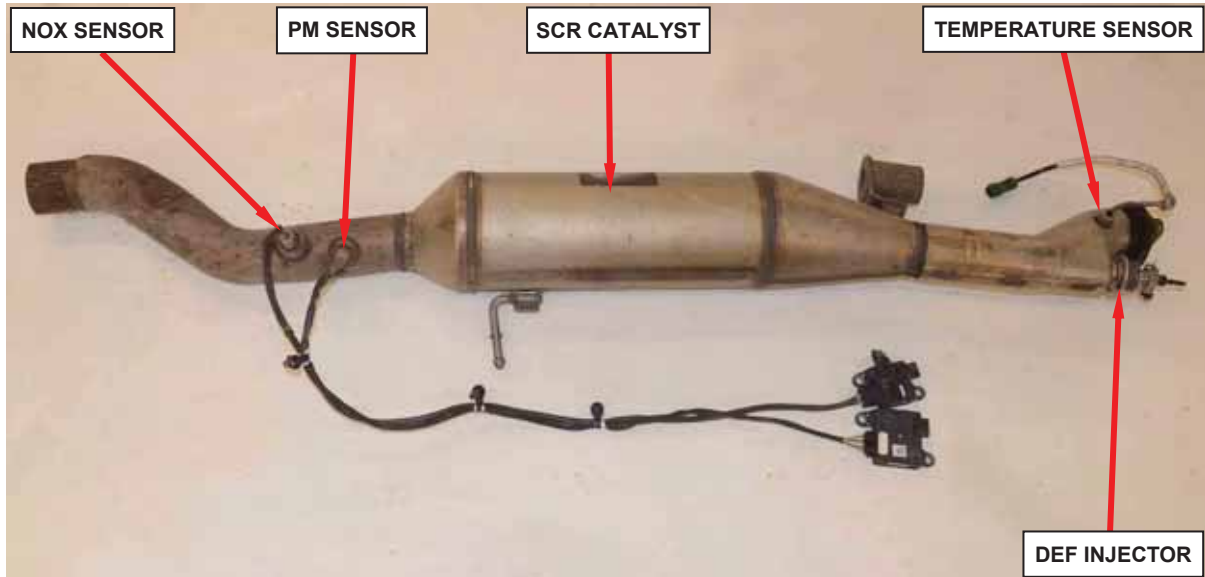
- a. Use a six sided crowfoot wrench to remove the NOx sensor from the SCR catalyst
- b. If the NOx sensor fails to loosen, use a torque wrench set to 118 ft. lbs. (160 N·m) and loosen the PM sensor.
- c. If the NOx sensor is still not loose after applying 118 ft. lbs. (160 N·m), then use a heat gun to heat the PM sensor boss for 1 minute at 842° F (450° C).
- d. Install the NOx sensor into the **NEW** SCR catalyst and tighten to 41 ft. lbs. (55 N·m).

**Service Procedure (Continued)**

25. Use the following procedure to transfer the exhaust gas temperature sensor from the original SCR catalyst to the **NEW** SCR catalyst (Figure 15).

**CAUTION:** The exhaust gas temperature sensor requires care when removing, handling and installing. The exhaust gas temperature sensor is sensitive to knocks and bending. Do **NOT** drop the sensor. Failure to follow these instructions may result in damage to the exhaust gas temperature sensor.

- a. Use a six sided crowfoot wrench to remove the exhaust gas temperature sensor from the SCR catalyst.
- b. Install the exhaust gas temperature sensor into the **NEW** SCR catalyst and tighten to 35 ft. lbs. (47 N·m).



**Figure 15 – Selective Catalytic Reduction (SCR) Catalyst Assembly**



### Service Procedure (Continued)

26. Use the following procedure to transfer the DEF injector from the original SCR catalyst to the **NEW** SCR catalyst (Figure 15).

- a. Loosen the DEF injector clamp and remove the DEF injector from the SCR catalyst (Figure 16).
- b. Inspect the opening of the DEF injector and make sure it is **NOT** plugged or restricted with buildup of DEF crystals. If the DEF injector opening is plugged or restricted, clean as necessary (Figure 17).

**NOTE: Hot water may be used to dissolve DEF crystal buildup if the DEF injector requires cleaning.**

- c. Remove and discard the DEF injector gasket then install a **NEW** DEF injector gasket (Figure 17).
- d. Install the DEF injector onto the SCR catalyst. Tighten the clamp to 44 in. lbs. (5 N·m) (Figure 16).

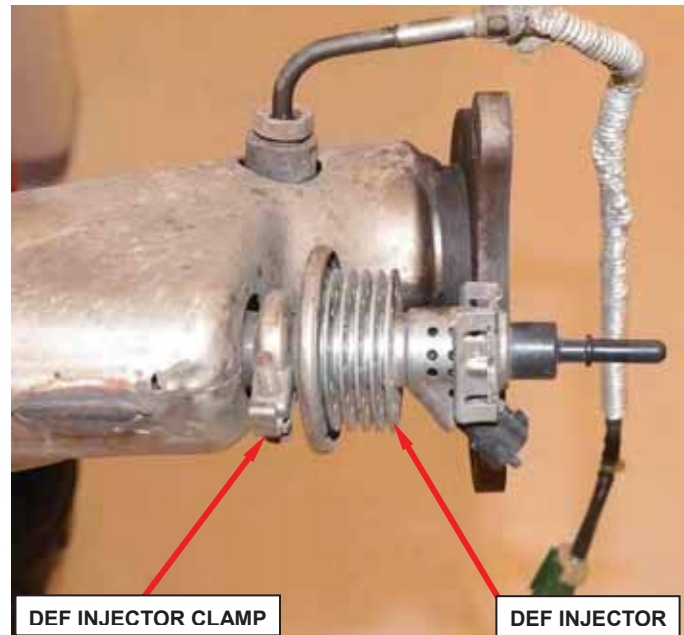


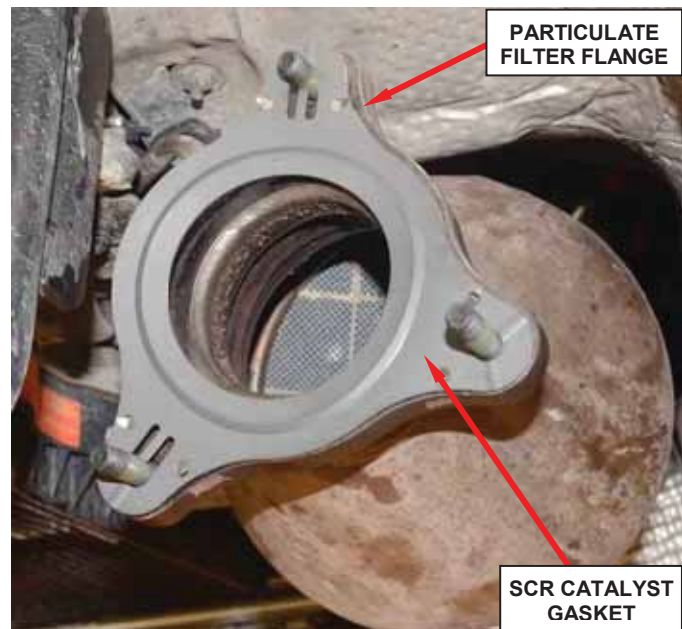
Figure 16 – DEF Injector



Figure 17 – DEF Injector Gasket

### Service Procedure (Continued)

27. Remove and discard the used SCR catalyst gasket (Figure 18).
28. Clean the particulate filter flange gasket sealing surface (Figure 18).
29. Install a **NEW** SCR catalyst gasket (Figure 18).
30. Position the **NEW** SCR catalyst onto the particulate filter flange and install the three flange nuts finger tight (Figure 14).



**Figure 18 – SCR Catalyst Gasket**

31. Install the isolator onto the SCR catalyst hanger rod (Figure 14).
32. Tighten the SCR catalyst flange nuts to 24 ft. lbs. (32 N·m) (Figure 14).

**NOTE: Assistance with exhaust system component installation is recommended.**

33. Install the tailpipe and resonator assembly to the SCR catalyst (Figure 13).
34. Install the isolators and ground strap onto the tailpipe and resonator assembly hanger rods (Figure 13).
35. Check the exhaust system for proper alignment and for any contact with other vehicle components. A minimum of 1.0 in. (25 mm) is required between the exhaust system and other vehicle components. Make adjustments, if needed to achieve proper exhaust system clearance and alignment.
36. Align the tailpipe clamp and tighten to 46 ft. lbs. (62 N·m) (Figure 13).

**Service Procedure (Continued)**

37. Route the PM sensor module and NO<sub>x</sub> sensor module over to the module mounting bracket and secure the wire harness with the three wire harness retainers (Figure 11).
38. Install the PM sensor module to the module mounting bracket and then install the two nuts that secure the module to the bracket. Tighten the nuts to 71 in. lbs. (8 N·m) (Figure 10).
39. Connect the vehicle wire harness connector to the PM sensor (Figure 10).
40. Install the module mounting bracket to the vehicle frame and then install the two nuts that secure the bracket to the frame. Tighten the nuts to 8 ft. lbs. (11 N·m) (Figure 9).
41. Install the NO<sub>x</sub> module to the module mounting bracket (Figure 9).
42. Connect the vehicle wire harness connector to the NO<sub>x</sub> module (Figure 9).
43. Install the NO<sub>x</sub> module cover and then install the two nuts that secure the cover. Tighten the nuts to 71 in. lbs. (8 N·m) (Figure 8).
44. Install the rear propshaft heat shield and then install the four fasteners that secure the heat shield to the vehicle underbody (Figure 7).
45. Connect the DEF supply line to the DEF injector (Figure 6).
46. Install the heat shielding cover over the DEF supply line fitting (Figure 6).

**Service Procedure (Continued)**

47. Connect the wire harness connector to the DEF injector (Figure 5).
48. Connect the green exhaust temperature sensor wire harness connector located between the exhaust particulate filter and the transmission (Figure 4).
49. If equipped with a transfer case skid plate, install the skid plate and fasteners.
50. If equipped with a transmission closeout panel, install the panel and fasteners (Figure 2).

**NOTE: If equipped with a transmission skid plate, installation process is similar.**

51. If equipped with an underbody splash shield, install the panel and fasteners (Figure 1).

**NOTE: If equipped with a underbody skid plate, installation process is similar.**

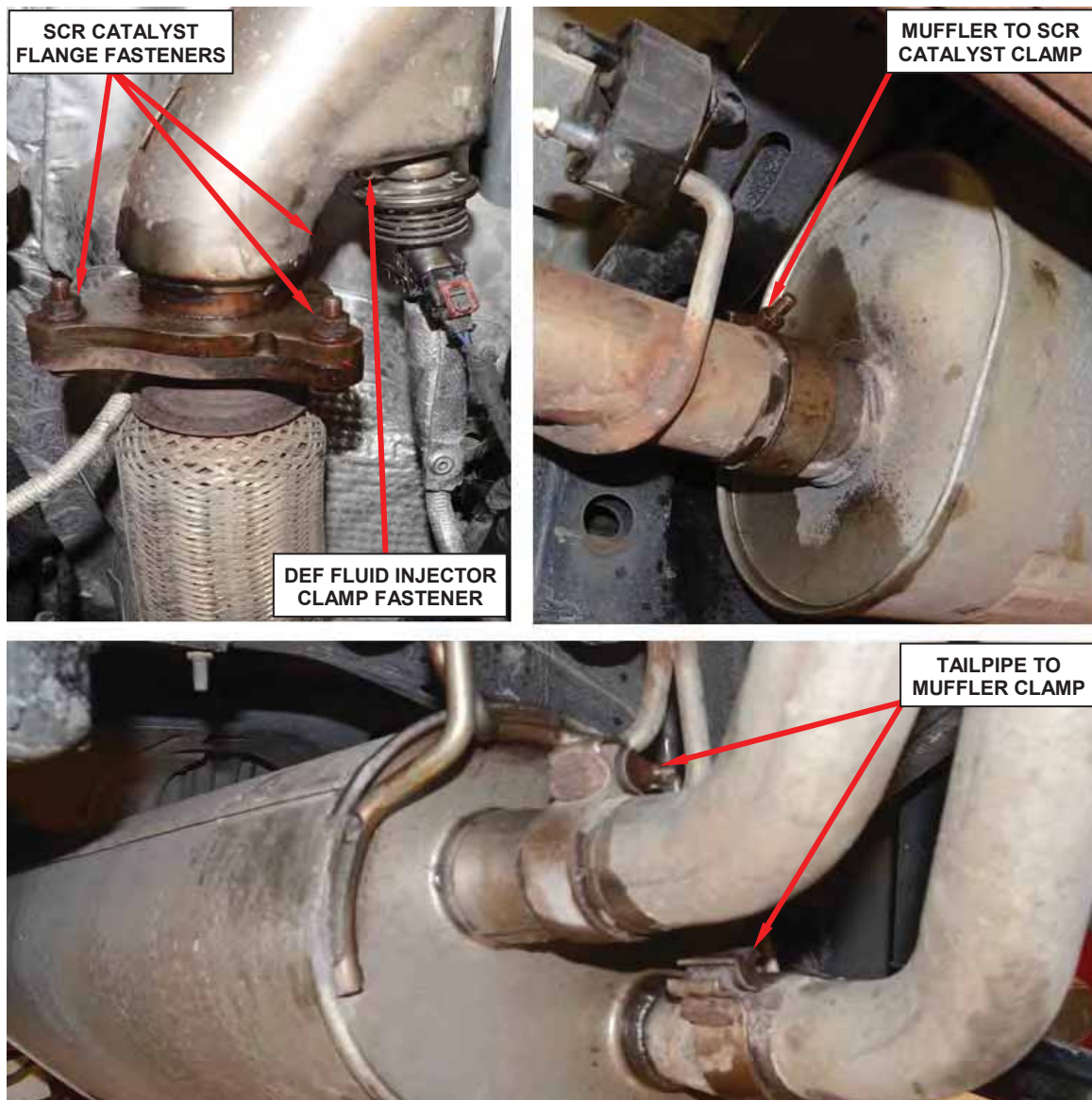
52. Remove support and lower the vehicle.
53. Connect the negative battery cable to the negative battery post.
54. Use the following procedure to perform the SCR catalyst reset:
  - a. Connect the wiTECH scan tool and start a session.
  - b. From the “PCM View” screen, click on the “Miscellaneous Functions” tab.
  - c. Perform the **SCR System Catalyst Reset** function.
  - d. Using the wiTECH scan tool, clear all Diagnostic Trouble Codes (DTCs).
55. Remove the wiTECH scan tool from the vehicle.
56. Return the vehicle to the customer.



**Service Procedure (Continued)**

**C. (DS) RAM 1500 Pickup**

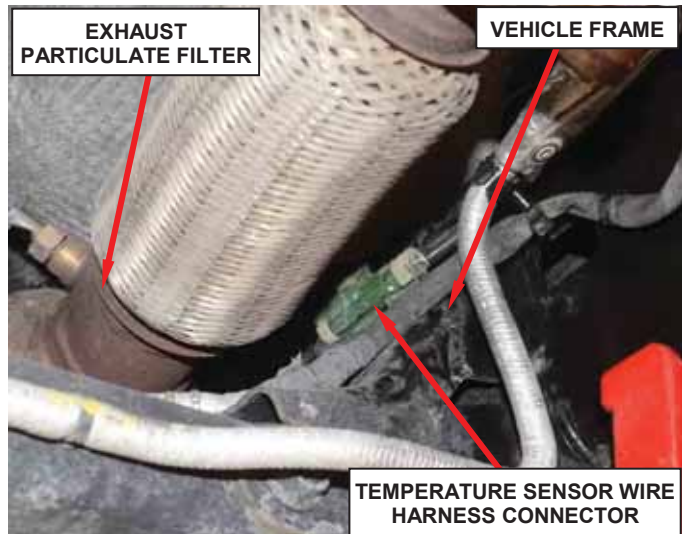
1. Saturate exhaust system fasteners with MOPAR rust penetrating lubricant or equivalent before proceeding to provide adequate time for lubricant penetration before exhaust component removal. Be sure to saturate the SCR catalyst flange fasteners, Diesel Exhaust Fluid (DEF) injector clamp fastener, muffler to SCR catalyst clamp, and tailpipe(s) to muffler clamp(s) (Figure 19).



**Figure 19 – Saturate Exhaust Fasteners with Penetrating Lubricant**

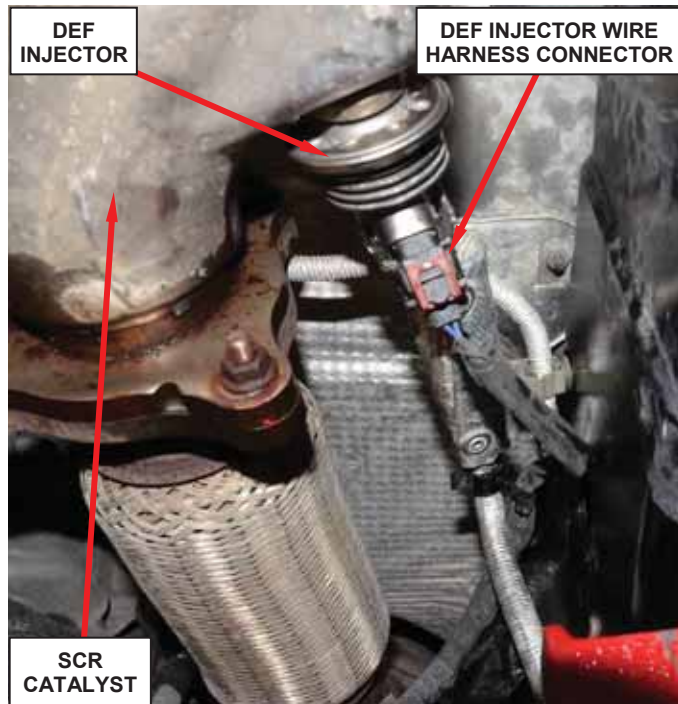
**Service Procedure (Continued)**

2. Disconnect the green exhaust temperature sensor wire harness connector located between the exhaust particulate filter and the vehicle frame (Figure 20).



**Figure 20 – Exhaust Temperature Sensor**

3. Disconnect the Diesel Exhaust Fluid (DEF) injector wire harness connector from the DEF injector (Figure 21).



**Figure 21 – DEF Injector Harness**

### Service Procedure (Continued)

4. Slide the heat shielding cover back and disconnect the DEF fluid supply line quick connect fitting from the DEF injector (Figure 22).
5. Remove and save the three nuts from the Oxides of Nitrogen (NOx) and Particulate Matter (PM) sensor module mounting bracket. Then remove the bracket from the crossmember (Figure 23).

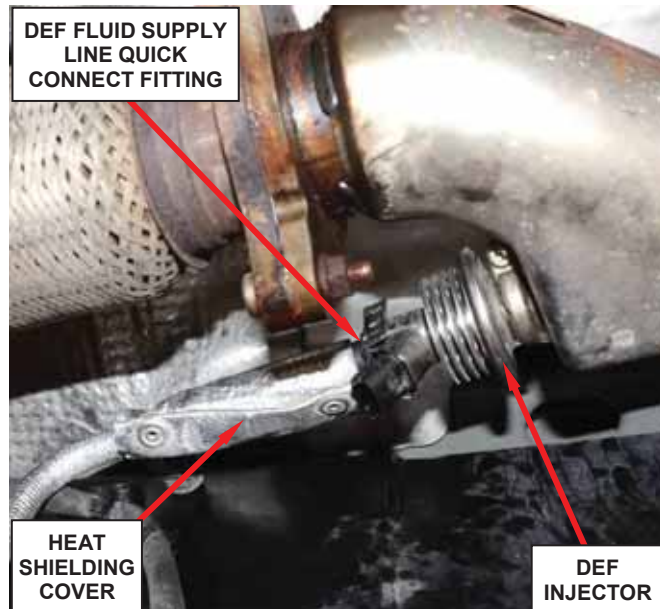


Figure 22 – DEF Injector Fitting

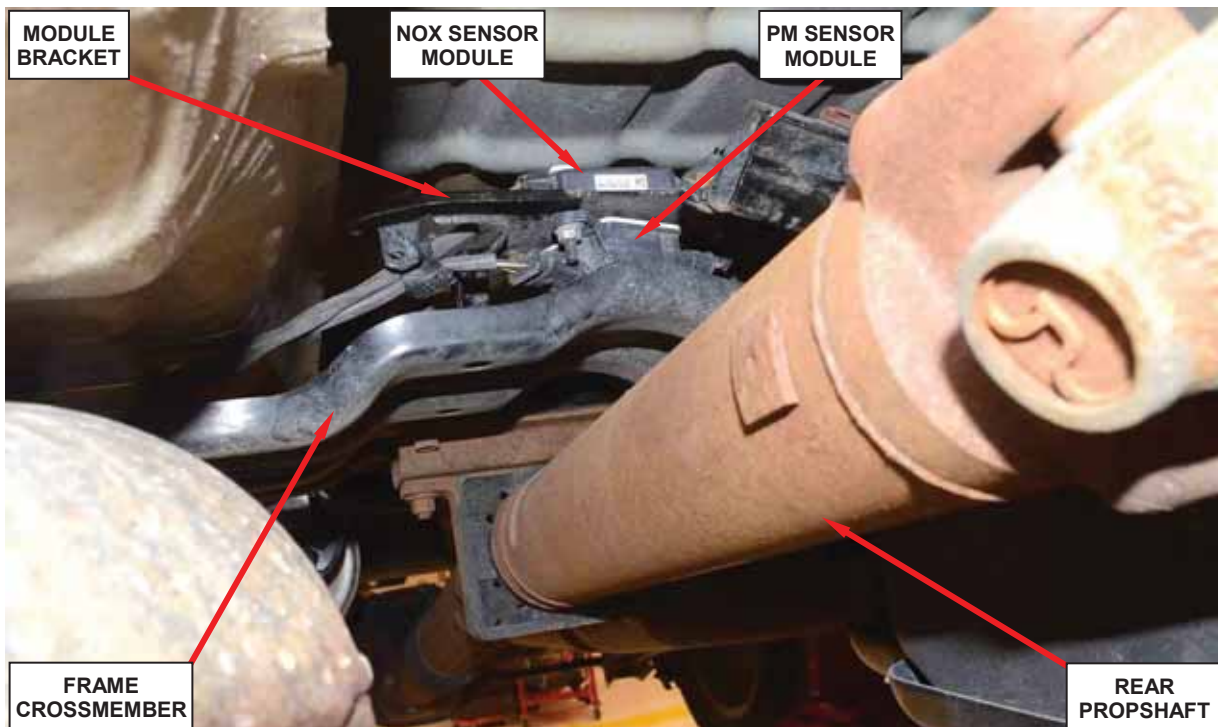


Figure 23 – PM and NOx Sensor Module Bracket on Crossmember

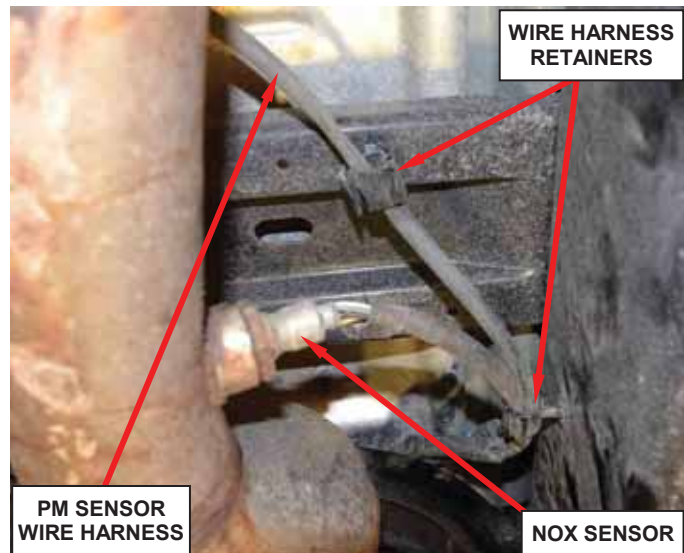


### Service Procedure (Continued)

6. Release the four NOx sensor and PM sensor wire harness retainers (Figure 24).

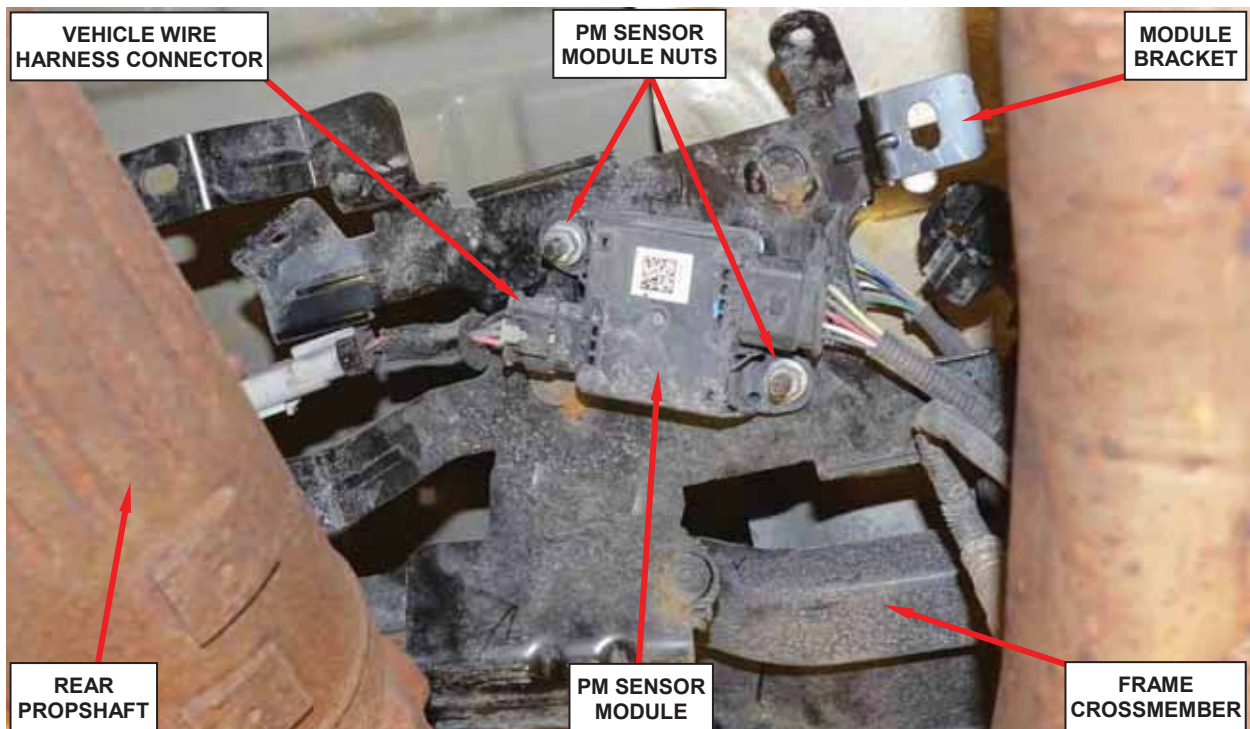
**NOTE: DO NOT disconnect the PM sensor wire harness connector from the PM sensor module. ONLY disconnect the vehicle wire harness from the PM sensor module (Figure 25).**

7. Disconnect the vehicle wire harness connector from the PM sensor module (Figure 25).



**Figure 24 – Wire Harness Retainers**

8. Remove and save the two nuts from the PM sensor module. Then remove the PM sensor module from the module mounting bracket (Figure 25).



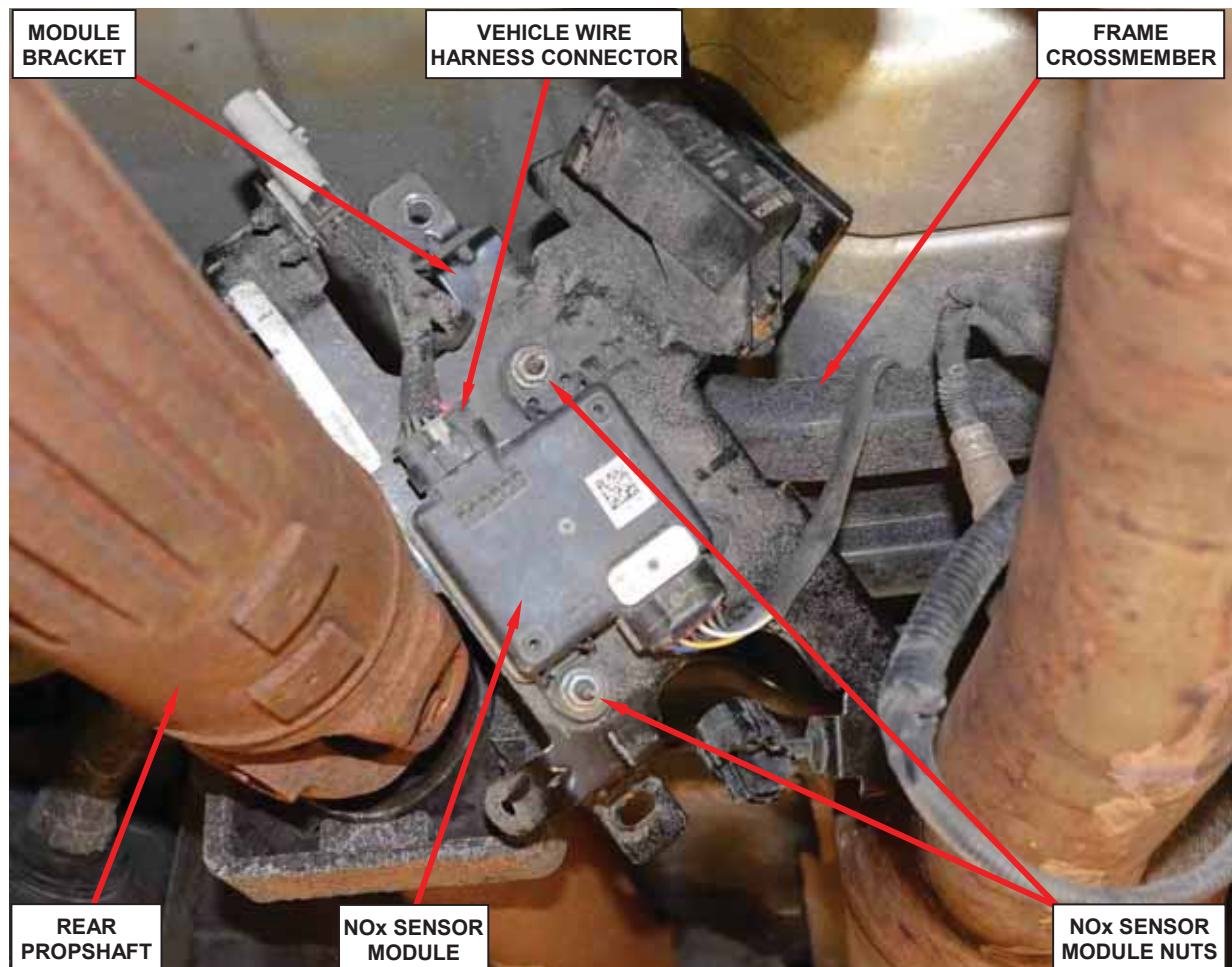
**Figure 25 – PM Sensor Module**

**Service Procedure (Continued)**

9. Disconnect the vehicle wire harness connector from the NOx sensor (Figure 26).

**NOTE: DO NOT disconnect the NOx sensor wire harness connector from the NOx sensor module. ONLY disconnect the vehicle wire harness from the NOx sensor module (Figure 26).**

10. Remove and save the two nuts from the NOx sensor module. Then remove the NOx sensor module from the module mounting bracket (Figure 26).
11. Route the PM sensor and NOx sensor modules over to the SCR catalyst and secure the wire harness and modules to the SCR catalyst for removal with SCR catalyst later in the procedure.

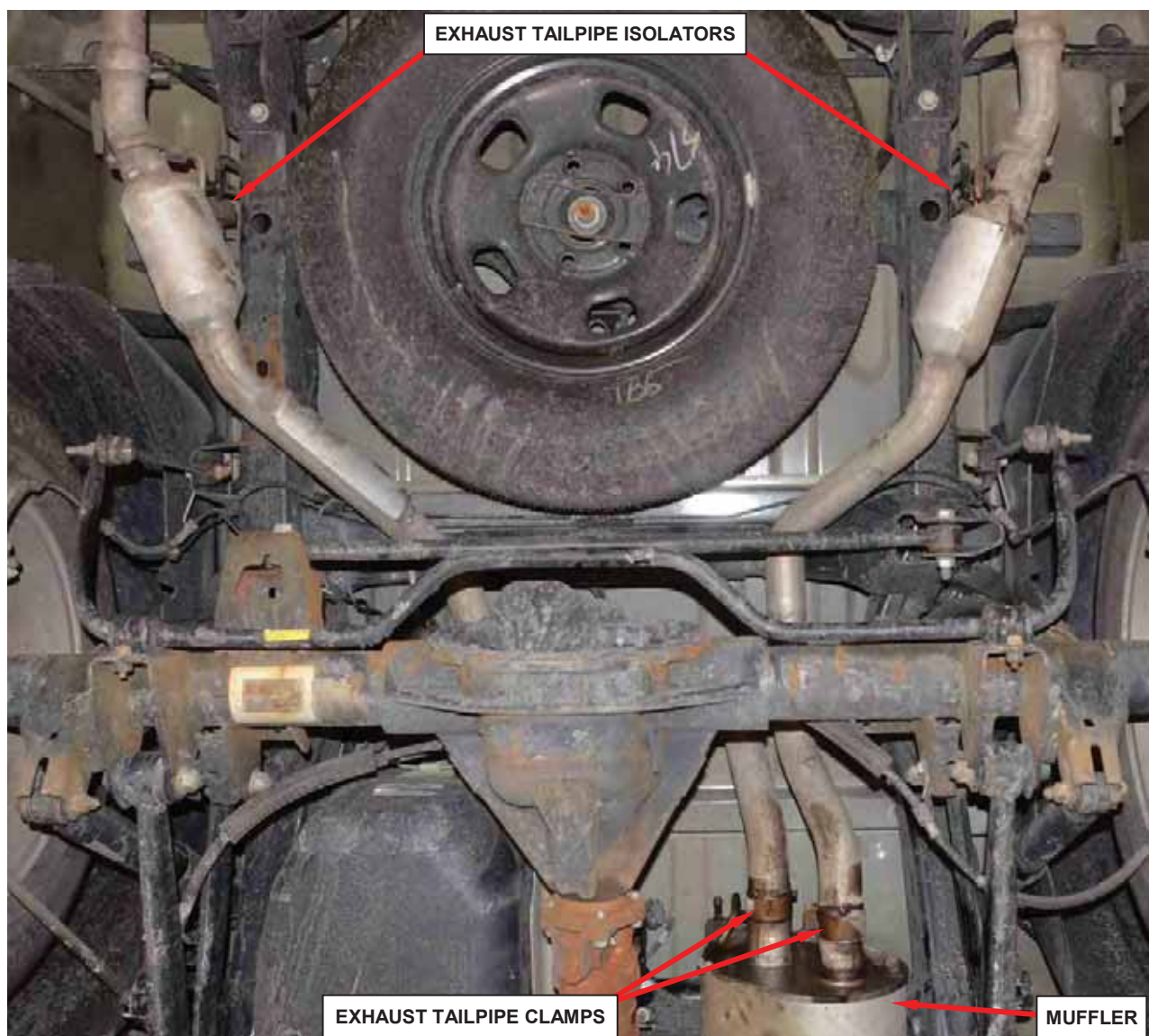


**Figure 26 – NOx Sensor Module**



**Service Procedure (Continued)**

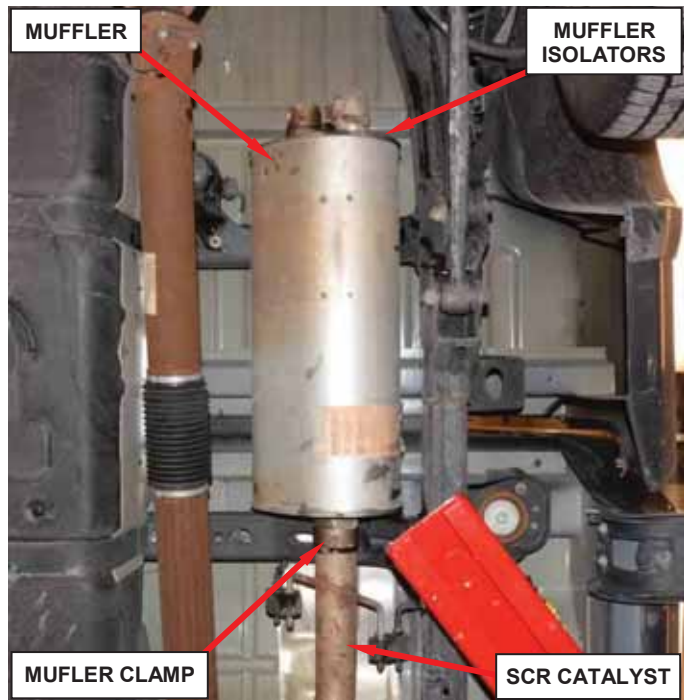
12. Loosen the exhaust tailpipe clamp(s) (Figure 27).
13. Release the isolator(s) from the exhaust tailpipe(s) hanger rod (Figure 27).
14. Separate the exhaust tailpipe(s) from the muffler. Then remove and save the tailpipe(s) (Figure 27).



**Figure 27 – Tailpipes (Dual Exhaust Shown Single Exhaust Similar)**

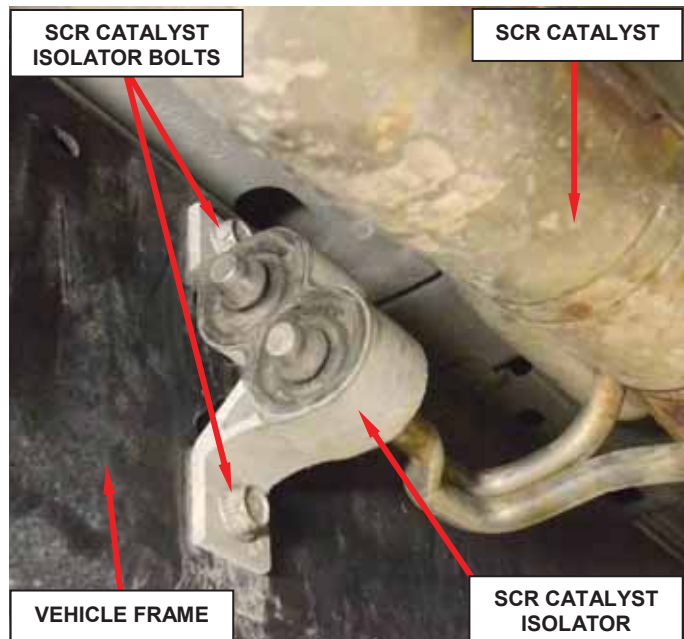
**Service Procedure (Continued)**

15. Loosen the muffler exhaust clamp nuts (Figure 28).
  
16. Release the isolators from the muffler hanger rods (Figure 28).
  
17. Separate the muffler from the SCR catalyst. Then remove and save the muffler (Figure 28).



**Figure 28 – Muffler**

18. Remove and save the two bolts securing the SCR catalyst isolator to the vehicle frame (Figure 29).

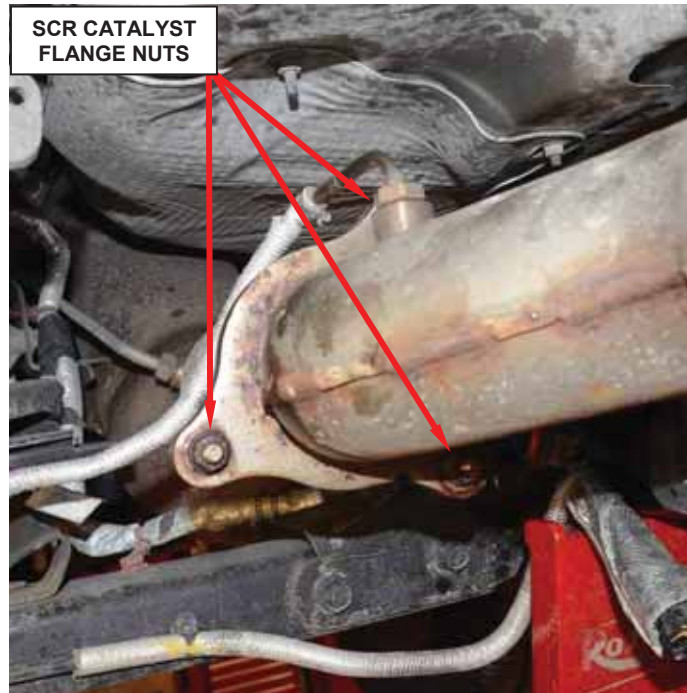


**Figure 29 – SCR Catalyst Isolator**

### Service Procedure (Continued)

19. Remove and save the three SCR catalyst flange nuts (Figure 30).

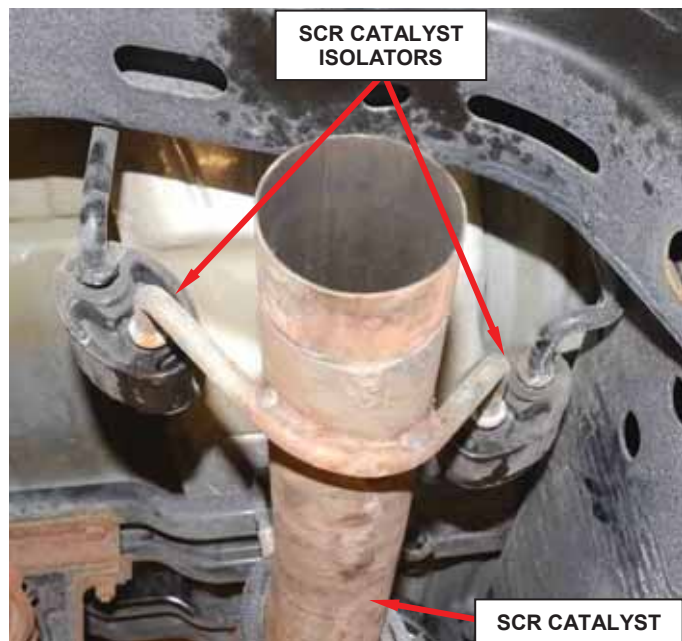
**NOTE:** If any of the three particulate filter studs break that secure the SCR catalyst, all three studs must be replaced with the bolts and nuts provided in the parts section of this recall.



**Figure 30 – SCR Catalyst Flange**

20. Release the isolator from the SCR catalyst hanger rod (Figure 31).

21. Remove the SCR catalyst from the vehicle and place on a suitable bench for transfer of sensors and components (Figure 32).



**Figure 31 – SCR Catalyst Isolators**



**Service Procedure (Continued)**

22. Use the following procedure to transfer the Particulate Matter (PM) sensor with module from the original SCR catalyst to the **NEW** SCR catalyst (Figure 32).

**NOTE: DO NOT use a torch as a heat source.**

- a. Use a six sided crowfoot wrench to remove the PM sensor from the SCR catalyst
- b. If the PM sensor fails to loosen, use a torque wrench set to 118 ft. lbs. (160 N·m) and loosen the PM sensor.
- c. If the PM sensor is still not loose after applying 118 ft. lbs. (160 N·m), then use a heat gun to heat the PM sensor boss for 1 minute at 842° F (450° C).
- d. Install the PM sensor into the **NEW** SCR catalyst and tighten to 44 ft. lbs. (60 N·m.).

23. Use the following procedure to transfer the NOx sensor with module from the original SCR catalyst to the **NEW** SCR catalyst (Figure 32).

**NOTE: DO NOT use a torch as a heat source.**

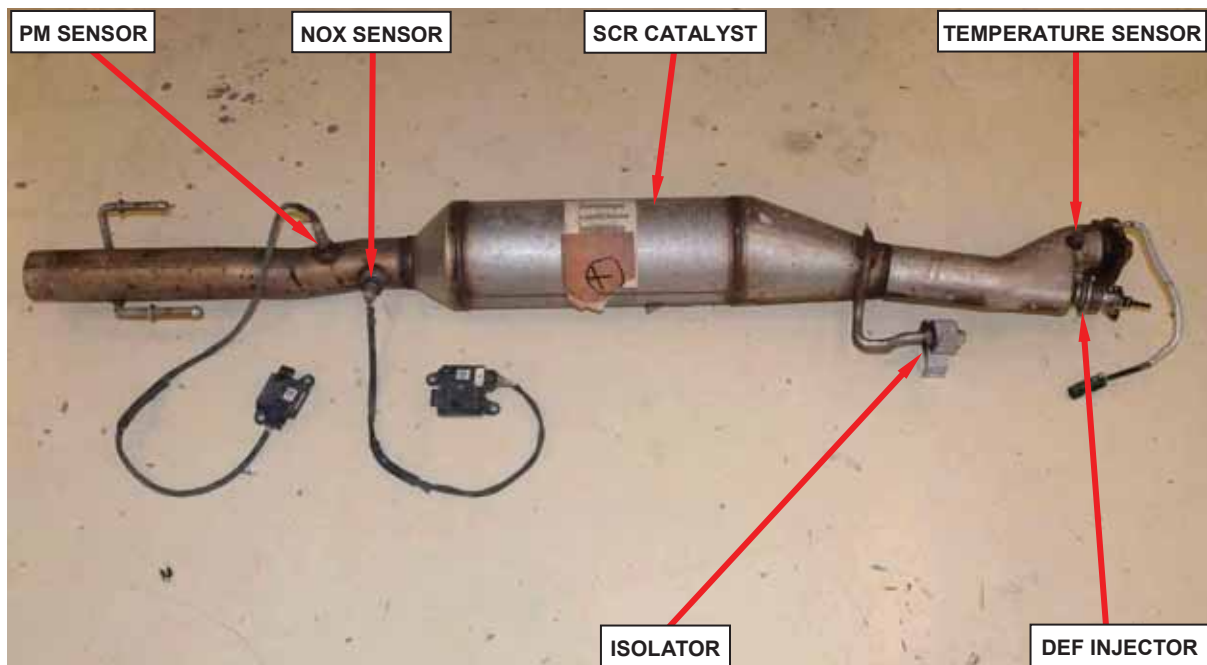
- a. Use a six sided crowfoot wrench to remove the NOx sensor from the SCR catalyst
- b. If the NOx sensor fails to loosen, use a torque wrench set to 118 ft. lbs. (160 N·m) and loosen the PM sensor.
- c. If the NOx sensor is still not loose after applying 118 ft. lbs. (160 N·m), then use a heat gun to heat the PM sensor boss for 1 minute at 842° F (450° C).
- d. Install the NOx sensor into the **NEW** SCR catalyst and tighten to 41 ft. lbs. (55 N·m).

**Service Procedure (Continued)**

24. Use the following procedure to transfer the exhaust gas temperature sensor from the original SCR catalyst to the **NEW** SCR catalyst (Figure 32).

**CAUTION:** The exhaust gas temperature sensor requires care when removing, handling and installing. The exhaust gas temperature sensor is sensitive to knocks and bending. Do **NOT** drop the sensor. Failure to follow these instructions may result in damage to the exhaust gas temperature sensor.

- a. Use a six sided crowfoot wrench to remove the exhaust gas temperature sensor from the SCR catalyst.
  - b. Install the exhaust gas temperature sensor into the **NEW** SCR catalyst and tighten to 35 ft. lbs. (47 N·m).
25. Transfer the isolator to the **NEW** SCR catalyst (Figure 32).



**Figure 32 – Selective Catalytic Reduction (SCR) Catalyst Assembly**

### Service Procedure (Continued)

26. Use the following procedure to transfer the DEF injector from the original SCR catalyst to the **NEW** SCR catalyst (Figure 32).

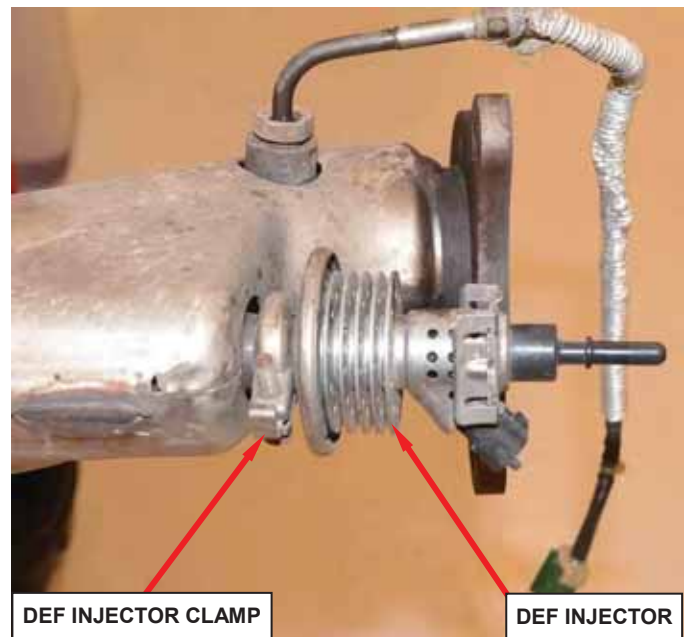
- a. Loosen the DEF injector clamp and remove the DEF injector from the SCR catalyst (Figure 33).

**NOTE: Hot water may be used to dissolve DEF crystal buildup if the DEF injector requires cleaning.**

- b. Inspect the opening of the DEF injector and make sure it is **NOT** plugged or restricted with buildup of DEF crystals. If the DEF injector opening is plugged or restricted, clean as necessary (Figure 34).

- c. Remove and discard the DEF injector gasket then install a **NEW** DEF injector gasket (Figure 34).

- d. Install the DEF injector onto the SCR catalyst. Tighten the clamp to 44 in. lbs. (5 N·m) (Figure 33).



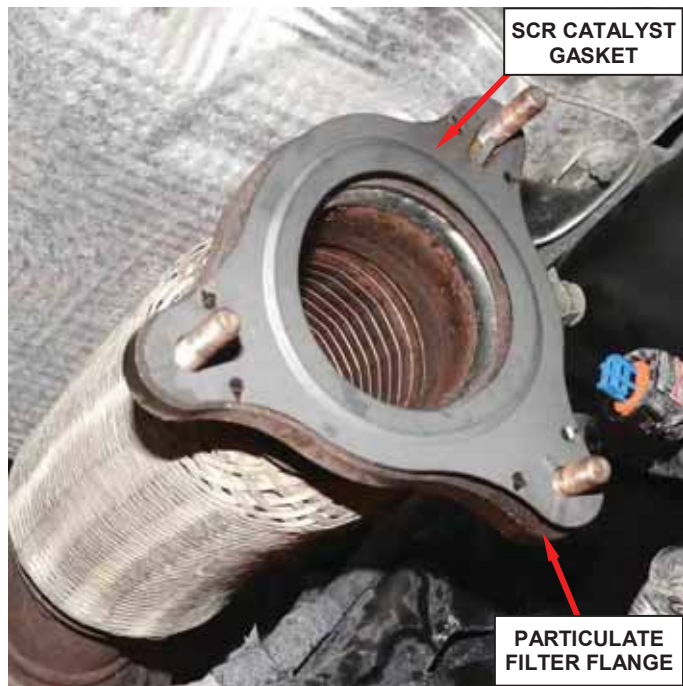
**Figure 33 – DEF Injector**



**Figure 34 – DEF Injector Gasket**

**Service Procedure (Continued)**

27. Remove and discard the used SCR catalyst gasket (Figure 35).
28. Clean the particulate filter flange gasket sealing surface (Figure 35).
29. Install a **NEW** SCR catalyst gasket (Figure 35).
30. Position the **NEW** SCR catalyst onto the particulate filter flange and install the three flange nuts finger tight (Figure 30).

**Figure 35 – SCR Catalyst Gasket**

31. Install the isolators onto the SCR catalyst hanger rods (Figure 31).
32. Install the two bolts securing the SCR catalyst isolator to the vehicle frame. Tighten the bolts to 21 ft. lbs. (28 N·m) (Figure 29).
33. Tighten the SCR catalyst flange nuts to 24 ft. lbs. (32 N·m) (Figure 30).
34. Install the muffler with clamps loosely to the SCR catalyst to permit proper alignment of all parts (Figure 28).
35. Install the isolators onto the muffler hanger rods (Figure 28).
36. Tighten the muffler clamp to 41 ft. lbs. (55 N·m) (Figure 28).
37. Install the tailpipe(s) loosely to the muffler to permit proper alignment of all parts (Figure 27).
38. Install the isolator(s) onto the tailpipe hanger rod(s) (Figure 27).

**Service Procedure (Continued)**

39. Check the exhaust system for proper alignment and for any contact with other vehicle components. A minimum of 1.0 in. (25 mm) is required between the exhaust system and other vehicle components. Make adjustments, if needed to achieve proper exhaust system clearance and alignment.
40. Align the tailpipe clamp and tighten to 41 ft. lbs. (55 N·m) (Figure 27).
41. Route the PM sensor module and NOx sensor module over to the module mounting bracket.
42. Install the NOx module to the top side of the module mounting bracket and then install the two nuts that secure the module to the bracket. Tighten the nuts to 80 in. lbs. (9 N·m) (Figure 26).
43. Connect the vehicle wire harness connector to the NOx module (Figure 26).
44. Install the PM module to the bottom side of the module mounting bracket and then install the two nuts that secure the module to the bracket. Tighten the nuts to 80 in. lbs. (9 N·m) (Figure 25).
45. Connect the vehicle wire harness connector to the PM module (Figure 25).
46. Install the module mounting bracket to the vehicle crossmember and then install the three nuts that secure the bracket to the crossmember. Tighten the nuts to 8 ft. lbs. (11 N·m) (Figure 23).
47. Secure the four NOx sensor and PM sensor wire harness retainers (Figure 24).
48. Connect the DEF fluid supply line quick connect fitting to the DEF injector (Figure 22).
49. Connect the DEF injector wire harness connector to the DEF injector (Figure 21).
50. Connect the green exhaust temperature sensor wire harness connector located between the exhaust particulate filter and the transmission (Figure 20).

**Service Procedure (Continued)**

51. Remove support and lower the vehicle.
52. Connect the negative battery cable to the negative battery post.
53. Use the following procedure to perform the SCR catalyst reset:
  - a. Connect the wiTECH scan tool and start a session.
  - b. From the “**PCM View**” screen, click on the “**Miscellaneous Functions**” tab.
  - c. Perform the **SCR System Catalyst Reset** function.
  - d. Using the wiTECH scan tool, clear all Diagnostic Trouble Codes (DTCs).
54. Remove the wiTECH scan tool from the vehicle.
55. Return the vehicle to the customer.

**D. Complete Proof of Correction Form for California Residents:**

This recall is subject to the **State of California Registration Renewal/Emissions Recall Enforcement Program**. Complete a Vehicle Emission Recall Proof of Correction Form (**Form No. 81-016-1053**) and **supply it to vehicle owners residing in the state of California** for proof that this recall has been performed when they renew the vehicle registration.



### Completion Reporting and Reimbursement

Claims for vehicles that have been serviced must be submitted on the DealerCONNECT Claim Entry Screen located on the Service tab. Claims submitted will be used by FCA US LLC to record recall service completions and provide dealer payments.

Use the following labor operation numbers and time allowances:

	<b><u>Labor Operation Number</u></b>	<b><u>Time Allowance</u></b>
Replace SCR (WK - Grand Cherokee)	25-R6-91-82	1.2 hours
Replace SCR (DS - 1500 Pickup)	25-R6-91-83	1.4 hours

#### **Related Operation**

Replace 3 SCR catalyst flange studs	25-R6-91-51	0.2 hours
-------------------------------------	-------------	-----------

#### **Optional Equipment**

Transfer Case Skid Plate (WK - Grand Cherokee)	25-R6-91-61	0.2 hours
--	-------------	-----------

Add the cost of the recall parts package plus applicable dealer allowance to your claim.

**NOTE:** See the Warranty Administration Manual, Recall Claim Processing Section, for complete recall claim processing instructions.

### Dealer Notification

To view this notification on DealerCONNECT, select “Global Recall System” on the Service tab, then click on the description of this notification.



### Owner Notification and Service Scheduling

All involved vehicle owners known to FCA US LLC are being notified of the service requirement by first class mail. They are requested to schedule appointments for this service with their dealers. A generic copy of the owner letter is attached.

Enclosed with each owner letter is an Owner Notification postcard to allow owners to update our records if applicable.

### Vehicle Lists, Global Recall System, VIP and Dealer Follow Up

All involved vehicles have been entered into the DealerCONNECT Global Recall System (GRS) and Vehicle Information Plus (VIP) for dealer inquiry as needed.

GRS provides involved dealers with an updated VIN list of their incomplete vehicles. The owner's name, address and phone number are listed if known. Completed vehicles are removed from GRS within several days of repair claim submission.

To use this system, click on the “**Service**” tab and then click on “**Global Recall System.**” Your dealer's VIN list for each recall displayed can be sorted by: those vehicles that were unsold at recall launch, those with a phone number, city, zip code, or VIN sequence.

**Dealers must perform this repair on all unsold vehicles before retail delivery.** Dealers should also use the VIN list to follow up with all owners to schedule appointments for this repair.

*Recall VIN lists may contain confidential, restricted owner name and address information that was obtained from the Department of Motor Vehicles of various states. Use of this information is permitted for this recall only and is strictly prohibited from all other use.*

### Additional Information

If you have any questions or need assistance in completing this action, please contact your Service and Parts District Manager.

Customer Services / Field Operations  
FCA US LLC



*SELECTIVE CATALYTIC REDUCTION CATALYST*

**IMPORTANT EMISSIONS RECALL**

**R69**

This notice applies to your vehicle (VIN: xxxxxxxxxxxxxxxxxxxx).

Dear: (Name)

FCA has determined that certain **2014 Jeep® Grand Cherokee and RAM 1500 Pickup** vehicles equipped with a 3.0L diesel engine may exceed exhaust emissions standards.

***The problem is...***      **The selective catalytic reduction (SCR) catalyst on your vehicle is experiencing washcoat degradation, which may lead to the exceedance of exhaust emission standards.**

***What your dealer will do...***      **FCA will repair your vehicle free of charge.** To do this, your dealer will replace the SCR catalyst. The work will take about 1½ hours to complete. However, additional time may be necessary depending on service schedules.

***What you must do...***      Simply **contact your dealer** right away to schedule a service appointment. Ask the dealer to hold the part for your vehicle.

***If you need help...***      If you have questions or concerns which your dealer is unable to resolve, please contact the FCA Group Recall Assistance Center at either **fcarecalls.com** or 1-800-853-1403.

***California residents...***      **The State of California requires the completion of emission recall repairs prior to vehicle registration renewal.** Your dealer will provide you with a Vehicle Emission Recall Proof of Correction Form after the recall service is performed. Be sure to save this form since the California Department of Motor Vehicles may require that you supply it as proof that the recall has been performed.

If you have already experienced this specific condition and have paid to have it repaired, you may visit **www.fcarecallreimbursement.com** to submit your reimbursement request online or you can mail your original receipts and proof of payment to the following address for reimbursement consideration: **FCA Customer Assistance, P.O. Box 21-8004, Auburn Hills, MI 48321-8007, Attention: Recall Reimbursement.** Once we receive and verify the required documents, reimbursement will be sent to you within 60 days. If you've had previous repairs and/or reimbursement you may still need to have the recall repair performed on your vehicle.

In order to ensure your full protection under the emission warranty provisions, it is recommended that you have your vehicle serviced as soon as possible. Failure to do so could legally be determined to be a lack of proper maintenance of your vehicle. Further, without this repair, your vehicle may fail a state or local emission inspection test.

We are sorry for any inconvenience but trust that you understand our interest in clean air. Thank you for your attention to this important matter.

Customer Services / Field Operations  
FCA US LLC

**APPENDIX D**  
**APPROVED EMISSIONS MODIFICATION DISCLOSURE**

## Appendix D

### Approved Emissions Modification Disclosure

The following statements shall be included in the disclosures required under Paragraph 43.b of the Consent Decree. Any related Class Action Settlement for which the United States and California send the notice specified in Paragraph 48.b must also require that the statements below be included in a class action notice. Defendants are not prohibited by the terms of this Consent Decree or this Appendix from making disclosures other than those listed below, however Defendants and their agents are prohibited from making disclosures or communications to Eligible Owners or Eligible Lessees that are inconsistent with the statements listed below.

#### Disclosures:

1. Nature of the Approved Emissions Modification. The Approved Emissions Modification (AEM) consists of a software reflash that modifies the calibrations in your vehicle's Engine Control Unit (ECU) and Transmission Control Unit (TCU). There are no hardware changes to your vehicle associated with this AEM. However, your authorized Ram or Jeep dealership may make certain hardware changes to your vehicle or may modify your vehicle in accordance with open recall notices at the same time the AEM is installed. You should ask your authorized dealer about these changes to your vehicle, as they are not part of the AEM described in this document.
2. Key Vehicle Attributes. This AEM is not expected to change any of your key vehicle attributes, such as reliability, durability, vehicle performance, drivability, engine noise or vibration, or other driving characteristics.
3. DEF Consumption. The AEM is not expected to change your Diesel Exhaust Fluid (DEF) tank refill interval. If your previous refill rate coincided with your oil change interval, that should not change with this software update. However, you may notice that under certain conditions your vehicle may use slightly more DEF as compared to prior usage.
4. Fuel Economy. Average fuel economy is not expected to change as a result of this AEM. The AEM may, under sustained low speed driving (e.g. under 21 mph) with frequent stops, decrease your fuel economy or, under sustained high speed driving conditions, may increase or decrease your fuel economy. As with all vehicles, however, several factors can affect your actual fuel economy such as: how and where you drive, vehicle condition, maintenance and age, fuel variations, and vehicle variations.

#### Disclosure Amendments:

The disclosures contained in this document may, upon approval by EPA and CARB, be modified if changes are necessary to account for updates to the AEM with respect to certain vehicles, as contemplated by Consent Decree Paragraph 31.f.

**APPENDIX E**  
**EXTENDED EMISSION WARRANTY**

## **Consent Decree Appendix E Extended Emission Warranty**

Subject to standard limitations that must be identified to Eligible Owners and Eligible Lessees, which may set forth exclusions like accident, abuse, neglect, or installation of non-certified parts, and applicable existing warranty provisions that will remain in effect, the Extended Warranty shall cover the cost of all parts and labor needed to repair the items listed below.

- Catalysts
  - Diesel Oxidation Catalyst / Diesel Particulate Filter (DPF) Assembly
  - Selective Catalytic Reduction (SCR) Catalyst
- Diesel Exhaust Fluid (DEF) System
  - DEF Injector
  - DEF Injector Controller
  - DEF Storage Tank
  - DEF Delivery Lines
  - DEF Concentration Sensor (2016 Model Year Ram 1500 and Jeep Grand Cherokee only)
  - DEF Supply Module, Pump, & Temperature Sensor Unit
- Parts of the Fuel System
  - Low Pressure Fuel Pump Module & Level Unit
  - Fuel Injectors
  - Fuel Rail
  - High Pressure Fuel Line
  - High Pressure Injection Pump & Regulator Unit
- Parts of the Exhaust Gas Recirculation (EGR) System
  - EGR Cooler Tubes
  - EGR Cooler
  - EGR Valve
  - EGR Temperature Sensor
  - EGR Cooler bypass actuator
- Other Sensors That Are Covered
  - Oxygen Sensors
  - NOx Sensors
  - Intake Manifold Pressure Sensor
  - Engine Coolant Temperature Sensor
  - Fuel/Water Separator Sensor
  - Intake Swirl Actuator Sensor
  - Engine Camshaft Position Sensor
  - Engine Crankshaft Position Sensor
  - Particulate Matter Sensor
  - Mass Airflow Sensor
  - Boost Pressure Sensor
  - Crankcase Pressure Sensor
  - Exhaust Manifold Pressure Sensor

- Throttle Valve
  - Exhaust Temperature Sensor
  - DPF Differential Pressure Sensor
- Engine Control Module (Computer)
- Transmission Control Module (Computer)/Valve Body & Solenoids
- Throttle Valve
- Cylinder Head Assembly, Including Valves, Springs, Valve Spring Keepers, Valve Seats, Cam Bearing Caps, and Manifold Studs (Camshaft and other components of the assembly are not covered)
- Engine Thermostat/housing/gasket
- The turbocharger system including all related hoses and pipes, all sensors and actuators.

Additionally, the Extended Warranty shall cover the cost of any OBD Diagnostic Scan for malfunctions that trigger the OBD Malfunction Indicator Light (MIL), regardless of whether the malfunction is attributable to a part that is covered under the Extended Warranty.



**APPENDIX F**  
**LIST OF DEFENDANTS' AFFILIATES, PARENTS, AND**  
**SUBSIDIARIES**

## Appendix F

### List of Defendants' Affiliates, Parents, and Subsidiaries

2 H Energy S.A.S.  
410, Park Display Inc.  
Abarth & C. S.p.A.  
AC Austro Car Handelsgesellschaft m.b.h. & Co. OHG  
Administracion Magneti Marelli Sistemi Sospensioni Mexicana S.R.L. de C.V.  
Afin Bohemia s.r.o.  
Afin Bulgaria EAD  
Afin Slovakia S.R.O.  
Afin Trade Bulgaria Eood  
ALFA ROMEO (SHANGHAI) AUTOMOBILES SALES CO. Ltd.  
Alfa Romeo S.p.A.  
Alfa Romeo U.S.A. S.p.A.  
Al-Ghazi Tractors Ltd  
ALMACANTAR GROUP S.A.  
Almandine I LLC  
Altra S.p.A.  
Amce-Automotive Manufacturing Co. Ethiopia  
Ancom USA Inc.  
ANFIA Automotive S.c.r.l.  
Arab American Vehicles Company S.A.E.  
Astra Veicoli Industriali S.p.A.  
Aurigen Capital Limited  
Aurigen Europe Holdings B.V.  
Aurigen Reinsurance Limited  
Aurigen USA Holdings Inc.  
Auto Componentistica Mezzogiorno - A.C.M. Melfi Societa Consortile a responsabilita limitata  
AUTO TRANSPORT SERVICES LLC  
Autodie LLC  
AUTOMOTIVE LIGHTING (THAILAND) CO. LTD  
Automotive Lighting Brotterode GmbH  
Automotive Lighting Italia S.p.A.  
Automotive Lighting LLC  
Automotive Lighting o.o.o.  
Automotive Lighting Rear Lamps France S.a.s.  
Automotive Lighting Rear Lamps Mexico S. de r.l. de C.V.  
Automotive Lighting Reutlingen GmbH  
Automotive Lighting S.R.O.  
Automotive Lighting UK Limited  
B&W Nest S.r.l.  
Banco CNH Industrial Capital S.A.  
Banco Fidis S.A.  
Bari Servizi Industriali S.c.r.l.  
BLI Group, Inc.  
Blue Leaf I.P., Inc.  
Blue Leaf Insurance Company  
C.R.F. Societa Consortile per Azioni  
Case Canada Receivables, Inc.

Case Construction Equipment, Inc.  
Case Construction Machinery (Shanghai) Co., Ltd  
Case Credit Holdings Limited  
Case Dealer Holding Company LLC  
Case Equipment Holdings Limited  
Case Europe S.a.r.l.  
Case Harvesting Systems GmbH  
Case IH Agricultural Equipment, Inc.  
CASE ILE DE FRANCE  
Case India Limited  
Case International Limited  
Case Mexico S.A. de C.V.  
Case New Holland Construction Equipment (India) Private Limited  
Case New Holland Industrial Inc.  
CASE New Holland Machinery Trading (Shanghai) Co. Ltd.  
Case Special Excavators N.V.  
Case United Kingdom Limited  
CF GOMMA DEUTSCHLAND GmbH  
CG AU NSC LIMITED  
CG EU NSC LIMITED  
CG Italia Operations S.p.A.  
CG Venezuela UK Holdings Limited  
Changchun Magneti Marelli Automotive Lighting System Co. Ltd.  
CHANGCHUN MAGNETI MARELLI POWERTRAIN COMPONENTS Co.Ltd.  
Chrysler (Hong Kong) Automotive Limited  
Chrysler Austria Gesellschaft mbH in liquidazione  
Chrysler Belgium Luxembourg NV/SA  
Chrysler Deutschland GmbH  
Chrysler France S.A.S.  
Chrysler Group (China) Sales Limited  
Chrysler International GmbH  
Chrysler Italia S.r.l.  
Chrysler Jeep Ticaret A.S.  
Chrysler Mexico Investment Holdings Cooperatie U.A.  
Chrysler Netherlands Distribution B.V.  
Chrysler Netherlands Holding Cooperatie U.A.  
Chrysler Polska Sp.z o.o.  
Chrysler South Africa (Pty) Limited  
Chrysler UK Limited  
Chrysler UK Pension Trustees Limited  
CMA Componentes e Modulos Automotivos Industria e Comercio Automotivos Ltda  
CMP Componentes e Modulos Plasticos Industria e Comercio Ltda.  
CNH (China) Management Co., Ltd.  
CNH (Shanghai) Equipment R&D Co., Ltd.  
CNH Capital Finance LLC  
CNH Capital Operating Lease Equipment Receivables LLC  
CNH Capital Receivables LLC  
CNH Comercial, SA de C.V.  
CNH Componentes, S.A. de C.V.  
CNH de Mexico SA de CV  
CNH Industrial (India) Private Limited

CNH Industrial (Thailand) Ltd.  
CNH Industrial America LLC  
CNH Industrial Asian Holding Limited N.V.  
CNH Industrial Australia Pty Limited  
CNH Industrial Baumaschinen GmbH  
CNH Industrial Belgium N.V.  
CNH Industrial BM GmbH  
CNH Industrial Brasil Ltda.  
CNH Industrial Canada, Ltd.  
CNH Industrial Capital (India) Private Limited  
CNH Industrial Capital (Shanghai) Commercial Factoring Co. Ltd.  
CNH Industrial Capital America LLC  
CNH INDUSTRIAL CAPITAL ARGENTINA S.A.  
CNH Industrial Capital Australia Pty Limited  
CNH Industrial Capital Canada Ltd.  
CNH Industrial Capital Corretora de Seguros Ltda.  
CNH Industrial Capital Europe S.a.S.  
CNH Industrial Capital Limited  
CNH Industrial Capital LLC  
CNH Industrial Capital Russia LLC  
CNH Industrial Capital Solutions S.p.A.  
CNH Industrial Danmark A/S  
CNH Industrial Deutschland GmbH  
CNH Industrial Europe Holding S.A.  
CNH Industrial Finance Europe S.A.  
CNH Industrial Finance France S.A.  
CNH Industrial Finance North America, Inc.  
CNH Industrial Finance S.p.A.  
CNH Industrial Financial Services A/S  
CNH Industrial Financial Services S.A.  
CNH Industrial France  
CNH Industrial Italia s.p.a.  
CNH Industrial Korea LLC  
CNH Industrial Kutno Polska sp. z o.o.  
CNH Industrial Machinery (Harbin) Co. Ltd.  
CNH Industrial Maquinaria Spain S.A.  
CNH Industrial N.V.  
CNH Industrial OLDSCO Capital Limited  
CNH Industrial Osterreich GmbH  
CNH Industrial Polska Sp. z o.o.  
CNH Industrial Portugal-Comercio de Tractores e Maquinas Agricolas Ltda  
CNH Industrial Russia LLC  
CNH Industrial S.A. de C.V.  
CNH Industrial Sales and services GmbH  
CNH Industrial Services (Thailand) Limited  
CNH Industrial Services S.r.l.  
CNH Industrial Sweden AB  
CNH Industrial U.S. Holdings Inc.  
CNH Industrial UK Limited  
CNH INDUSTRIAL VENEZUELA, C.A.  
CNH Reman LLC

CNH Servicios Comerciales, S.A. de C.V., SOFOM, E.N.R.  
CNH Servicios Corporativos S.A. de C.V.  
CNH U.K. Limited  
CNH Wholesale Receivables LLC  
CNHI COMERCIO DE PEÇAS LTDA  
CNHI International SA  
CNI C.V.  
CODEFIS Società consortile per azioni  
Cofap Fabricadora de Pecas Ltda  
COMAU (KUNSHAN) Automation Co. Ltd.  
Comau (Shanghai) Engineering Co. Ltd.  
Comau (Shanghai) International Trading Co. Ltd.  
COMAU (THAILAND) CO. LTD in liquidazione  
Comau Argentina S.A.  
Comau Automatizacion S.de R.L. C.V.  
Comau Canada Inc.  
COMAU Czech s.r.o. in liquidazione  
Comau Deutschland GmbH  
Comau Do Brasil Facilities Ltda.  
Comau do Brasil Industria e Comercio Ltda.  
Comau France S.A.S.  
Comau Iaisa S.de R.L. de C.V.  
Comau India Private Limited  
Comau LLC  
Comau Mexico S.de R.L. de C.V.  
Comau Poland Sp. z o.o. in liquidazione  
Comau Robot ve Sistemleri A.S  
Comau Romania S.R.L.  
Comau Russia OOO  
Comau S.p.A  
Comau s.p.A.  
Comau Service Systems S.L.  
Comau Trebol S.de R.L. de C.V.  
Comau U.K. Limited  
Compania Industrial Frontera S.A. de C.V.  
Consorzio ATA - FORMAZIONE  
CONSORZIO FCA CNHI ENERGY  
Consorzio Fermag in liquidazione  
Consorzio Nido Industria Vallesina  
Consorzio per la Reindustrializzazione Area di Arese S.r.l. in liquidazione  
Consorzio Servizi Balocco  
CPK Interior Products Inc.  
Deposito Avogadro S.p.A.  
DTR VMS Italy S.r.l.  
Easy Drive S.r.l.  
Effe Grundbesitz GmbH  
Employers Health Initiatives L.L.C.  
Entitle Direct Group, Inc.  
EXOR Capital Limited  
EXOR INVESTMENT (UK) LLP  
EXOR INVESTMENTS LTD

EXOR N.V.  
EXOR NEDERLAND N.V.  
EXOR S.A.  
EXOR S.N. (USA), LLC  
Extended Vehicle Protection LLC  
F. Pegaso S.A.  
Farm FZCO  
Farmpower Pty Limited  
FAS FREE ZONE Ltd. Kragujevac  
FC RISK MANAGEMENT DAC  
FCA (SHANGHAI) AUTO PARTS TRADING CO., LTD.  
FCA AD GmbH  
FCA ADMINISTRACION INTEGRAL, S.A. DE C.V.  
FCA Argentina S.A.  
FCA Asia Pacific Investment Co., Ltd.  
FCA AUBURN HILLS OWNER LLC  
FCA Australia Pty. Ltd.  
FCA AUSTRIA GmbH  
FCA AUSTRO CAR GmbH  
FCA AUTOMOBILES ARGENTINA S.A.  
FCA Automotive Finance Co. Ltd.  
FCA AUTOMOTIVE SERVICES UK LTD.  
FCA Bank Deutschland G.m.b.H.  
FCA Bank G.m.b.H.  
FCA BANK S.p.A.  
FCA Belgium S.A.  
FCA Canada Cash Services Inc.  
FCA Canada Inc.  
FCA CAPITAL DANMARK A/S  
FCA CAPITAL DANMARK NS  
FCA CAPITAL ESPANA E.F.C. S.A.  
FCA CAPITAL FRANCE S.A.  
FCA CAPITAL HELLAS S.A.  
FCA Capital Nederland B.V.  
FCA CAPITAL NORGE AS  
FCA CAPITAL PORTUGAL INSTITUIÇÃO FINANCEIRA DE CREDITO SA  
FCA CAPITAL RE Designated Activity Company  
FCA Capital Suisse S.A.  
FCA CAPITAL SVERIGE AB  
FCA Caribbean LLC  
FCA Center Italia S.p.A.  
FCA CENTRAL AND EASTERN EUROPE KFT.  
FCA Chile Importadora Limitada  
FCA Co-Issuer Inc.  
FCA Compania Financiera S.A.  
FCA Customer Services Centre S.r.l.  
FCA DEALER CAPITAL LLC  
FCA DEALER SERVICES ESPANA S.A.  
FCA DEALER SERVICES PORTUGAL S.A.  
FCA DEALER SERVICES UK LTD.  
FCA Denmark A/S

FCA DUTCH OPERATING LLC  
FCA Engineering India Private Limited  
FCA FIAT CHRYSLER AUTOMOVEIS BRASIL LTDA.  
FCA Fiat Chrysler Participacoes Brasil Limitada  
FCA FINLAND Oy  
FCA Fleet & Tenders S.R.L.  
FCA FOREIGN SALES COMPANY INC.  
FCA Foundation  
FCA France S.A.S.  
FCA GERMANY AG  
FCA GREECE S.A.  
FCA Group Marketing S.p.A.  
FCA Group Purchasing France S.a.r.l.  
FCA Group Purchasing Poland Sp. z o.o.  
FCA Group Purchasing S.r.l.  
FCA INDIA AUTOMOBILES Private Limited  
FCA Information Technology, Excellence and Methods  
FCA Information Technology, Excellence and Methods S.p.A.  
FCA INSURANCE HELLAS S.A.  
FCA INTERMEDIATE MEXICO LLC  
FCA INTERNATIONAL OPERATIONS LLC  
FCA INTERNATIONAL SERVICES LLC  
FCA INVESTMENT HOLDINGS LLC  
FCA ITALY HOLDINGS S.p.A.  
FCA Italy S.p.A.  
FCA JAPAN Ltd.  
FCA Korea Limited  
FCA LEASING FRANCE SNC  
FCA Leasing GmbH  
FCA Leasing Polska Sp. z o.o.  
FCA Melfi S.r.l.  
FCA Mexico, S.A. de C.V.  
FCA MID LLC  
FCA Middle East FZ-LLC  
FCA MINORITY LLC  
FCA Motor Village Austria GmbH  
FCA MOTOR VILLAGE BELGIUM S.A.  
FCA MOTOR VILLAGE FRANCE S.A.S.  
FCA MOTOR VILLAGE GERMANY GmbH  
FCA MOTOR VILLAGE PORTUGAL S.A.  
FCA MOTOR VILLAGE SPAIN, S.L.  
FCA MOTOR VILLAGE SWITZERLAND S.A.  
FCA Netherlands B.V.  
FCA Newco LLC  
FCA North America Holdings LLC  
FCA NORWAY AS  
FCA ONTARIO HOLDINGS Limited  
FCA Partecipazioni S.p.A.  
FCA PLASTICS SERBIA d.o.o. Kragujevac  
FCA POLAND Spółka Akcyjna  
FCA PORTUGAL, S.A.



FCA Powertrain Brasil Industria e Comercio de Motores Ltda  
FCA POWERTRAIN POLAND Sp. z o.o.  
FCA Powertrain Technologies Shanghai R&D Co. Ltd.  
FCA Real Estate Germany GmbH  
FCA REAL ESTATE SERVICES FRANCE SAS  
FCA REAL ESTATE SERVICES LLC  
FCA Real Estate Services S.p.A.  
FCA REALTY LLC  
FCA REAL™ LLC CN C.V.  
FCA Rental Locadora de Automoveis Ltda  
FCA Russia AO  
FCA Russia S.r.l.  
FCA S.A. de Ahorro para Fines Determinados  
FCA Security Societe consortile per azioni  
FCA SERBIA DOO KRAGUJEVAC  
FCA Service Contracts LLC  
FCA Services Belgium N.V.  
FCA Services d.o.o. Kragujevac  
FCA Services Germany GmbH  
FCA Services Hispano-Lusa S.A.  
FCA Services Polska Sp. z o.o.  
FCA Services S.p.A.  
FCA Services Support Malaysia SDN. BHD.  
FCA Services Support Mexico S.A. de C.V.  
FCA Services U.S.A., Inc.  
FCA Servizi per l'Industria S.c.p.A.  
FCA South Africa (Proprietary) Ltd  
FCA SWEDEN AB  
FCA SWITZERLAND S.A.  
FCA TRANSPORT LLC  
FCA US Insurance Company  
FCA US LLC  
FCA Venezuela LLC  
FCA VERSICHERUNGSSERVICE GmbH  
FCA-Group Bank Polska S.A.  
FER MAS Oto Ticaret A.S.  
Ferrari (HK) Limited  
Ferrari Australasia Pty Limited  
Ferrari Auto Securitization Transaction - Lease, LLC  
Ferrari Auto Securitization Transaction - Select, LLC  
Ferrari Auto Securitization Transaction, LLC  
Ferrari Central East Europe GmbH  
Ferrari Far East Pte Limited  
Ferrari Financial Services GMBH  
Ferrari Financial Services Inc.  
Ferrari Financial Services S.p.A.  
Ferrari Financial Services Titling Trust  
Ferrari International Cars Trading (Shanghai) Co. L.t.d.  
Ferrari Japan KK  
Ferrari Management Consulting (Shanghai) Co. L.t.d.  
Ferrari N.V.

Ferrari North America Inc.  
Ferrari North Europe Limited  
Ferrari S.p.A.  
Ferrari South West Europe S.a.r.l.  
Fiat (Beijing) Business Co., Ltd.  
Fiat Chrysler Automobiles (FCA) Egypt Limited  
FIAT CHRYSLER AUTOMOBILES CR s.r.o.  
Fiat Chrysler Automobiles Ireland DAC  
FIAT CHRYSLER AUTOMOBILES MIDDLE EAST FZE  
Fiat Chrysler Automobiles Morocco S.A.  
Fiat Chrysler Automobiles N.V.  
Fiat Chrysler Automobiles Services UK Limited  
Fiat Chrysler Automobiles Spain S.A.  
FIAT CHRYSLER AUTOMOBILES SR s.r.o.  
FIAT CHRYSLER AUTOMOBILES UK Ltd  
Fiat Chrysler Financas Brasil Ltda.  
Fiat Chrysler Finance Canada Ltd.  
Fiat Chrysler Finance et Services S.A.S.  
Fiat Chrysler Finance Europe S.A.  
Fiat Chrysler Finance Netherlands B.V.  
Fiat Chrysler Finance North America, Inc.  
Fiat Chrysler Finance S.p.A.  
Fiat Chrysler Finance US Inc.  
FIAT CHRYSLER MOTOR VILLAGE Ltd.  
Fiat Chrysler Polska Sp. z o.o.  
Fiat Chrysler Rimaco Argentina S.A.  
Fiat Chrysler Rimaco Brasil Corretagens de Seguros Ltda.  
Fiat Chrysler Rimaco S.A.  
Fiat Chrysler Rimaco SA  
Fiat Chrysler Risk Management S.p.A.  
Fiat Chrysler UK LLP  
Fiat CIEI S.p.A. in liquidazione  
Fiat Common Investment Fund Limited  
Fiat Group Automobiles Japan K.K.  
Fiat India Automobiles Private Limited  
Fiat Motor Sales Ltd  
Fiat Powertrain Technologies Management (Shanghai) Co. Ltd.  
Fiat Powertrain Technologies of North America, Inc.  
Fiat U.S.A. Inc.  
Fiatallis North America LLC  
Fidis S.p.A.  
Flagship Dealer Holding Company, LLC  
Flexi-Coil (U.K.) Limited  
FMA-Consultoria e Negocios Ltda  
FMM Pernambuco Componentes Automotivos Ltda  
Fondazione Casa di Enzo Ferrari Museo  
FPT – Powertrain Technologies France S.A.  
FPT Industrial S.p.A.  
FPT Motorenforschung AG  
Fundacion Chrysler, I.A.P.  
FUNDACION FCA, A.C.

Funfrap-Fundicao Portuguesa S.A.  
G.S.A. S.A.  
GAC FIAT Chrysler Automobiles Co. Ltd.  
GAC FIAT CHRYSLER AUTOMOBILES SALES CO., Ltd.  
GESTIN POLSKA Sp. z o.o.  
Hangzhou IVECO Automobile Transmission Technology Co., Ltd.  
Hefei Magneti Marelli Exhaust Systems Co.Ltd.  
Heuliez Bus S.A.S.  
HFI Holdings, Inc.  
HMC MM Auto Ltd  
Hua Dong Teksid Automotive Foundry Co. Ltd.  
Hubei Huazhoung Magneti Marelli Automotive Lighting Co. Ltd  
IAV-Industrie-Anlagen-Verpachtung GmbH  
i-FAST Automotive Logistics S.r.l.  
i-FAST Container Logistics S.p.A.  
Industrias Magneti Marelli Mexico S.A. de C.V.  
Innovazione Automotive e Metalmeccanica Scrl  
International Harvester Company  
Irisbus Italia S.p.A.  
Isvor Fiat India Private Ltd. in liquidazione  
Italcar SA  
IUVO SRL  
IVECO - OTO MELARA Società Consortile a responsabilità limitata  
Iveco (China) Commercial Vehicle Sales Co. Ltd  
Iveco (Schweiz) AG  
Iveco Acentro S.p.A.  
Iveco Arac Sanayi VE Ticaret A.S.  
Iveco Argentina S.A.  
Iveco Austria GmbH  
Iveco Bayern GmbH  
Iveco Capital Broker de Asigurare – Reasigurare S.r.l.  
Iveco Capital Limited  
Iveco Capital Russia LLC  
Iveco Capital SA in liquidazione  
Iveco Capital Services S.A.  
Iveco Czech Republic A.S.  
Iveco Danmark A/S  
Iveco Defence Vehicles SpA  
Iveco Espana S.L.  
Iveco Est Sas  
Iveco Finland OY  
Iveco France  
Iveco Holdings Limited  
Iveco Investitions GmbH  
Iveco L.V.I. S.a.s.  
Iveco Limited  
Iveco Magirus AG  
Iveco Magirus Fire Fighting GmbH  
Iveco Magyarorszag Kereskedelmi KFT  
Iveco Nederland B.V.  
Iveco Nord Nutzfahrzeuge GmbH

Iveco Nord S.A.  
Iveco Nord-Ost Nutzfahrzeuge GmbH  
Iveco Norge A.S.  
Iveco Orecchia S.p.A.  
Iveco Otomotiv Ticaret A.S.  
Iveco Participations s.a.s.  
Iveco Pension Trustee Ltd  
Iveco Poland Sp. z o.o.  
Iveco Portugal-Comercio de Veiculos Industriais S.A.  
Iveco Provence s.a.s.  
Iveco Retail Limited  
Iveco Romania S.r.l.  
Iveco S.p.A.  
Iveco Slovakia, s.r.o.  
Iveco South Africa (Pty) Ltd.  
Iveco South Africa Works (Pty) Ltd  
Iveco Sud-West Nutzfahrzeuge GmbH  
Iveco Sweden A.B.  
Iveco Truck Services S.R.L.  
Iveco Trucks Australia Limited  
Iveco Ukraine LLC  
Iveco Venezuela C.A.  
Iveco West Nutzfahrzeuge GmbH  
IVECO-AMT Ltd.  
Iveco-Motor Sich, Inc.  
J Medical S.r.l.  
J.I. Case Company Limited  
Juventus Football Club S.p.A.  
Koc Fiat Kredi Tuketici Finansmani A.S.  
KOMERSIA AUTO s.r.o.  
KOMERSIA WEST s.r.o.  
LEASYS FRANCE S.A.S.  
LEASYS NEDERLAND B.V.  
Leasys S.p.A.  
LEASYS UK LTD.  
LFR Collections LLC  
Lorenz Re Ltd.  
MAGIRUS CAMIVA S.a.s. (societè par actions simplifièe)  
Magirus GmbH  
Magirus Lohr GmbH  
Magnetì Marelli (China) Co. Ltd.  
Magnetì Marelli After Market Parts and Services S.p.A.  
Magnetì Marelli Aftermarket GmbH  
Magnetì Marelli Aftermarket Sp. z o.o.  
Magnetì Marelli Argentina S.A.  
Magnetì Marelli Automotive Cluj S.r.l.  
Magnetì Marelli Automotive Components (Changsha) Co. Ltd  
Magnetì Marelli Automotive Components (Guangzhou) Co.,Ltd.  
Magnetì Marelli Automotive Components (WUHU) Co. Ltd.  
Magnetì Marelli Automotive d.o.o. Kragujevac  
Magnetì Marelli Automotive Electronics (Guangzhou) Co. Limited

Magneti Marelli Automotive Lighting (Foshan) Co. Ltd  
Magneti Marelli Cofap Fabricadora de Pecas Ltda  
Magneti Marelli Componentes Plasticos Ltda  
Magneti Marelli Conjuntos de Escape S.A.  
Magneti Marelli do Brasil Industria e Comercio Ltda  
Magneti Marelli Espana S.A.  
Magneti Marelli France S.a.s.  
Magneti Marelli GmbH  
Magneti Marelli Holding U.S.A. LLC  
Magneti Marelli Iberica S.A.  
Magneti Marelli India Private Ltd  
Magneti Marelli International Trading (Shanghai) Co. LTD  
Magneti Marelli Japan K.K..  
Magneti Marelli Mako Elektrik Sanayi Ve Ticaret Anonim Sirketi  
Magneti Marelli Morocco LLC SARL  
Magneti Marelli Motherson Auto System Private Limited  
Magneti Marelli Motherson India Holding B.V.  
Magneti Marelli Motherson Shock Absorbers (India) Private Limited  
Magneti Marelli Motopropulsion France SAS  
Magneti Marelli of Tennessee LLC  
Magneti Marelli Poland Sp. z o.o.  
Magneti Marelli Powertrain (Hefei) Co. Ltd.  
Magneti Marelli Powertrain India Private Limited  
Magneti Marelli Powertrain Mexico S. de r.l. de c.v.  
Magneti Marelli Powertrain Mexico S. de r.l. de c.v. Magneti Marelli S.p.A.  
Magneti Marelli Powertrain Slovakia s.r.o.  
Magneti Marelli Powertrain U.S.A. LLC  
Magneti Marelli Promatcor Sistemi Sospensioni Mexicana S.R.L. de C.V.  
Magneti Marelli Repuestos S.A.  
Magneti Marelli S.p.A.  
Magneti Marelli Sistemas Automotivos Industria e Comercio Ltda  
Magneti Marelli Sistemas Electronicos Mexico S.A.  
Magneti Marelli SKH Exhaust Systems Private Limited  
Magneti Marelli Slovakia s.r.o.  
Magneti Marelli South Africa (Proprietary) Limited  
Magneti Marelli Suspansiyon Sistemleri Ticaret Limited Sirketi  
Magneti Marelli Suspension Systems Bielsko Sp. z.o.o.  
Magneti Marelli Talbros Chassis Systems Pvt. Ltd.  
Magneti Marelli Toluca Mexico S. de R.L. de CV.  
Magneti Marelli Um Electronic Systems Private Limited  
Malaysian Automotive Lighting SDN. BHD  
Mamda Re  
Mars Seal Private Limited  
Maserati (China) Cars Trading Co., Ltd.  
Maserati (Suisse) S.A.  
Maserati Canada Inc.  
Maserati Deutschland GmbH  
Maserati GB Limited  
Maserati Japan KK  
Maserati North America, Inc.  
Maserati S.p.A.

Maserati West Europe societe par actions simpliffee  
Matay Otomotiv Yan Sanay Ve Ticaret A.S.  
MBA AG  
Mecaner S.A.  
Mediterranea de Camiones S.L.  
Mercalli ILS Bermuda Feeder Fund Ltd.  
Mercalli ILS Feeder Fund LLC  
Mercalli ILS Master Fund Ltd.  
Mercalli Investment Holding Company Ltd  
Mercalli Investment Management Inc.  
Mercalli Re Ltd.  
MM B.V.  
MM I&T Sas  
MM S.r.l.  
MM Smart me up S.A.S.  
MMH Industria e Comercio De Componentes Automotivos Ltda  
Mopar (Shanghai) Auto Parts Trading Co., Ltd.  
Mugello Circuit S.p.A.  
MVPC LLC  
Naveco (Nanjing IVECO Motor Co.) Ltd.  
Neptunia Assicurazioni Marittime S.A.  
New Business 29 S.c.r.l.  
New Business 30 S.r.l.  
New Business 31 S.p.A.  
New Business 33 S.p.A.  
New Business 35 s.r.l.  
New Business 36 s.r.l.  
NEW BUSINESS 37 S.p.A.  
NEW BUSINESS 38 S.p.A.  
New Holland Construction Machinery S.p.A.  
New Holland Credit Company, LLC  
New Holland HFT Japan Inc.  
New Holland Holding Limited  
New Holland Ltd  
New Holland Tractor Ltd.  
New Industrial Business 2 s.r.l.  
Nuova Didactica S.c. a r.l.  
O & K - Hilfe GmbH  
Officine Brennero S.p.A.  
OOO "CABEKO"  
OOO Iveco Russia  
Orange Grove Re Holdings Limited  
Orange Grove Re Ltd.  
Otoyol Sanayi A.S. in Liquidazione  
Parco Industriale di Chivasso Societa Consortile a responsabilita limitata  
Partner Reinsurance Asia Pte ltd. Labuan Branch  
Partner Reinsurance Asia Pte. Ltd.  
Partner Reinsurance Company Ltd.  
Partner Reinsurance Company Ltd. (Canada Life Branch) Insurance  
Partner Reinsurance Company Ltd. Third Parties  
Partner Reinsurance Company of the U.S.

Partner Reinsurance Company of the U.S. Canada Branch  
Partner Reinsurance Europ SE- Escritório de Representação no Brasil Ltda.  
Partner Reinsurance Europe SE  
Partner Reinsurance Europe SE (Dubai Branch)  
Partner Reinsurance Europe SE (Hong Kong Branch)  
Partner Reinsurance Europe SE United Kingdom Branch  
Partner Reinsurance Europe SE, Dublin, Zurich Branch  
Partner Reinsurance Europe SE, Succursale Fraçaise  
Partner Reinsurance Life Company of Bermuda Ltd.  
PartnerRe America Insurance Company  
PartnerRe America Services Company S.A. de C.V.  
PartnerRe Asset Management Corporation  
PartnerRe Capital Investments Corp.  
PartnerRe Capital Trust II  
PartnerRe Capital Trust III  
PartnerRe Connecticut Inc.  
PartnerRe Corporate Member 2 Limited  
PartnerRe Corporate Member Limited  
PartnerRe Finance A LLC  
PartnerRe Finance B LLC  
PartnerRe Finance C LLC  
PartnerRe Finance I Inc.  
PartnerRe Finance II Inc  
PartnerRe Financing Ltd  
PartnerRe Holding Europe Ltd.  
PartnerRe Holdings B.V.  
PartnerRe Holdings Europe Limited  
PartnerRe Holdings Europe Limited, Dublin, Zurich Branch  
PartnerRe Holdings SA  
PartnerRe Holdings Switzerland GmbH  
PartnerRe Insurance Company of New York  
PartnerRe Ireland Finance Dac  
PartnerRe Ireland Insurance dac  
PartnerRe Ireland Insurance dac, United Kingdom Branch  
PartnerRe Ireland Insurance Limited  
PartnerRe Life Reinsurance Company of America  
PartnerRe Life Reinsurance Company of Canada  
PartnerRe Ltd  
PartnerRe Management Ltd.  
PartnerRe Miami Inc.  
PartnerRe Principal Finance Inc.  
PartnerRe Services Ltd.  
PartnerRe Servicios Compañía Limitada  
PartnerRe U.S. Corporation  
PartnerRe Underwriting Management Ltd  
Peninsula Coinvestment II, LLC  
Plastic Components and Modules Automotive S.p.A.  
Plastic Components and Modules Holding S.p.A.  
Plastic Components and Modules Poland S.A.  
Plastic Components Fuel Systems Poland Sp. z o.o.  
PLASTIFORM PLASTIK SANAY ve TICARET A.S.



Polagris S.A.  
PPF Finance LLC  
PPF Holdings I Ltd.  
PPF Holdings II Ltd.  
PPF Holdings III Ltd.  
Presidio Excess Insurance Services Inc.  
Presidio Reinsurance Corporation  
Presidio Reinsurance Group, Inc.  
PSMM Campania S.r.l.  
PSMM Pernambuco Componentes Automotivos Ltda  
Raccoon River Re Ltd  
Receivables Credit II Corporation  
RosCaseMash  
S.A. Iveco Belgium N.V.  
Sadi Polska-Agencja Celna Sp. z o.o.  
SAIC Fiat Powertrain Hongyan Co. Ltd.  
SAIC IVECO Commercial Vehicle Investment Company Limited  
SAIC MAGNETI MARELLI Powertrain Co. Ltd  
SBH EXTRUSAO DO BRASIL LTDA.  
Scuderia Ferrari Club S.c. a r.l.  
Seddon Atkinson Vehicles Ltd  
SERFIT S.R.L.  
Servicios Administrates Corp. IPASA S.A.  
Servicios Administrativos Corp. IPASA S.A.  
Servizi e Attivita Doganali per l'Industria S.p.A.  
Shanghai New Holland Agricultural Machinery Corporation Limited  
Sirio Polska Sp. z o.o.  
Sisport S.p.A. - Societa sportiva dilettantistica  
Sistemi Comandi Meccanici Otomotiv Sanayi Ve Ticaret A.S.  
Sistemi Sospensioni S.p.A.  
SKH Magneti Marelli Exhaust Systems Private Limited  
Societa di Commercializzazione e Distribuzione Ricambi S.p.A. in liquidazione  
Societa Europea Veicoli Leggeri-Sevel S.p.A.  
Société Charolaise de Participations S.A.  
Société de Diffusion de Vehicules Industriels-SDVI S.A.S.  
Soffiaggio Polimeri S.r.l.  
Sotra S.A.  
Steyr Center Nord GmbH  
SYNEXO S.R.L.  
Talent Garden Fondazione Agnelli S.r.l.  
Tecnologia de Iluminacion Automotriz S.A. de C.V.  
Tecnologie per il Calcolo Numerico-Centro Superiore di Trento Formazione S.c. a r.l.  
Teksid Aluminum S.r.l.  
Teksid do Brasil Ltda  
Teksid Hierro de Mexico S.A. de C.V.  
Teksid Inc.  
Teksid Iron Poland Sp. z o.o.  
Teksid S.p.A.  
The Economist Newspaper Ltd.  
Tobeez F&B Italia S.r.l.  
Tofas-Turk Otomobil Fabrikasi A.S.

Transolver Finance Establecimiento Financiero de Credito S.A.  
Transolver Service S.A.  
Transolver Services S.A.S.  
Tridente Real Estate S.r.l.  
Trucks & Bus Company  
Turk Traktor ve Ziraat Makineleri A.S.  
UAB Iveco Capital Baltic  
United States Council for Automotive Research LLC  
Uzcaseagroleasing LLC  
UzCaseMash LLC  
UzCaseService LLC  
UzCaseTractor LLC  
VM Motori S.p.A.  
VM North America, Inc.  
Welltec International APS  
Win Rent S.p.A.  
Zhejiang Wanxiang Magneti Marelli Shock Absorbers Co. Ltd.  
Zona Franca Alari Sepauto S.A.

## **EXHIBIT 2**

Comments by Mr. Richard Angell .....PDF pages 3 – 40 (set 1), pages 41-73 (set 2)

Comments by Certain Tribal Committees.....PDF pages 74 – 75

PARSONS  
BEHLE &  
LATIMER

201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Main 801.532.1234  
Fax 801.536.6111

A Professional  
Law Corporation

Richard J. Angell  
Attorney at Law  
Direct 801.536.6754  
RAngell@parsonsbehle.com

March 4, 2019

**VIA U.S. MAIL AND E-MAIL**

Assistant Attorney General  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, DC  
20044-7611  
pubcomment-ees.enrd@usdoj.gov.

**Re: Public Comment on *In re: Chrysler-Dodge-Jeep “Ecodiesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:17-md-2777 EMC (JSC).**

To Whom It May Concern:

The following comment is respectfully submitted in the above-caption matter. This comment is submitted on behalf of myself and various aftermarket parts manufacturers and sellers that sell or have in the past sold parts and technologies used solely for competition motorsports (“Aftermarket Competition Providers” or “ACPs”). In summary, the Consent Decree proposed to resolve the matter captioned *In re: Chrysler-Dodge-Jeep “Ecodiesel” Marketing, Sales Practices, and Products Liability Litigation*, Case No. 3:17-md-2777 EMC (hereinafter referred to as “CD”), does not match the scope of relief the United States seeks in its Complaint as filed on May 23, 2017 (“Complaint”). This has important implications for the sales of aftermarket parts by ACPs according to requirements of the United States, as applied by the Environmental Protection Agency (“EPA”).

Specifically, the scope of the proposed CD does not match the scope of relief the United States seeks in its Complaint. In its Complaint, the United States requests that the Court provide the following relief:

Permanently enjoin FCA US, VM Italy, and VM North America from manufacturing, selling, offering to sell, or installing parts or components intended for use with a motor vehicle or motor vehicle engine (or causing any of the foregoing acts), where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with regulations promulgated under Title II of the Act.



Assistant Attorney General  
U.S. DOJ – ENRD  
March 4, 2019  
Page Two

*See* Complaint, Section XI, Prayer for Relief Par. (c).

The United States also requests that the Court: “Permanently enjoin FCA US, VM Italy and VM North America from removing or rendering inoperative any device or element of design installed on or in a new motor vehicle in compliance with regulations promulgated under Title II of the Act.” *See* Complaint, Section XI, Prayer for Relief Par. (d).

In contrast to the relief the United States’ requests in the Complaint, the CD addresses only “Subject Vehicles” as that term is defined on Line 9, Page 1, in the opening “Background” paragraph of the CD. The Complaint states in broad terms that:

Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), makes it a violation ‘for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the Act], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.’ *See* also 40 C.F.R. § 86.1854-12(a)(3)(ii).

*See* Complaint, Par. 54.

EPA has offered similar interpretations to define broad categories of aftermarket parts as defeat devices prohibited by Section 203(a)(3)(B) of the Clean Air Act. *See* Exhibit 1 (“Tampering & Aftermarket Defeat Devices, Mid-Atlantic Regional Air Management Association Webinar, November 18, 2018”).

FCA US LLC, or one or more of its affiliates, parents, or subsidiaries identified in Appendix F of the CD (“FCA”), sells many different parts and technologies under the “Mopar” name that could arguably fall within EPA’s definition of defeat device in the Complaint and the attached representative guidance. An example of such a device that is marketed directly is attached as Exhibit 2 (Pages from Mopar Performance Parts Catalog). This device includes instructions that it can be “third party tuned to optimize engine operation.” *See* Exhibit 2, Powertrain Control Modules, p. 27.

Many others are marketed indirectly through Mopar dealers, either as standalone products or bundled as recommended packages of parts. An example is a Mopar aftermarket intake manifold (Exhibit 3) that comes with a recommendation to purchase an additional aftermarket engine control module (“ECM”) and a wiring harness. *See* Exhibit 3. Mopar dealers selling these parts note that such items are not for use on streets or highways and are for competition use only. In the attached example, the Mopar dealer states: “IMPORTANT NOTICE: This device is not legal for use on pollution-controlled vehicles certified for use on streets or highways. Once this device is installed, use of the vehicle on a street or highway is a violation of the Clean Air



Assistant Attorney General  
U.S. DOJ – ENRD  
March 4, 2019  
Page Three

Act, potentially subjecting the operator and the installer to civil penalties of up to \$32,500 per vehicle depending on the circumstances.” See Exhibit 4 (Mopar Performance EMS, Programmable - P5153608).

Based on EPA’s guidance as attached at Exhibit 1, these parts, and many others like them, may be argued by the United States to fall within the scope of relief it seeks in the Complaint to permanently enjoin FCA from selling any parts or components intended for use with a motor vehicle or motor vehicle engine (or causing any of the foregoing acts), where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with regulations promulgated under Title II of the Clean Air Act. However, no such injunction is included in the Consent Decree, which only applies to certain conditions of Subject Vehicles.

Accordingly, the United States’ decision to consider the Complaint satisfied by this CD leaves the ACPs to draw the only possible conclusion that the United States is satisfied that sales by FCA and Mopar dealers of parts such as those identified in this comment are lawful sales of competition parts. This would be consistent with the recent EPA policy update preview that states it “will not address EPA-certified motor vehicles that are converted into a vehicle used solely for competition motorsports, nor aftermarket parts purportedly manufactured or sold for that purpose.” Exhibit 5 (Preview of the Draft “EPA Tampering Policy” for Stakeholder Awareness September 2018). Absent any injunctive coverage in the CD, sales by FCA and its dealers of parts such as programmable ECMs that EPA otherwise may potentially classify as defeat devices, see Exhibit 1, appear to be permissible and acceptable to EPA if they are simply intended for use in custom engine applications and for competition purposes beyond normal street or highway applications. This comment does not request that the court reject the CD but rather requests that language be added to the CD explicitly acknowledging EPA’s position that sales of FCA products that may potentially qualify as defeat devices do not violate the Clean Air Act provided they are sold solely for competition use.

Thank you for your consideration of this comment.

Sincerely,

PARSONS BEHLE & LATIMER



Richard J. Angell  
Attorney at Law

Attachments



# EXHIBIT 1



# Tampering & Aftermarket Defeat Devices

## Mid-Atlantic Regional Air Management Association Webinar, November 16, 2018



Evan Belsler, Chief  
Vehicle and Engine Enforcement Branch  
United States Environmental Protection Agency  
(202) 564-6850, [belsler.evan@epa.gov](mailto:belsler.evan@epa.gov)

# Outline

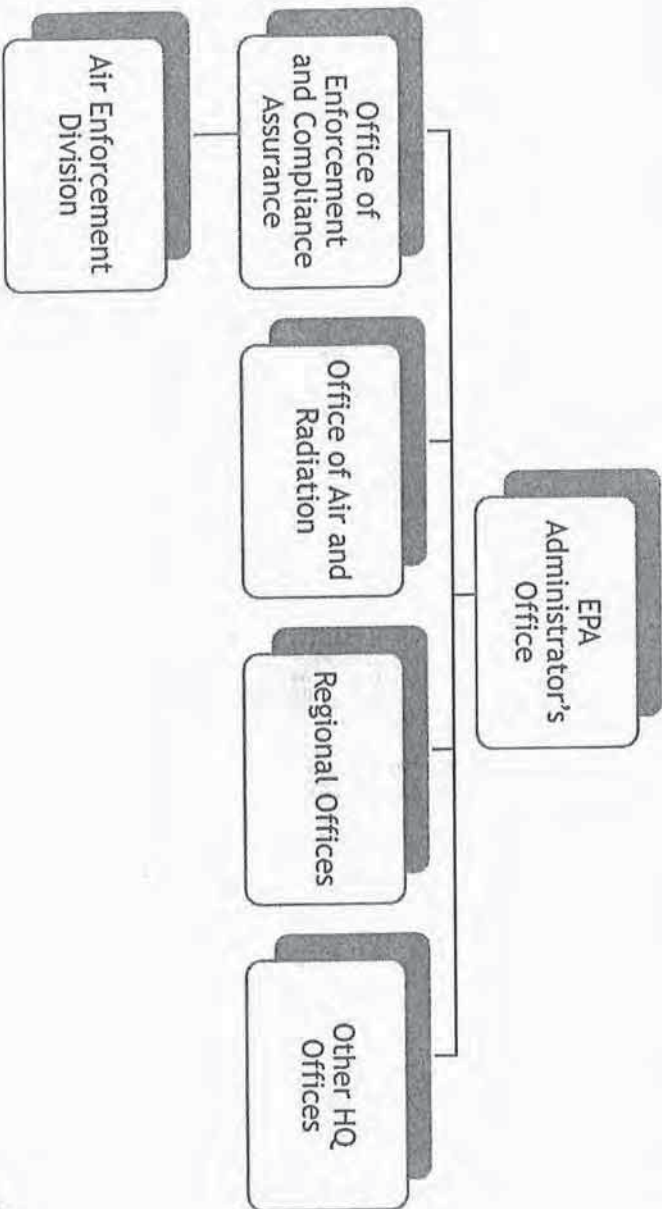
- ❖ Overview: EPA, Public Health, and the Clean Air Act
- ❖ Defeat Device and Tampering Prohibitions
- ❖ Defeat Device and Tampering Examples
- ❖ Tampering Enforcement Policy
- ❖ Civil and Criminal Penalties
- ❖ Warranty Implications
- ❖ Frequently Asked Questions



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



# Vehicle & Engine Enforcement



Tampering & Aftermarket Defeat Devices, US EPA, November 2018

# Vehicle & Engine Enforcement

- ▶ The Vehicle and Engine Enforcement Branch (VEEB) is responsible for enforcement of Part A of Title II of the Clean Air Act, 42 U.S.C. §§ 7521–7554, and the accompanying federal engine regulations.
- ▶ On-road and non-road spark ignition and combustion ignition engines (cars, trucks, recreational vehicles, generators, etc.), as well as locomotive and marine transportation
- ▶ Stopping importation of illegal equipment and parts
- ▶ VEEB staff are located at EPA Headquarters in Washington D.C., with recent increase in regional enforcement participation



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



# Air Quality & Public Health

- ▶ Heavy-duty diesel engines emit large amounts of nitrogen oxides and particulate matter, both of which contribute to serious public health problems in the United States.
- ▶ These problems include premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function.
- ▶ Numerous studies also link diesel exhaust to increased incidence of lung cancer.



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

# The Clean Air Act

- ▶ The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- ▶ CAA protects human health and the environment by reducing emissions from mobile sources of air pollution.
- ▶ Title II of the CAA – Mobile Source Provisions
  - ▶ Requires EPA to promulgate “emissions standards” limiting the amount of pollution that motor vehicles may emit
  - ▶ Manufacturers who wish to sell motor vehicles in the United States must design those vehicles to comply with emission standards

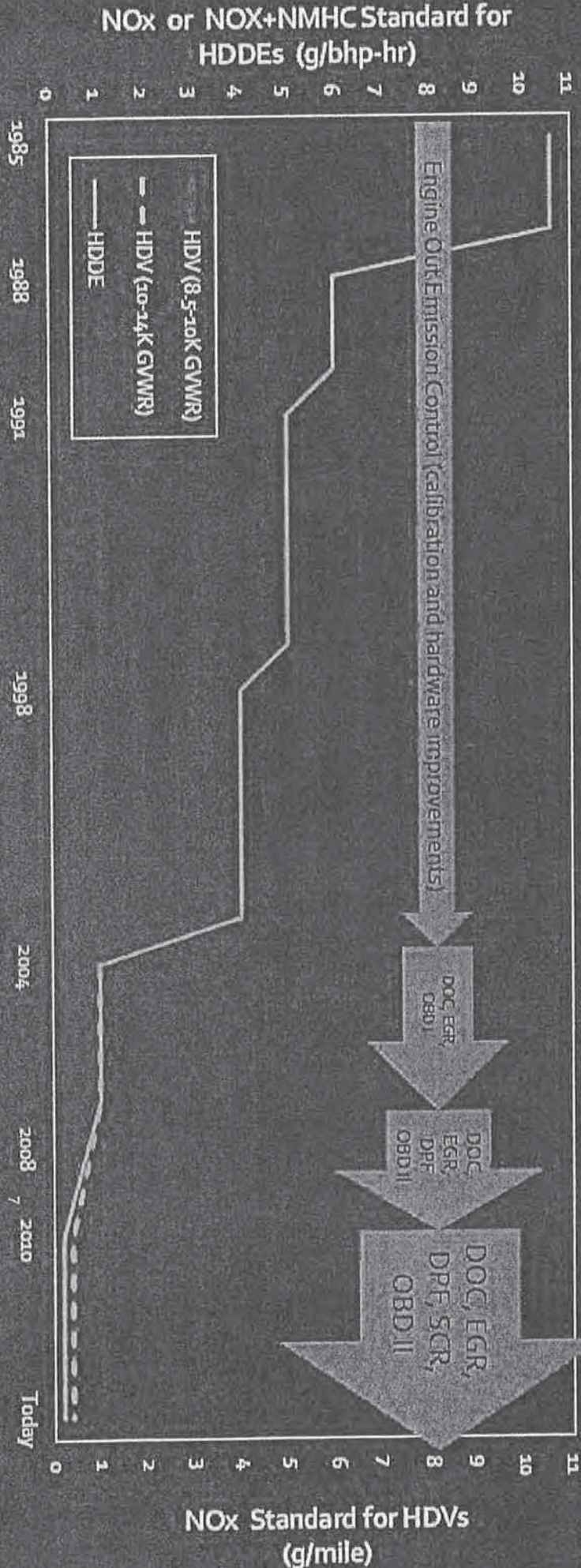


*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



# NOx Standards and Emission Control Devices Used by OEMs

## Heavy-Duty Vehicles (HDVs) and Heavy-Duty Diesel Engines (HDDEs)



Source: <https://nepis.epa.gov/Exec/Query/Query.pl?Dockey=P1000A01.pdf>



## CAA Title II Prohibitions: Defeat Devices

The following acts and the causing thereof are prohibited –

- ▶ For any person to manufacture or sell, or offer to sell, or install, a part or component for a motor vehicle, where
- ▶ A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
- ▶ The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

## CAA Title II Prohibitions: Tampering

The following acts and the causing thereof are prohibited –

- ▶ For anyone to remove or render inoperative an emission control component on a certified motor vehicle or engine prior to sale or delivery to ultimate purchaser, or
- ▶ For anyone to knowingly remove or render inoperative any emission control component on a certified motor vehicle or engine after sale and delivery to the ultimate purchaser.

CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A).



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



## Criminal Prohibitions

- ▶ It is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any “monitoring device or method” required under the CAA.
- ▶ CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C).
- ▶ Vehicle Onboard Diagnostics (OBD) are a “monitoring device or method” required by the CAA.



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

# Defeat Device and Tampering Examples

- ❖ Alterations to Fueling, Timing Strategy
- ❖ DPF Delete
- ❖ EGR Delete
- ❖ SCR Delete
- ❖ Alterations to OBD
- ❖ Software and Hardware





# Resolved Cases

- ▶ All resolved civil enforcement cases are available at: <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions>

Matter Name	Type of Company	Type of Violations	Violations
Abbyland Trucking	Installer	Tuners	202
Adrenaline Truck Performance	Dealer	Tuners/Pipes	15,912
Antim Diesel Services, Inc	Installer	Tampered	5
Boost Diesel Repair	Installer	Tampered	30
Caspers	Manufacturer	O2 simulators	44,000
Edge	Manufacturer	Tuners	9,000
Eisenhart Diesel, LLC	Installer	Tampered	3
Evart's Tuning	Dealer	Tuners/Pipes	108
Freerksen Trucking	Installer	Tampered	22
H&S Performance	Manufacturer	Tuners/Pipes	114,436
Harley/Davidson	Manufacturer	Tuners	340,000
KT Performance	Dealer	Tuners/Pipes	2,833
Liberator Performance, Inc.	Installer	Tampered	3
Maryland Performance Diesel	Manufacturer	Tuners/Pipes	3,697
ModBargains	Dealer	Pipes	16
OE Construction	Installer	Tampered	6
Patterson's Diesel, Inc.	Installer	Tampered	2
Precision Automotive	Installer	Tampered	1
Rexer/Rockwater/Sweitzer	Installer	Tampered	30
Ryan's Diesel Service	Installer	Tampered	23
Spartan	Manufacturer	Tuners	5,000
Trick Trucks	Installer	Tampered	113
TSI Diesel and Performance	Installer	Tampered	6
Two Brothers Racing	Manufacturer	Pipes <sup>1,2</sup>	13,000
Yoshimura	Manufacturer	Pipes	46,502

# Civil Cases re Tampering Heavy-Duty Diesel Fleets

## Abbyland Trucking

- ▶ Service truck repair center and refrigeration transport company in Wisconsin sold and installed defeat devices
- ▶ ECM tuning products that bypass, defeat, or render inoperative EGRs, DPFS, and other emission control devices
- ▶ 202 heavy-duty diesel trucks

## Freerksen Trucking

- ▶ Minnesota trucking company removed emission controls and otherwise modified its trucking fleet
- ▶ ECM tuning products that bypass, defeat, or render inoperative emission controls, including DPFS, EGRs, and/or SCRs
- ▶ 22 heavy-duty diesel trucks



# Criminal Charges re Tampering Heavy-Duty Diesel Fleets

## OE Construction

- ▶ An employee of OE Construction purchased delete kits that allowed him to alter the vehicles' emission control systems
- ▶ Pled guilty to being an accessory after the fact to violating the Clean Air Act
- ▶ Six company vehicles

## Rockwater

- ▶ Five men with various relationships to a hauling service for the fracking industry in Pennsylvania (Rockwater)
- ▶ Charged with conspiring to violate the CAA by modifying the emissions systems
- ▶ Falsified records to conceal defeat devices and state inspections
- ▶ ~30 heavy-duty diesel trucks

## Memo 1A - Tampering Enforcement Policy

- ▶ Interim Tampering Enforcement Policy Memorandum 1A (6/25/74)
- ▶ Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not increase emissions
- ▶ EPA issues no approvals under Memo 1A



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



## Memo 1A Requirements

In order to prevent and protect yourself from violations of the prohibitions on tampering and defeat devices, you should have in your records:

- ▶ Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) showing that similar vehicles meet the standards for the vehicles' useful lives
- ▶ Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are usually the same

*Vehicle must perform the same on- and off-cycle*



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

## Warranty Implications

- ▶ Consumers and service technicians should investigate warranty implications in advance.
- ▶ Tampering can void manufacturer warranties and insurance agreements if the tampering can be shown to have caused the failure.



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



So this guy comes in with a truck that's already tampered . . .

- ▶ When determining whether service performed on an element of an emission control system was illegal tampering, the EPA typically compares the element after the service to the element's fully-functioning certified configuration, rather than to the element's configuration prior to the service.
- ▶ Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA will generally take no enforcement action if the person restores the element to its certified configuration or declines to perform the service.

Fact Sheet: Exhaust System Repair Guidelines, available at <https://www.epa.gov/enforcement/us-epa-fact-sheet-exhaust-system-repair-guidelines-march-13-1991>

I didn't tamper the truck,  
but can I sell it?

- ▶ Federal law prohibits tampering, and selling defeat devices, but does not say it is illegal to sell a tampered vehicle
- ▶ However, many states have laws that prohibit dealers from selling (or offering to sell) vehicles that are tampered.
- ▶ Know your state law.



# Report Violations

- ▶ [tampering@epa.gov](mailto:tampering@epa.gov)
- ▶ Report violations online:  
<https://www.epa.gov/enforcement/report-environmental-violations>
- ▶ Contact me at (202) 564-6850 or [belsler.ewan@epa.gov](mailto:belser.ewan@epa.gov)



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



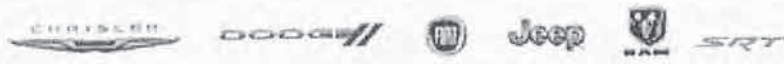
# EXHIBIT 2



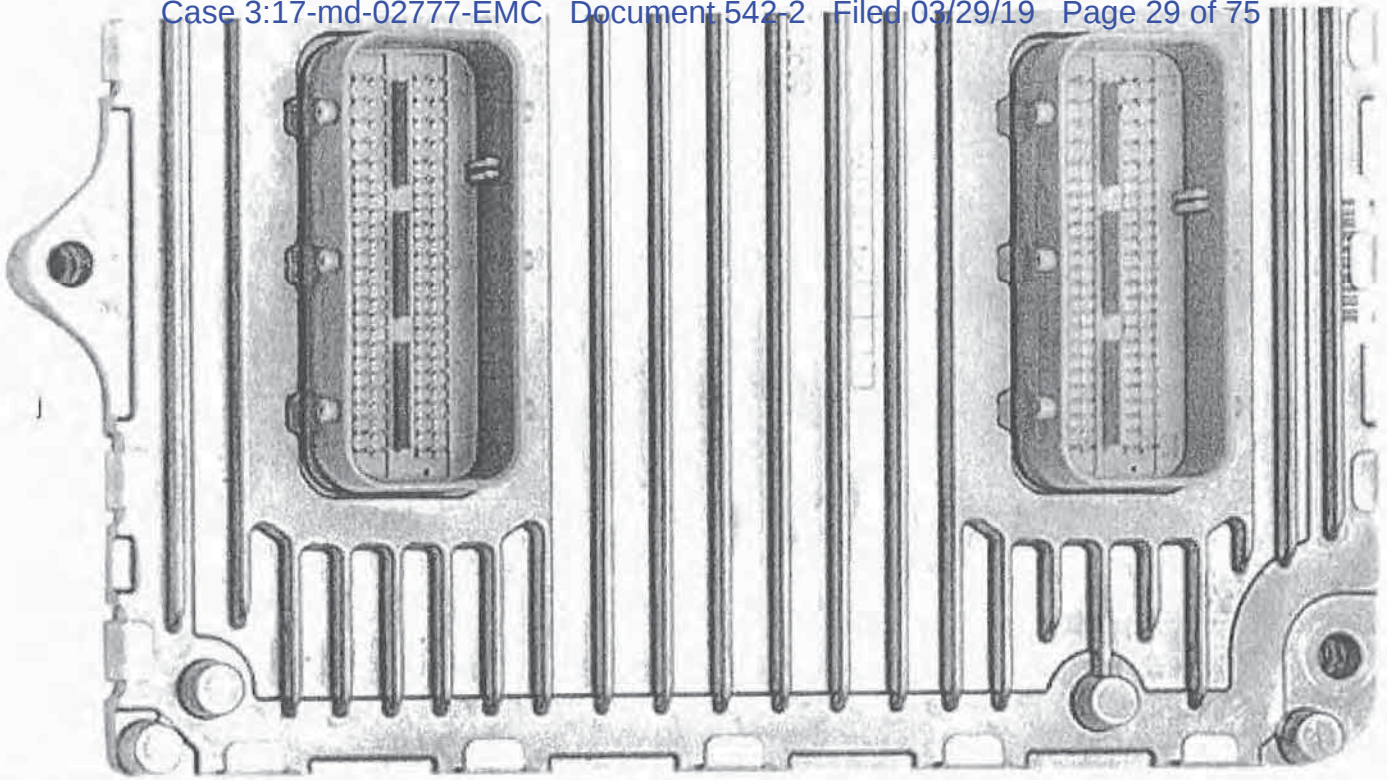


# PERFORMANCE PARTS

## CATALOG







## POWERTRAIN CONTROL MODULES

The Mopar<sup>®</sup> aftermarket powertrain control module for the 5.7L-equipped Charger has the Mopar<sup>®</sup> Stage 1 calibration for owners who may already have purchased a Mopar<sup>®</sup> Cold Air Intake and Cat-Back Exhaust System. For owners seeking custom engine packages to take their Charger to the next performance level, this PCM can be third-party tuned to optimize engine operation. (See representative image: Fig. j)

	Stage 1 Calibration 2013 Charger, P/N 68420253AA . . . . .	\$666.00
	Stage 1 Calibration 2014 Charger, P/N 6820255AA . . . . .	\$666.00
	Stage 1 Calibration 2015-2016 Charger, P/N 6820256AA . . . . .	\$666.00
	Stage 1 Calibration 2011-2017 Charger, P/N 68420457AA . . . . .	\$666.00

## FILTER

### PERFORMANCE OIL FILTER

Why use anything other than a factory-engineered Mopar<sup>®</sup> Oil Filter for your Charger? Superior filtration and particulate trapping. Hard case for durable performance.

Mopar<sup>®</sup> Performance Oil Filter  
2011-2019 Charger, P/N 05038041AA (Fig.k) . . . . . \$16.75



k

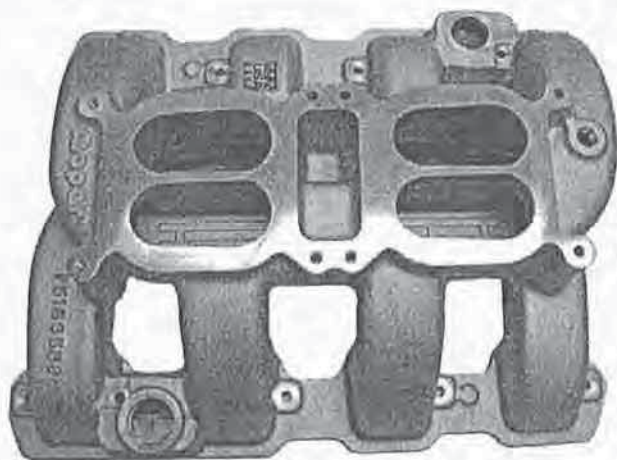


# EXHIBIT 3





INSTALLATION INSTRUCTIONS  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
 PART NUMBER P5153556



### Intake Manifold Kit Components

- (1) Intake Manifold
- (1) Oil Fill Cap w/ O-Ring
- (2) 11/32" ID x 15" Long PCV Hose
- (1) PCV Valve (AC Delco CV746C)
- (1) PCV Valve Rubber Grommet
- (1) 6 AN Bulkhead Nut
- (1) 6 AN to 3/8" Hose Barb Fitting
- (1) 1/4" NPT to 3/8" Hose Fitting

## READ ALL INSTRUCTIONS BEFORE BEGINNING INSTALLATION

## WARNINGS AND CAUTIONS

MOPAR PERFORMANCE PARTS RECOMMENDS PROFESSIONAL INSTALLATION BY AN ASE CERTIFIED TECHNICIAN. TORQUE WRENCHES AND SPECIALIZED REMOVAL AND INSTALLATION TOOLS ARE REQUIRED.

**DESCRIPTION:** This intake manifold is designed to allow the use of dual carburetors on a 5.7L Chrysler HEMI crate engine or a production HEMI engine that has been transplanted into an older muscle car or custom hot rod. This manifold is not intended to be installed on a vehicle that

is factory equipped with a HEMI engine. All new production HEMI engines are equipped with electronic fuel injection from the factory and additional accessories will be required to allow them to function properly with carburetors.

**ACCESSORIES:** For a successful installation, the Mopar Performance Intake Manifold requires several specialized components. To complete your installation, you will need the following items:

- Port Seals; reuse the stock seals or replace them with part # 53032382AB.
- PCV Seals; reuse the stock seals or replace them with part # 53032384AB.
- Programmable Ignition Timing Controller; P5153608
- Wiring Harness; P5153606
- Carburetor and Linkage Kit; P5153904
- MAP Sensor; use part #56041018AD, this sensor is factory equipped on certain 5.7L applications. Use M5 x 16mm screws to mount.

**CARBURETORS:** This manifold is machined to accept square bore AFB / AVS type carburetors. Most applications will work best with two 500 cfm carburetors setup with a progressive linkage. Mopar Performance offers a carburetor and linkage kit as part #P5153904. When using a progressive linkage, the front carburetor will need to have any choke disabled. The rear carburetor will handle most low speed fueling and it can be equipped with manual or electric choke, or no choke at all if the vehicle will be used exclusively in warm weather.

**GASKETS:** The 5.7L HEMI engine does not use traditional intake gaskets. Eight individual rubber seals will need to be inserted into the machined grooves that surround each port exit of the manifold. These seals are reusable, but if they are damaged or missing they can be purchased individually from any Chrysler dealership as part #53032382AB. Two PCV seals are also needed and are available under part #53032384AB.





**INSTALLATION INSTRUCTIONS**  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
 PART NUMBER P5153556

**LINKAGES:** A progressive linkage kit is strongly recommended for use with this manifold. Use of a direct 1:1 linkage can cause a stumble or bog during low speed acceleration. Throttle and transmission kickdown cables can vary widely from one application to another; adapters and/or brackets may need to be purchased or fabricated.

**IGNITION TIMING CONTROLLER:** These engines were designed by Chrysler to be used exclusively with an electronic fuel injection and ignition computer, which allowed them to replace a mechanical spark distributor with electronic coil on plug ignition. When using carburetors on this style of engine, it will be necessary to have a separate ignition computer to interpret the camshaft position sensor signal, apply the appropriate amount of retard or advance, and to drive the coil on plug ignition system. Programmable controller P5153608 and wiring harness P5153606 are available to provide this function.

**INTAKE MANIFOLD**  
**INSTALLATION PROCEDURE:**

1. Before beginning installation, inspect all passages in the manifold for any debris or contaminants. Remove any loose material to prevent potential engine damage. Use the supplied aluminum cap to plug the oil fill hole located at the front, driver's side of the manifold.
2. Fully clean the cylinder head intake flanges.
3. Insert the port o-ring gaskets into the machined grooves around the runner exits and install the two PCV seals on the mounting flange face.
4. Install the intake manifold and hold down bolts. Torque all manifold bolts in two steps by the sequence shown in Figure 1.

5. A provision for the MAP sensor required by most ignition controllers has been located in the center of the plenum on the passenger side. This provision has been designed to accept the OEM MAP sensor, which is available as part #56041018AD.
6. Install the supplied PCV valve in the rear, passenger side provision and route the hose to the rear port of the carburetor.
7. The bulkhead fitting, hose, and 90° 1/4" NPT fitting are included to allow filtered air into the crankcase. You will need to drill and mount the bulkhead fitting in the base of your air cleaner. Then route the hose from the air cleaner to the 1/4" pipe provision below the oil fill cap. The PCV valve will not function properly without this alteration.

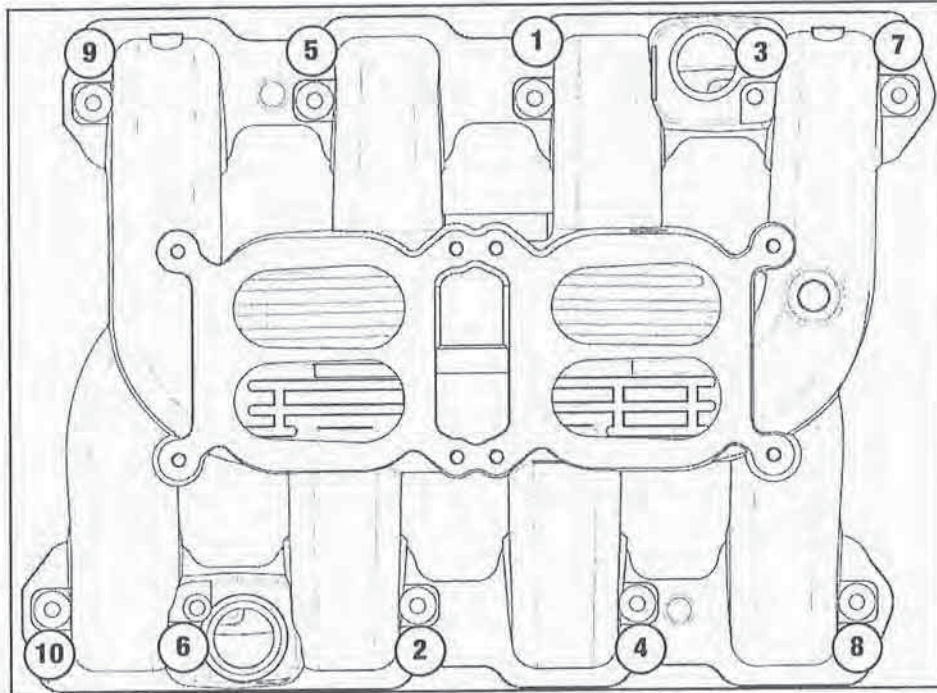
**NO PARTS WARRANTY – "AS IS"**

Mopar Performance parts beginning with a "P" prefix are sold "as is" unless otherwise noted. This means that parts sold by Mopar Performance carry no warranty whatsoever. **Implied warranties, such as warranties of merchantability, are excluded.** (An implied warranty of merchantability means that the part is reasonably fit for the general purpose for which it was sold). The entire risk as to quality and performance of such parts is with the buyer. Should such parts prove defective following their purchase, the buyer and not the manufacturer, distributor or retailer, assumes the entire cost of all necessary servicing or repair. Chrysler, Dodge and Jeep® vehicle and parts warranties are voided if the vehicle or parts are used for competition. The addition of performance parts does not by itself void a vehicle's warranty. However, added performance parts (parts not originally supplied on the vehicle from the factory) are not covered by the vehicle's warranty, and any failure that they may cause is also not covered by the vehicle's warranty.





**INSTALLATION INSTRUCTIONS**  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
PART NUMBER P5153556



**FIGURE 1 - Chrysler HEMI Dual Quad Intake Manifold**  
**Torque Sequence**  
Torque bolts to 11 ft/lbs in the sequence shown above.

For technical assistance with this intake manifold, please contact the Mopar Performance Tech Line Monday-Friday, 7:00am - 3:00pm EST at 1(888) 528-HEMI or 1(888) 528-4364.



# EXHIBIT 4



3/3/2019

Mopar Performance EMS, Programmable - P5153608

MY CART: 0

HOME | ABOUT US | MY ACCOUNT | HELP

SEARCH HERE

MoparOnlinePerformance.com

SHOP BY VEHICLE

CRATE ENGINES

ENGINE PARTS

RESTORATION PARTS

RACING / MISC

MOPAR GEAR


Home &gt; ENGINE PARTS &gt; MODERN HEMI ENGINE PARTS &gt; IGNITION &amp; ELECTRONICS &gt;

## Mopar Performance EMS, Programmable - P5153608

List Price: \$2,620.00

Our Price: \$2,358.00

Savings: \$262.00

 This item qualifies for  
FREE SHIPPING!

Mopar Part Number: P5153608

Qty: 1

 ADD TO CART

 ADD TO WISHLIST


On all orders  
over \$99

\*contiguous US only,  
excludes oversize items

AUTHORIZED


 LARGER PHOTO

## Description

## "Plug and Play" Engine Management Systems (EMS)

These engine management systems will forever change the way you look at and perform fuel injection tuning! User-friendly Windows-based software (XP, 2000, NT, 98, 95 and ME) makes the task of copying, viewing and manipulating data as simple as a click of the mouse. User-defined templates are easily configurable and enable tuners to establish "quick keys" to any pertinent information during the tuning process. The infinitely adjustable Mopar EMS software allows tuners to program virtually any combination of engine control, power adders and auxiliary devices, and accurately deliver proper amounts of fuel and correct ignition timing for virtually any engine configuration or operating condition. Mopar's programmable engine management system is capable of adapting to almost any vehicle using "flying lead" wiring harness (available separately). We are confident that this is the most versatile, powerful, and comprehensive universal engine management program available for your Mopar!

Unique features found in Mopar's universal EMS also include independent, built in "peak and hold" injector drivers, capable of controlling both high and low impedance injectors of any brand or flow rate. Direct ignition coil drivers control the coil-on-plug system with no additional hardware required. Unique, dual-UEGO (wideband O<sub>2</sub> sensor) input provides accurate A/F tuning and calibration capabilities no matter how heavily modified the engine. In addition, dual-channel (typically, one per cylinder bank) detonation (spark knock) sensor capability provides safe engine operation under a wide range of loads, altitudes, and fuel octane availability.

- EMS
- Programmable
- Carbureted Applications

Note: For crate engine or conversion of 5.7L or 6.1L into an older classic car or truck. Not designed for newer vehicles already equipped with a 5.7L or 6.1L Hemi.

IMPORTANT NOTICE: This device is not legal for use on pollution-controlled vehicles certified for use on streets or highways. Once this device is installed, use of the vehicle on a street or highway is a violation of the Clean Air Act, potentially subjecting the operator and the installer to civil penalties of up to \$32,500 per vehicle depending on the circumstances.

## Related Items

Mopar Performance Pin  
Connector Kit - P5155065

Mopar Performance MAP  
Sensor - 56041018AD

Mopar Performance ACT  
Sensor - 4606487AB

Mopar Performance A/C  
Expansion Kit - 77072446

3/3/2019

Mopar Performance EMS, Programmable - P5153608

Our Price: \$31.92



Mopar Performance Hall Effect Sender - P5155068

Our Price: \$128.40



Our Price: \$45.00



Mopar Performance Engine Wiring Harness, Programmable - P5153607AB

Our Price: \$751.20



Our Price: \$37.32



Mopar Performance IAC Motor - 4861552AC

Our Price: \$76.32



Our Price: \$314.40



Mopar Performance Non-Programmable EMS - P4510356

Our Price: \$840.00



Share your knowledge of this product. Be the first to write a review »

Mopar Online Performance sells only genuine Mopar Performance parts and products.

@ JOIN OUR EMAIL LIST!

Enter your email address

COMPANY INFO

- ABOUT US
- CONTACT US
- PRIVACY POLICY
- TERMS OF USE

CUSTOMER SERVICE

- HELP / FAQ
- SHIPPING & RETURNS
- BOOKMARK US

MY ACCOUNT

- LOGIN
- REGISTER
- ORDER STATUS
- VIEW SHOPPING CART

SITE MAPS

- PRODUCT INDEX
- CATEGORY INDEX



© Copyright 2019 MoparOnlinePerformance.com. All Rights Reserved. Built with Volusion.



# EXHIBIT 5



**Preview of the Draft “EPA Tampering Policy” for Stakeholder Awareness  
September 2018**

**Purpose:** EPA plans update to Clean Air Act (“Act”) enforcement policy concerning vehicle and engine tampering and aftermarket defeat devices. This policy will be called the “EPA Tampering Policy.” This update will restate long-standing enforcement policy, but in terms of today’s technology and in a single document. It will also replace a 1986 enforcement policy regarding replacement catalytic converters to align with today’s state-of-the art converters. This updated policy will complement the Agency’s enforcement efforts, which are ongoing and focused on companies that are defeating the emissions controls designed to protect air quality. Resolved vehicle and engine enforcement cases are available at <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions>.

**Scope of Policy:** The EPA Tampering Policy will address civil enforcement of the Act’s prohibitions on tampering and aftermarket defeat devices. CAA § 203(a)(3), 42 U.S.C. § 7522(a)(3), and 40 C.F.R. § 1068.101. These prohibitions concern all vehicles, engines and equipment that are subject to the Act. These prohibitions apply to companies who service vehicles and engines or who manufacture, sell, and install aftermarket parts (e.g., catalytic converters, performance parts, software and hardware). The Policy will *not* address any conduct already addressed by EPA regulation (such as locomotive engine remanufacturing), nor any provision of the Act other than the prohibitions on tampering and aftermarket defeat devices. The Policy will not address EPA-certified motor vehicles that are converted into a vehicle used solely for competition motorsports, nor aftermarket parts purportedly manufactured or sold for that purpose. The EPA intends to finalize the EPA Tampering Policy no later than December 2018. For replacement catalysts for out-of-warranty light-duty gasoline vehicles within the scope of the 1986 Catalyst Policy, EPA will continue to adhere to the 1986 Catalyst Policy until 18 months after the EPA Tampering Policy is finalized at which point EPA will adhere to that policy.

**Synopsis of draft EPA Tampering Policy:**

- The EPA Tampering Policy will supersede and replace the following: Mobile Source Enforcement Memorandum 1A (June 25, 1974); Sale and Use of Aftermarket Catalytic Converters, 51 Fed. Reg. 28,114 and 51 Fed. Reg. 28,132 (August 5, 1986) (“1986 Catalyst Policy”); Exhaust System Repair Guidelines (March 13, 1991); Engine Switching Fact Sheet (March 13, 1991). The EPA Tampering Policy would consolidate and restate the principles of these policies, but state these principles in terms of today’s technology and for all vehicles, engines, and equipment subject to the Act’s prohibitions on tampering and aftermarket defeat devices.
- The Policy will, in plain language, answer common questions from service technicians and parts manufacturers and thereby prevent violations. For example, the Policy will state that where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA will generally take no enforcement action if the person restores the element to its certified configuration or declines to perform the service.
- The Policy will establish a uniform enforcement stance for all replacement after-treatment systems (not just catalysts for older, gasoline, light-duty vehicles, but also, for example, diesel particulate filters).
- This is not a rulemaking; the Policy creates no obligations on regulated parties, but instead describes how EPA will exercise enforcement discretion in this area.



- The centerpiece of the EPA Tampering Policy will be the following statement (or similar):

The EPA typically does not take enforcement action for conduct that may be a violation of § 203(a)(3) if the person performing the conduct has a documented “reasonable basis” demonstrating that the conduct (or, where the conduct in question is the manufacturing or sale of a part or component, the installation and use of that part or component) does not adversely affect emissions. This Policy Statement does not apply, however, to conduct affecting an OBD systems, which is subject to enforcement regardless of effect on emissions.

- The Policy will identify several ways that a person may document that they had a “reasonable basis” as follows:

A. **Identical to Certified Configuration:** The EPA will typically find that a person has a reasonable basis for conduct if that conduct:

- (1) is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and
- (2) restores that element of design to be identical in all emissions-related respects to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.

B. **Emissions Testing for Replacement After-Treatment Systems for Older Vehicles, Engines, and Equipment:** The EPA will typically find that a person has a reasonable basis for conduct if:

- (1) that conduct involves a replacement after-treatment system, the replacement after-treatment system is used to replace the same kind of system on a vehicle, engine, or piece of equipment, and that replaced system is beyond its emissions warranty; and
- (2) emissions testing shows that the vehicle, engine, or equipment with the replacement after-treatment system will meet all applicable emissions standards for an amount of time or distance (as applicable) that is equivalent to at least 75% of the original regulatory useful life of the vehicle, engine, or equipment; and
- (3) the replacement after-treatment system is warranted to last, both in terms of emissions performance and structural integrity, for an appropriate amount of time or distance (as applicable) that is equivalent to a minimum 5 years or 50% of the original regulatory useful life of the vehicle, engine, or equipment, whichever occurs first.

C. **New After-Treatment Systems that Decrease Emissions:** The EPA will typically find that a person has a reasonable basis for conduct if:

- (1) that conduct involves mechanically adding an after-treatment system where none previously existed;
- (2) the after-treatment system is added into the exhaust of a vehicle, engine, or piece of equipment;
- (3) the vehicle, engine, or piece of equipment is EPA-certified as having no such system and originally manufactured without any such system; and



- (4) any person familiar with emission control system design and function would reasonably believe adding the system would decrease emissions.

- D. **Emissions Testing:** The EPA will typically find that a person has a reasonable basis for conduct if:
- (1) that conduct alters a vehicle, engine, or piece of equipment;
  - (2) emissions testing of an appropriate test vehicle, engine, or piece of equipment that had been identically altered by the conduct shows that the vehicle, engine, or piece of equipment will comply with all applicable regulations including emissions standards for its full useful life; and
  - (3) (if the conduct includes the manufacture, sale, or offering for sale of a part or component) that part or component is marketed as applicable only to those vehicles, engines, or pieces of equipment that are appropriately represented by the tested product.
- E. **EPA Certification:** The EPA will typically find that a person has a reasonable basis for conduct if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).
- F. **CARB Certification:** The EPA will typically find that a person has a reasonable basis for conduct if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board. In the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

**Opportunity for Discussion:** The EPA would like to discuss any questions or concerns you may have. Please contact Mr. Belser and Ms. Cook (below) and we will make time to meet and discuss.

Evan Belser, Chief  
Vehicle and Engine Enforcement Branch  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
(202) 564-6850, [belser.evan@epa.gov](mailto:belser.evan@epa.gov)

Lee Cook, Deputy Director  
Office of Transportation and Air Quality  
United States Environmental Protection Agency  
(734) 214-4820, [cook.leila@epa.gov](mailto:cook.leila@epa.gov)

**From:** [Richard Angell](#)  
**To:** [ENRD\\_PUBCOMMENT-EES \(ENRD\)](#)  
**Subject:** Public Comment on In re: Chrysler-Dodge-Jeep "Ecodiesel" Marketing, Sales Practices, and Products Liability Litigation, Case No. 3:17-md-2777 EMC (JSC)  
**Date:** Monday, March 4, 2019 6:20:43 PM  
**Attachments:** [emailsignaturelogonotext\\_c4fe8a58-60ec-4e55-8f78-be04efb3833d.png](#)  
[\(Exhibit 1\) 2018.11.16 MDC Belser Defeat Devices Tampering.pdf](#)  
[\(Exhibit 2\) Pages from MoparPerformancePartsCatalog.pdf](#)  
[\(Exhibit 3\) 5.7 L Hemi Manifold \(P5153556\).pdf](#)  
[\(Exhibit 4\) Mopar Performance EMS - Programmable - P5153608.pdf](#)  
[\(Exhibit 5\) PreviewofthedraftEPATamperingPolicyforStakeholderAwareness09.2018.pdf](#)

---

The following comment is respectfully submitted behalf of myself and various aftermarket parts manufacturers and sellers that sell or have in the past sold parts and technologies used solely for competition motorsports ("Aftermarket Competition Providers" or "ACPs"). In summary, the Consent Decree proposed to resolve the matter captioned IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION, No. 3:17-md-02777-EMC (hereinafter referred to as the "CD"), does not match the scope of relief the United States seeks in its Complaint as filed on May 23, 2017 ("Complaint"). This has important implications for the sales of aftermarket parts by ACPs according to requirements of the United States, as applied by the Environmental Protection Agency ("EPA").

Specifically, the scope of the proposed CD does not match the scope of relief the United States seeks in its Complaint. In its Complaint, the United States requests that the Court provide the following relief:

*Permanently enjoin FCA US, VM Italy, and VM North America from manufacturing, selling, offering to sell, or installing parts or components intended for use with a motor vehicle or motor vehicle engine (or causing any of the foregoing acts), where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with regulations promulgated under Title II of the Act.*

Complaint, Section XI, Prayer for Relief Par. (c).

The United States also requests that the Court:

*Permanently enjoin FCA US, VM Italy and VM North America from removing or rendering inoperative any device or element of design installed on or in a new motor vehicle in compliance with regulations promulgated under Title II of the Act.*

Complaint, Section XI, Prayer for Relief Par. (d). In contrast to the relief the United States' requests in the Complaint, the CD addresses only "Subject Vehicles" as that term is defined on Line 9, Page 1, in the opening "Background" paragraph of the CD.

The Complaint states in broad terms that:

*"Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), makes it a violation 'for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design*



*installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the Act], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.’ See also 40 C.F.R. § 86.1854-12(a)(3)(ii).”*

Complaint, Par. 54. EPA has offered similar interpretations to define broad categories of aftermarket parts as defeat devices prohibited by Section 203(a)(3)(B) of the Clean Air Act. See [Exhibit 1](#) (“Tampering & Aftermarket Defeat Devices, Mid-Atlantic Regional Air Management Association Webinar, November 18, 2018”).

FCA US LLC, or one or more of its affiliates, parents, or subsidiaries identified in Appendix F of the CD (“FCA”), sells many different parts and technologies under the “Mopar” name that could arguably fall within EPA’s definition of defeat device in the Complaint and the attached representative guidance. An example of such a device that is marketed directly is attached as [Exhibit 2](#) (Pages from Mopar Performance Parts Catalog). This device includes instructions that it can be “third party tuned to optimize engine operation.” See [Exhibit 2](#), Powertrain Control Modules, p. 27.

Many others are marketed indirectly through Mopar dealers, either as standalone products or bundled as recommended packages of parts. An example is a Mopar aftermarket intake manifold ([Exhibit 3](#)) that comes with a recommendation to purchase an additional aftermarket engine control module (“ECM”) and a wiring harness. See [Exhibit 3](#). Mopar dealers selling these parts note that such items are not for use on streets or highways and are for competition use only. In the attached example, the Mopar dealer states: “IMPORTANT NOTICE: This device is not legal for use on pollution-controlled vehicles certified for use on streets or highways. Once this device is installed, use of the vehicle on a street or highway is a violation of the Clean Air Act, potentially subjecting the operator and the installer to civil penalties of up to \$32,500 per vehicle depending on the circumstances.” See [Exhibit 4](#) (Mopar Performance EMS, Programmable - P5153608).

Based on EPA’s guidance as attached at [Exhibit 1](#), these parts, and many others like them, may be argued by the United States to fall within the scope of relief it seeks in the Complaint to permanently enjoin FCA from selling any parts or components intended for use with a motor vehicle or motor vehicle engine (or causing any of the foregoing acts), where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle in compliance with regulations promulgated under Title II of the Clean Air Act. However, no such injunction is included in the Consent Decree, which only applies to certain conditions of Subject Vehicles.

Accordingly, the United States’ decision to consider the Complaint satisfied by this CD leaves the ACPs to draw the only possible conclusion that the United States is satisfied that sales by FCA and Mopar dealers of parts such as those identified in this comment are lawful sales of competition parts. This would be consistent with the a recent EPA policy update preview that states it “will not address EPA-certified motor vehicles that are converted into a vehicle used solely for competition motorsports, nor aftermarket parts purportedly manufactured or sold for that purpose.” [Exhibit 5](#) (Preview of the Draft “EPA Tampering Policy” for Stakeholder Awareness September 2018). Absent any injunctive coverage in the CD, sales by FCA and its dealers of parts such as programmable ECMs that EPA otherwise may potentially classify as defeat devices, see [Exhibit 1](#), appear to be permissible and acceptable to EPA if they are simply intended for use in custom engine applications and for competition purposes beyond normal street or highway applications. This comment does not request that the court reject the CD but rather requests that language be added to the CD explicitly acknowledging EPA’s position that sales of FCA products that may potentially qualify as defeat devices do not violate the Clean Air Act provided they are sold solely for competition use.

Thank you for your consideration of this comment.

Sincerely,

Richard J. Angell



A Professional  
Law Corporation

**Richard Angell • Attorney at Law • Admitted in Utah, Nevada, Arizona, Wyoming and Montana  
Parsons Behle & Latimer**

201 South Main Street, Suite 1800 • Salt Lake City, Utah 84111

Main 801.532.1234 • Direct 801.536.6754 • Fax 801.536.6111

[parsonsbehle.com](http://parsonsbehle.com) • [RAngell@parsonsbehle.com](mailto:RAngell@parsonsbehle.com) • [vCard](#)

**CONFIDENTIALITY NOTICE:** This electronic mail message and any attachment(s) are confidential and may also contain privileged attorney-client information or work product. The message is intended only for the use of the addressee. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, distribute, or copy this communication. If you have received the message in error, please immediately notify us by reply electronic mail or by telephone at 801.532.1234, and delete this original message.

# Tampering & Aftermarket Defeat Devices

Mid-Atlantic Regional Air Management Association  
Webinar, November 16, 2018



Evan Belser, Chief

Vehicle and Engine Enforcement Branch

United States Environmental Protection Agency

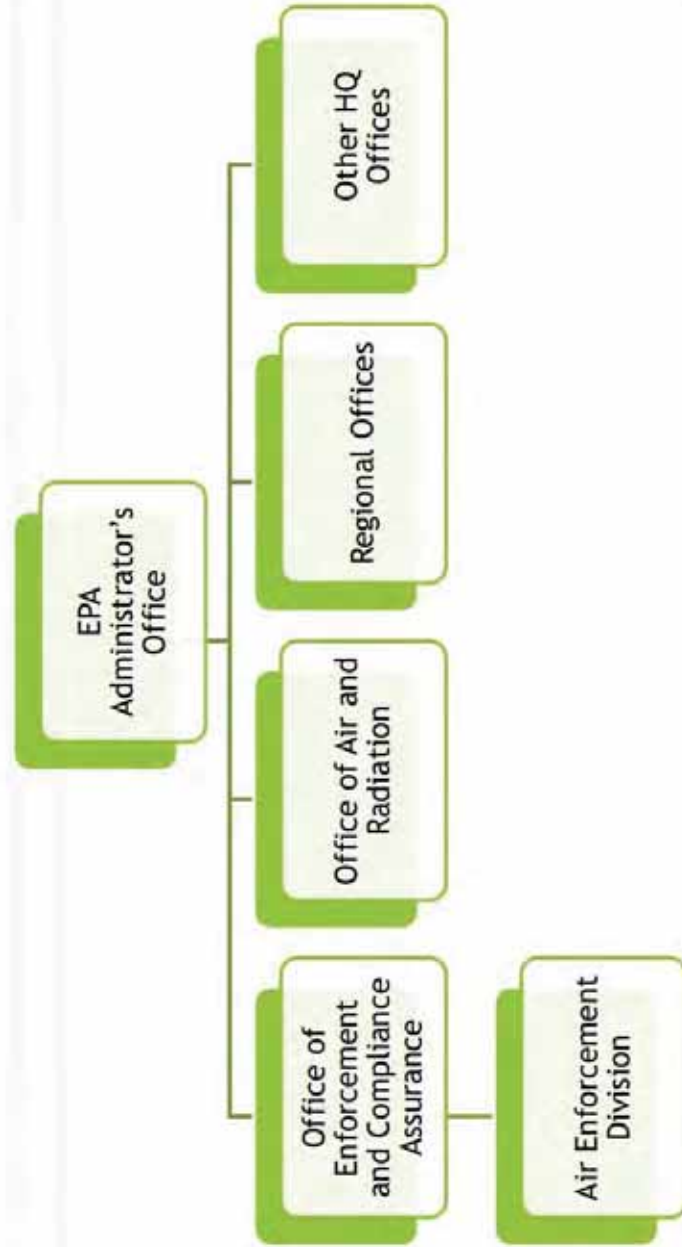
(202) 564-6850, [belser.evan@epa.gov](mailto:belser.evan@epa.gov)

## Outline

- ❖ Overview: EPA, Public Health, and the Clean Air Act
- ❖ Defeat Device and Tampering Prohibitions
- ❖ Defeat Device and Tampering Examples
- ❖ Tampering Enforcement Policy
- ❖ Civil and Criminal Penalties
- ❖ Warranty Implications
- ❖ Frequently Asked Questions



# Vehicle & Engine Enforcement



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



## Vehicle & Engine Enforcement

- ▶ The Vehicle and Engine Enforcement Branch (VEEB) is responsible for enforcement of Part A of Title II of the Clean Air Act, 42 U.S.C. §§ 7521–7554, and the accompanying federal engine regulations.
- ▶ On-road and non-road spark ignition and combustion ignition engines (cars, trucks, recreational vehicles, generators, etc.), as well as locomotive and marine transportation
- ▶ Stopping importation of illegal equipment and parts
- ▶ VEEB staff are located at EPA Headquarters in Washington D.C., with recent increase in regional enforcement participation



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

## Air Quality & Public Health

- ▶ Heavy-duty diesel engines emit large amounts of nitrogen oxides and particulate matter, both of which contribute to serious public health problems in the United States.
- ▶ These problems include premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function.
- ▶ Numerous studies also link diesel exhaust to increased incidence of lung cancer.



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

# The Clean Air Act

- ▶ The Clean Air Act (CAA) was enacted by Congress in 1970, and amended in 1977 and 1990.
- ▶ CAA protects human health and the environment by reducing emissions from mobile sources of air pollution.
- ▶ Title II of the CAA – Mobile Source Provisions
  - ▶ Requires EPA to promulgate “emissions standards” limiting the amount of pollution that motor vehicles may emit
  - ▶ Manufacturers who wish to sell motor vehicles in the United States must design those vehicles to comply with emission standards

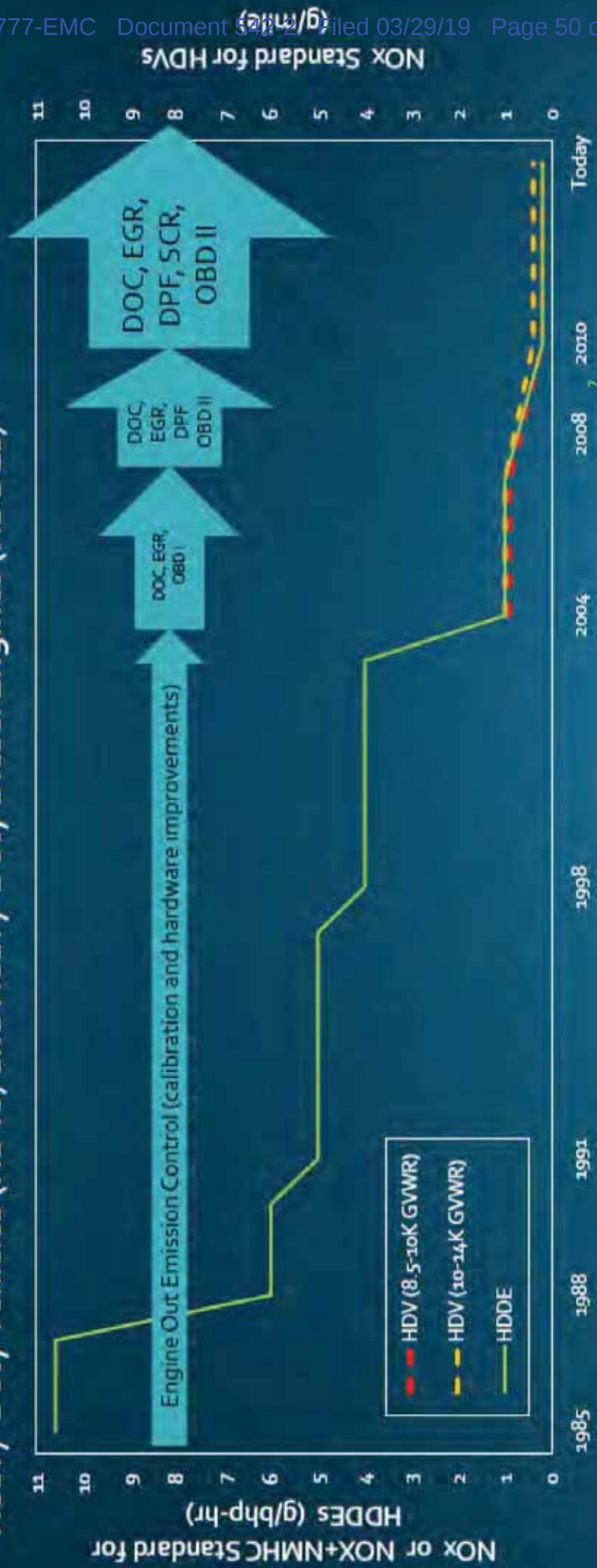


*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



# NOx Standards and Emission Control Devices Used by OEMs

## Heavy-Duty Vehicles (HDVs) and Heavy-Duty Diesel Engines (HDDEs)



Source: <https://nepis.epa.gov/Exec/Query/PDF.cgi?Dockey=31000AA01.pdf>

## CAA Title II Prohibitions: Defeat Devices

The following acts and the causing thereof are prohibited –

- ▶ For any person to manufacture or sell, or offer to sell, or install, a part or component for a motor vehicle, where
  - ▶ A principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, and
  - ▶ The person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



## CAA Title II Prohibitions: Tampering

The following acts and the causing thereof are prohibited –

- ▶ For anyone to remove or render inoperative an emission control component on a certified motor vehicle or engine prior to sale or delivery to ultimate purchaser, or
- ▶ For anyone to knowingly remove or render inoperative any emission control component on a certified motor vehicle or engine after sale and delivery to the ultimate purchaser.

CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A).



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

## Criminal Prohibitions

- ▶ It is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any “monitoring device or method” required under the CAA.
- ▶ CAA § 113(c)(2)(C), 42 U.S.C. § 7413(c)(2)(C).
- ▶ Vehicle Onboard Diagnostics (OBD) are a “monitoring device or method” required by the CAA.



## Defeat Device and Tampering Examples

- ❖ Alterations to Fueling, Timing Strategy
- ❖ DPF Delete
- ❖ EGR Delete
- ❖ SCR Delete
- ❖ Alterations to OBD
- ❖ Software and Hardware





# Resolved Cases

- ▶ All resolved civil enforcement cases are available at:
- ▶ <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions>

Matter Name	Type of Company	Type of Violations	Violations
Abbyland Trucking	Installer	Tuners	202
Adrenaline Truck Performance	Dealer	Tuners/Pipes	15,912
Antrim Diesel Services, Inc.	Installer	Tampered	5
Boost Diesel Repair	Installer	Tampered	30
Caspers	Manufacturer	O2 simulators	44,000
Edge	Manufacturer	Tuners	9,000
Eisenhart Diesel, LLC	Installer	Tampered	3
Evan's Tuning	Dealer	Tuners/Pipes	108
Freerksen Trucking	Installer	Tampered	22
H8.5 Performance	Manufacturer	Tuners/Pipes	114,436
Harley Davidson	Manufacturer	Tuners	340,000
KT Performance	Dealer	Tuners/Pipes	2,833
Liberator Performance, Inc.	Installer	Tampered	3
Maryland Performance Diesel	Manufacturer	Tuners/Pipes	3,697
ModBargains	Dealer	Pipes	16
OE Construction	Installer	Tampered	6
Patterson's Diesel, Inc.	Installer	Tampered	2
Precision Automotive	Installer	Tampered	1
Rexer/Rockwater/Sweitzer	Installer	Tampered	30
Ryan's Diesel Service	Installer	Tampered	23
Spartan	Manufacturer	Tuners	5,000
Trick Trucks	Installer	Tampered	113
TSI Diesel and Performance	Installer	Tampered	6
Two Brothers Racing	Manufacturer	Pipes	13,000
Yoshimura	Manufacturer	Pipes	46,502

## Civil Cases re Tampering Heavy-Duty Diesel Fleets

### Abbyland Trucking

- ▶ Service truck repair center and refrigeration transport company in Wisconsin sold and installed defeat devices
- ▶ ECM tuning products that bypass, defeat, or render inoperative EGRs, DPFs, and other emission control devices
- ▶ 202 heavy-duty diesel trucks

### Freerksen Trucking

- ▶ Minnesota trucking company removed emission controls and otherwise modified its trucking fleet
- ▶ ECM tuning products that bypass, defeat, or render inoperative emission controls, including DPFs, EGRs, and/or SCRs
- ▶ 22 heavy-duty diesel trucks



## Criminal Charges re Tampering Heavy-Duty Diesel Fleets

### OE Construction

- ▶ An employee of OE Construction purchased delete kits that allowed him to alter the vehicles' emission control systems
- ▶ Pled guilty to being an accessory after the fact to violating the Clean Air Act
- ▶ Six company vehicles

### Rockwater

- ▶ Five men with various relationships to a hauling service for the fracking industry in Pennsylvania (Rockwater)
- ▶ Charged with conspiring to violate the CAA by modifying the emissions systems
- ▶ Falsified records to conceal defeat devices and state inspections
- ▶ ~30 heavy-duty diesel trucks

## Memo 1A - Tampering Enforcement Policy

- ▶ Interim Tampering Enforcement Policy Memorandum 1A (6/25/74)
- ▶ Memo 1A allows the sale and use of aftermarket parts when an individual or company has a “reasonable basis” to believe their actions do not increase emissions
- ▶ EPA issues no approvals under Memo 1A



## Memo 1A Requirements

In order to prevent and protect yourself from violations of the prohibitions on tampering and defeat devices, you should have in your records:

- ▶ Emission test results from tests conducted in accordance with EPA's federal test procedure (FTP) showing that similar vehicles meet the standards for the vehicles' useful lives
- ▶ Generally, the testing required for a CARB EO is the same as the testing required under Memo 1A because the test procedures are usually the same

*Vehicle must perform the same on- and off-cycle*



*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*

## Warranty Implications

- ▶ Consumers and service technicians should investigate warranty implications in advance.
- ▶ Tampering can void manufacturer warranties and insurance agreements if the tampering can be shown to have caused the failure.





## So this guy comes in with a truck that's already tampered . . .

- ▶ When determining whether service performed on an element of an emission control system was illegal tampering, the EPA typically compares the element after the service to the element's fully-functioning certified configuration, rather than to the element's configuration prior to the service.
- ▶ Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA will generally take no enforcement action if the person restores the element to its certified configuration or declines to perform the service.

Fact Sheet: Exhaust System Repair Guidelines, available at <https://www.epa.gov/enforcement/us-epa-fact-sheet-exhaust-system-repair-guidelines-march-13-1991>



## I didn't tamper the truck, but can I sell it?

- ▶ Federal law prohibits tampering, and selling defeat devices, but does not say it is illegal to sell a tampered vehicle
- ▶ However, many states have laws that prohibit dealers from selling (or offering to sell) vehicles that are tampered.
- ▶ Know your state law.

# Report Violations

- ▶ tampering@epa.gov
- ▶ Report violations online:  
<https://www.epa.gov/enforcement/report-environmental-violations>
- ▶ Contact me at (202) 564-6850 or belser.evan@epa.gov



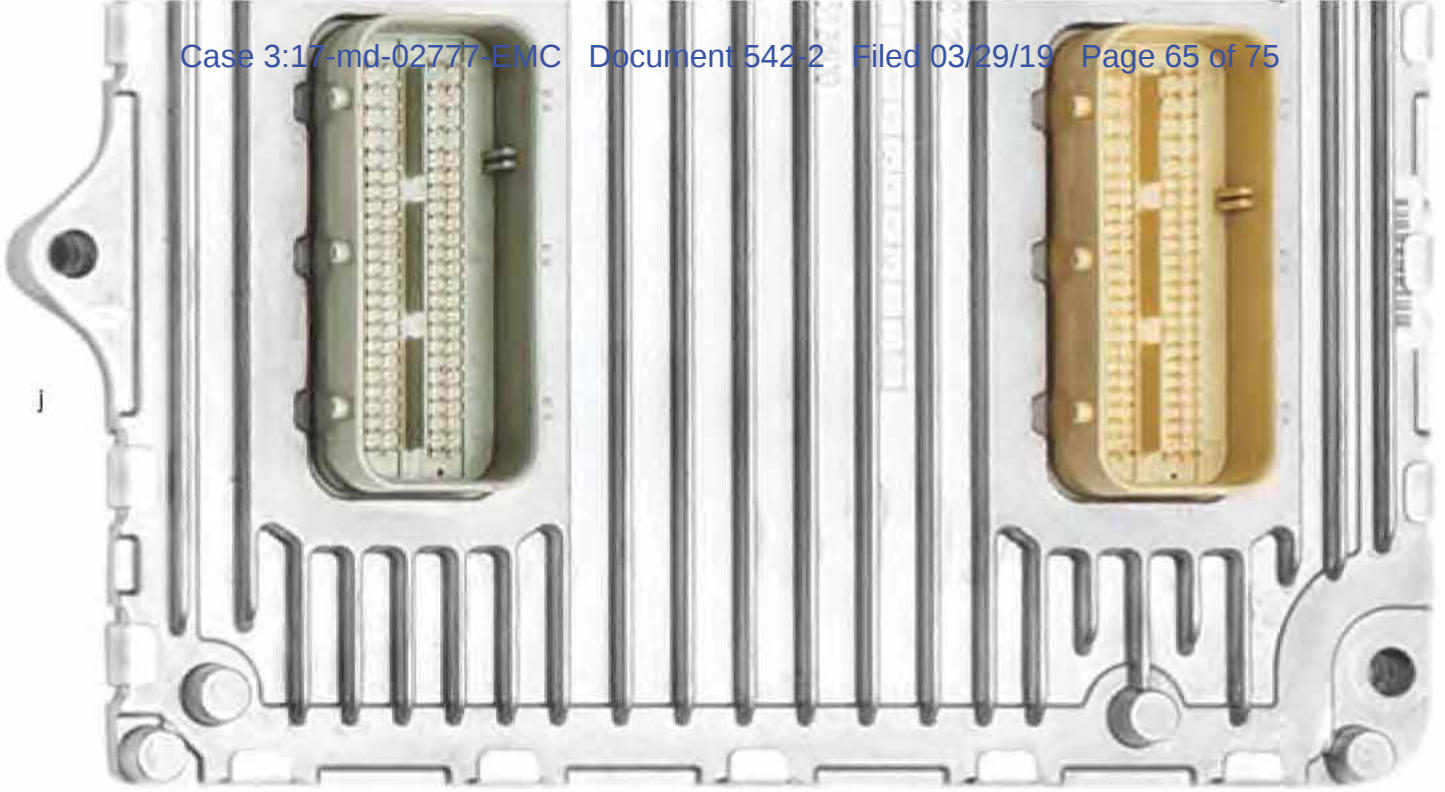
*Tampering & Aftermarket Defeat Devices, US EPA, November 2018*



# PERFORMANCE PARTS

## CATALOG





## POWERTRAIN CONTROL MODULES

The Mopar<sup>®</sup> aftermarket powertrain control module for the 5.7L-equipped Charger has the Mopar<sup>®</sup> Stage 1 calibration for owners who may already have purchased a Mopar<sup>®</sup> Cold Air Intake and Cat-Back Exhaust System. For owners seeking custom engine packages to take their Charger to the next performance level, this PCM can be third-party tuned to optimize engine operation. (See representative image: Fig. j)

	Stage 1 Calibration 2013 Charger, <b>P/N 68420253AA</b> . . . . .	\$666.00
	Stage 1 Calibration 2014 Charger, <b>P/N 6820255AA</b> . . . . .	\$666.00
	Stage 1 Calibration 2015-2016 Charger, <b>P/N 6820256AA</b> . . . . .	\$666.00
	Stage 1 Calibration 2011-2017 Charger, <b>P/N 68420457AA</b> . . . . .	\$666.00

## FILTER

### PERFORMANCE OIL FILTER

Why use anything other than a factory-engineered Mopar<sup>®</sup> Oil Filter for your Charger? Superior filtration and particulate trapping. Hard case for durable performance.

Mopar<sup>®</sup> Performance Oil Filter  
2011-2019 Charger, **P/N 05038041AA** (Fig. k) . . . . . \$16.75







**INSTALLATION INSTRUCTIONS**  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
 PART NUMBER P5153556



### Intake Manifold Kit Components

- (1) Intake Manifold
- (1) Oil Fill Cap w/ O-Ring
- (2) 11/32" ID x 15" Long PCV Hose
- (1) PCV Valve (AC Delco CV746C)
- (1) PCV Valve Rubber Grommet
- (1) 6 AN Bulkhead Nut
- (1) 6 AN to 3/8" Hose Barb Fitting
- (1) 1/4" NPT to 3/8" Hose Fitting

## READ ALL INSTRUCTIONS BEFORE BEGINNING INSTALLATION

## WARNINGS AND CAUTIONS

MOPAR PERFORMANCE PARTS RECOMMENDS PROFESSIONAL INSTALLATION BY AN ASE CERTIFIED TECHNICIAN. TORQUE WRENCHES AND SPECIALIZED REMOVAL AND INSTALLATION TOOLS ARE REQUIRED.

**DESCRIPTION:** This intake manifold is designed to allow the use of dual carburetors on a 5.7L Chrysler HEMI crate engine or a production HEMI engine that has been transplanted into an older muscle car or custom hot rod. This manifold is not intended to be installed on a vehicle that

is factory equipped with a HEMI engine. All new production HEMI engines are equipped with electronic fuel injection from the factory and additional accessories will be required to allow them to function properly with carburetors.

**ACCESSORIES:** For a successful installation, the Mopar Performance Intake Manifold requires several specialized components. To complete your installation, you will need the following items:

- Port Seals; reuse the stock seals or replace them with part # 53032382AB.
- PCV Seals; reuse the stock seals or replace them with part # 53032384AB.
- Programmable Ignition Timing Controller; P5153608
- Wiring Harness; P5153606
- Carburetor and Linkage Kit; P5153904
- MAP Sensor; use part #56041018AD, this sensor is factory equipped on certain 5.7L applications. Use M5 x 16mm screws to mount.

**CARBURETORS:** This manifold is machined to accept square bore AFB / AVS type carburetors. Most applications will work best with two 500 cfm carburetors setup with a progressive linkage. Mopar Performance offers a carburetor and linkage kit as part #P5153904. When using a progressive linkage, the front carburetor will need to have any choke disabled. The rear carburetor will handle most low speed fueling and it can be equipped with manual or electric choke, or no choke at all if the vehicle will be used exclusively in warm weather.

**GASKETS:** The 5.7L HEMI engine does not use traditional intake gaskets. Eight individual rubber seals will need to be inserted into the machined grooves that surround each port exit of the manifold. These seals are reusable, but if they are damaged or missing they can be purchased individually from any Chrysler dealership as part #53032382AB. Two PCV seals are also needed and are available under part #53032384AB.





**INSTALLATION INSTRUCTIONS**  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
 PART NUMBER P5153556

**LINKAGES:** A progressive linkage kit is strongly recommended for use with this manifold. Use of a direct 1:1 linkage can cause a stumble or bog during low speed acceleration. Throttle and transmission kickdown cables can vary widely from one application to another; adapters and/or brackets may need to be purchased or fabricated.

**IGNITION TIMING CONTROLLER:** These engines were designed by Chrysler to be used exclusively with an electronic fuel injection and ignition computer, which allowed them to replace a mechanical spark distributor with electronic coil on plug ignition. When using carburetors on this style of engine, it will be necessary to have a separate ignition computer to interpret the camshaft position sensor signal, apply the appropriate amount of retard or advance, and to drive the coil on plug ignition system. Programmable controller P5153608 and wiring harness P5153606 are available to provide this function.

## INTAKE MANIFOLD

### INSTALLATION PROCEDURE:

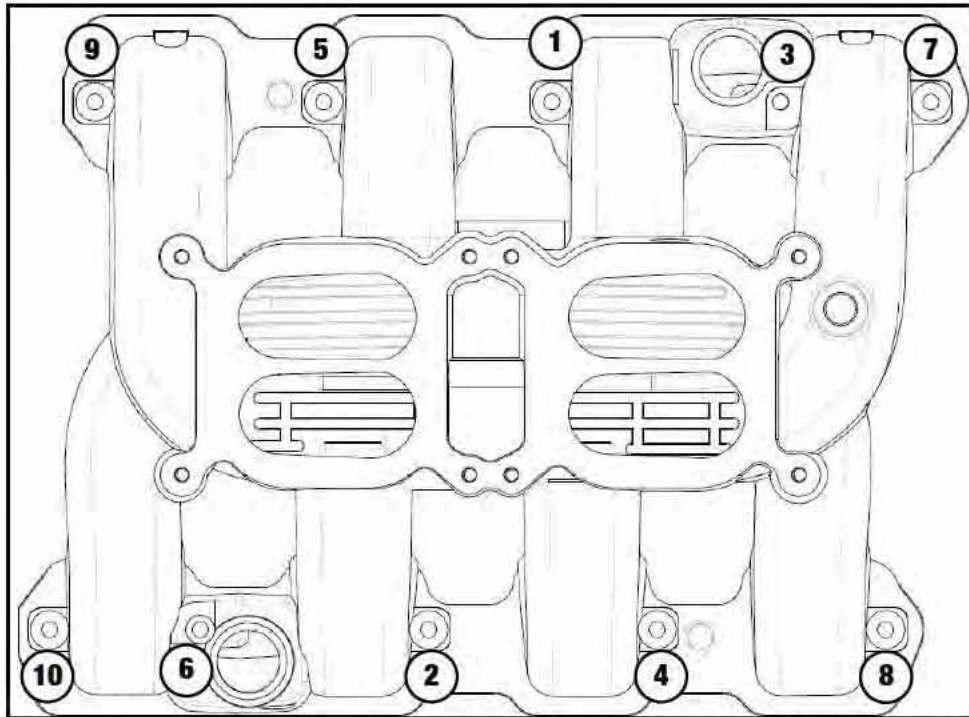
1. Before beginning installation, inspect all passages in the manifold for any debris or contaminants. Remove any loose material to prevent potential engine damage. Use the supplied aluminum cap to plug the oil fill hole located at the front, driver's side of the manifold.
2. Fully clean the cylinder head intake flanges.
3. Insert the port o-ring gaskets into the machined grooves around the runner exits and install the two PCV seals on the mounting flange face.
4. Install the intake manifold and hold down bolts. Torque all manifold bolts in two steps by the sequence shown in Figure 1.
5. A provision for the MAP sensor required by most ignition controllers has been located in the center of the plenum on the passenger side. This provision has been designed to accept the OEM MAP sensor, which is available as part #56041018AD.
6. Install the supplied PCV valve in the rear, passenger side provision and route the hose to the rear port of the carburetor.
7. The bulkhead fitting, hose, and 90° 1/4" NPT fitting are included to allow filtered air into the crankcase. You will need to drill and mount the bulkhead fitting in the base of your air cleaner. Then route the hose from the air cleaner to the 1/4" pipe provision below the oil fill cap. The PCV valve will not function properly without this alteration.

### NO PARTS WARRANTY – “AS IS”

Mopar Performance parts beginning with a “P” prefix are sold “as is” unless otherwise noted. This means that parts sold by Mopar Performance carry no warranty whatsoever. **Implied warranties, such as warranties of merchantability, are excluded.** (An implied warranty of merchantability means that the part is reasonably fit for the general purpose for which it was sold). The entire risk as to quality and performance of such parts is with the buyer. Should such parts prove defective following their purchase, the buyer and not the manufacturer, distributor or retailer, assumes the entire cost of all necessary servicing or repair. Chrysler, Dodge and Jeep® vehicle and parts warranties are voided if the vehicle or parts are used for competition. The addition of performance parts does not by itself void a vehicle's warranty. However, added performance parts (parts not originally supplied on the vehicle from the factory) are not covered by the vehicle's warranty, and any failure that they may cause is also not covered by the vehicle's warranty.



**INSTALLATION INSTRUCTIONS**  
**MOPAR 5.7L HEMI DUAL QUAD INTAKE MANIFOLD**  
**2005 AND LATER CHRYSLER HEMI ENGINES CONVERTED TO CARBURETION**  
PART NUMBER P5153556



**FIGURE 1 - Chrysler HEMI Dual Quad Intake Manifold  
Torque Sequence**  
Torque bolts to 11 ft/lbs in the sequence shown above.

For technical assistance with this intake manifold, please contact the Mopar Performance Tech Line Monday-Friday, 7:00am - 3:00pm EST at 1(888) 528-HEMI or 1(888) 528-4364.



SEARCH HERE

# MoparOnlinePerformance.com

SHOP BY VEHICLE | CRATE ENGINES | ENGINE PARTS | RESTORATION PARTS | RACING / MISC | MOPAR GEAR

Home > ENGINE PARTS > MODERN HEMI ENGINE PARTS > IGNITION & ELECTRONICS >

## Mopar Performance EMS, Programmable - P5153608

List Price: \$2,620.00  
Our Price: ~~\$2,358.00~~  
Savings: \$262.00

This item qualifies for FREE SHIPPING!

Mopar Part Number: P5153608

Qty:

ADD TO CART

ADD TO WISHLIST



On all orders over \$99

\*contiguous US only, excludes oversize items

AUTHORIZED



MOPAR®  
WHOLESALE



LARGER PHOTO

### Description

#### "Plug and Play" Engine Management Systems (EMS)

These engine management systems will forever change the way you look at and perform fuel injection tuning! User-friendly Windows based software (XP, 2000, NT, 98, 95 and ME) makes the task of copying, viewing and manipulating data as simple as a click of the mouse. User-defined templates are easily configurable and enable tuners to establish "quick keys" to any pertinent information during the tuning process. The infinitely adjustable Mopar EMS software allows tuners to program virtually any combination of engine control, power adders and auxiliary devices, and accurately deliver proper amounts of fuel and correct ignition timing for virtually any engine configuration or operating condition. Mopar's programmable engine management system is capable of adapting to almost any vehicle using "flying lead" wiring harness (available separately). We are confident that this is the most versatile, powerful, and comprehensive universal engine management program available for your Mopar!

Unique features found in Mopar's universal EMS also include independent, built in "peak and hold" injector drivers, capable of controlling both high and low impedance injectors of any brand or flow rate. Direct ignition coil drivers control the coil-on-plug system with no additional hardware required. Unique, dual-UEGO (wideband O<sub>2</sub> sensor) input provides accurate A/F tuning and calibration capabilities no matter how heavily modified the engine. In addition, dual-channel (typically, one per cylinder bank) detonation (spark knock) sensor capability provides safe engine operation under a wide range of loads, altitudes, and fuel octane availability.

- EMS
- Programmable
- Carbureted Applications

Note: For crate engine or conversion of 5.7L or 6.1L into an older classic car or truck. Not designed for newer vehicles already equipped with a 5.7L or 6.1L Hemi.

IMPORTANT NOTICE: This device is not legal for use on pollution-controlled vehicles certified for use on streets or highways. Once this device is installed, use of the vehicle on a street or highway is a violation of the Clean Air Act, potentially subjecting the operator and the installer to civil penalties of up to \$32,500 per vehicle depending on the circumstances.

### Related Items

Mopar Performance Pin Connector Kit - P5155065

Mopar Performance MAP Sensor - 56041018AD

Mopar Performance ACT Sensor - 4606487AB

Mopar Performance A/C Expansion Kit - 77072446

Our Price: \$31.92



Mopar Performance Hall Effect Sender - P5155068

Our Price: \$128.40



Our Price: \$45.00



Mopar Performance Engine Wiring Harness, Programmable - P5153607AB

Our Price: \$751.20



Our Price: \$37.32



Mopar Performance IAC Motor - 4861552AC

Our Price: \$76.32



Our Price: \$314.40



Mopar Performance Non-Programmable EMS - P4510356

Our Price: \$840.00



Share your knowledge of this product. Be the first to write a review »

Mopar Online Performance sells only genuine Mopar Performance parts and products.

@ JOIN OUR EMAIL LIST!

Enter your email address

COMPANY INFO

- ABOUT US
- CONTACT US
- PRIVACY POLICY
- TERMS OF USE

CUSTOMER SERVICE

- HELP / FAQ
- SHIPPING & RETURNS
- BOOKMARK US

MY ACCOUNT

- LOGIN
- REGISTER
- ORDER STATUS
- VIEW SHOPPING CART

SITE MAPS

- PRODUCT INDEX
- CATEGORY INDEX



© Copyright 2019 Mopar Online Performance.com. All Rights Reserved. Built with Volusion.

## **Preview of the Draft “EPA Tampering Policy” for Stakeholder Awareness September 2018**

**Purpose:** EPA plans update to Clean Air Act (“Act”) enforcement policy concerning vehicle and engine tampering and aftermarket defeat devices. This policy will be called the “EPA Tampering Policy.” This update will restate long-standing enforcement policy, but in terms of today’s technology and in a single document. It will also replace a 1986 enforcement policy regarding replacement catalytic converters to align with today’s state-of-the art converters. This updated policy will complement the Agency’s enforcement efforts, which are ongoing and focused on companies that are defeating the emissions controls designed to protect air quality. Resolved vehicle and engine enforcement cases are available at <https://www.epa.gov/enforcement/clean-air-act-vehicle-and-engine-enforcement-case-resolutions>.

**Scope of Policy:** The EPA Tampering Policy will address civil enforcement of the Act’s prohibitions on tampering and aftermarket defeat devices. CAA § 203(a)(3), 42 U.S.C. § 7522(a)(3), and 40 C.F.R. § 1068.101. These prohibitions concern all vehicles, engines and equipment that are subject to the Act. These prohibitions apply to companies who service vehicles and engines or who manufacture, sell, and install aftermarket parts (e.g., catalytic converters, performance parts, software and hardware). The Policy will *not* address any conduct already addressed by EPA regulation (such as locomotive engine remanufacturing), nor any provision of the Act other than the prohibitions on tampering and aftermarket defeat devices. The Policy will not address EPA-certified motor vehicles that are converted into a vehicle used solely for competition motorsports, nor aftermarket parts purportedly manufactured or sold for that purpose. The EPA intends to finalize the EPA Tampering Policy no later than December 2018. For replacement catalysts for out-of-warranty light-duty gasoline vehicles within the scope of the 1986 Catalyst Policy, EPA will continue to adhere to the 1986 Catalyst Policy until 18 months after the EPA Tampering Policy is finalized at which point EPA will adhere to that policy.

### **Synopsis of draft EPA Tampering Policy:**

- The EPA Tampering Policy will supersede and replace the following: Mobile Source Enforcement Memorandum 1A (June 25, 1974); Sale and Use of Aftermarket Catalytic Converters, 51 Fed. Reg. 28,114 and 51 Fed. Reg. 28,132 (August 5, 1986) (“1986 Catalyst Policy”); Exhaust System Repair Guidelines (March 13, 1991); Engine Switching Fact Sheet (March 13, 1991). The EPA Tampering Policy would consolidate and restate the principles of these policies, but state these principles in terms of today’s technology and for all vehicles, engines, and equipment subject to the Act’s prohibitions on tampering and aftermarket defeat devices.
- The Policy will, in plain language, answer common questions from service technicians and parts manufacturers and thereby prevent violations. For example, the Policy will state that where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA will generally take no enforcement action if the person restores the element to its certified configuration or declines to perform the service.
- The Policy will establish a uniform enforcement stance for all replacement after-treatment systems (not just catalysts for older, gasoline, light-duty vehicles, but also, for example, diesel particulate filters).
- This is not a rulemaking; the Policy creates no obligations on regulated parties, but instead describes how EPA will exercise enforcement discretion in this area.



- The centerpiece of the EPA Tampering Policy will be the following statement (or similar):

The EPA typically does not take enforcement action for conduct that may be a violation of § 203(a)(3) if the person performing the conduct has a documented “reasonable basis” demonstrating that the conduct (or, where the conduct in question is the manufacturing or sale of a part or component, the installation and use of that part or component) does not adversely affect emissions. This Policy Statement does not apply, however, to conduct affecting an OBD systems, which is subject to enforcement regardless of effect on emissions.

- The Policy will identify several ways that a person may document that they had a “reasonable basis” as follows:

- A. **Identical to Certified Configuration:** The EPA will typically find that a person has a reasonable basis for conduct if that conduct:
  - (1) is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and
  - (2) restores that element of design to be identical in all emissions-related respects to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.
  
- B. **Emissions Testing for Replacement After-Treatment Systems for Older Vehicles, Engines, and Equipment:** The EPA will typically find that a person has a reasonable basis for conduct if:
  - (1) that conduct involves a replacement after-treatment system, the replacement after-treatment system is used to replace the same kind of system on a vehicle, engine, or piece of equipment, and that replaced system is beyond its emissions warranty; and
  - (2) emissions testing shows that the vehicle, engine, or equipment with the replacement after-treatment system will meet all applicable emissions standards for an amount of time or distance (as applicable) that is equivalent to at least 75% of the original regulatory useful life of the vehicle, engine, or equipment; and
  - (3) the replacement after-treatment system is warranted to last, both in terms of emissions performance and structural integrity, for an appropriate amount of time or distance (as applicable) that is equivalent to a minimum 5 years or 50% of the original regulatory useful life of the vehicle, engine, or equipment, whichever occurs first.
  
- C. **New After-Treatment Systems that Decrease Emissions:** The EPA will typically find that a person has a reasonable basis for conduct if:
  - (1) that conduct involves mechanically adding an after-treatment system where none previously existed;
  - (2) the after-treatment system is added into the exhaust of a vehicle, engine, or piece of equipment;
  - (3) the vehicle, engine, or piece of equipment is EPA-certified as having no such system and originally manufactured without any such system; and

- (4) any person familiar with emission control system design and function would reasonably believe adding the system would decrease emissions.
- D. **Emissions Testing:** The EPA will typically find that a person has a reasonable basis for conduct if:
- (1) that conduct alters a vehicle, engine, or piece of equipment;
  - (2) emissions testing of an appropriate test vehicle, engine, or piece of equipment that had been identically altered by the conduct shows that the vehicle, engine, or piece of equipment will comply with all applicable regulations including emissions standards for its full useful life; and
  - (3) (if the conduct includes the manufacture, sale, or offering for sale of a part or component) that part or component is marketed as applicable only to those vehicles, engines, or pieces of equipment that are appropriately represented by the tested product.
- E. **EPA Certification:** The EPA will typically find that a person has a reasonable basis for conduct if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).
- F. **CARB Certification:** The EPA will typically find that a person has a reasonable basis for conduct if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board. In the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

**Opportunity for Discussion:** The EPA would like to discuss any questions or concerns you may have. Please contact Mr. Belser and Ms. Cook (below) and we will make time to meet and discuss.

Evan Belser, Chief  
Vehicle and Engine Enforcement Branch  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
(202) 564-6850, [belser.evan@epa.gov](mailto:belser.evan@epa.gov)

Lee Cook, Deputy Director  
Office of Transportation and Air Quality  
United States Environmental Protection Agency  
(734) 214-4820, [cook.leila@epa.gov](mailto:cook.leila@epa.gov)



March 4, 2019

Jeffrey Bossert Clark  
Assistant Attorney General  
U.S. DOJ—ENRD  
P.O. Box 7611  
Washington, DC 20044–7611

**Subject: NTAA EC and TAMS SC Recommendations for the Distribution of Funds for Environmental Mitigation and Supplemental Environmental Projects Related to a Settlement with Fiat Chrysler Automobiles N.V., FCA US, and Affiliates (FCA) for Alleged Violations of the Clean Air Act and California law, Case 3:17-md-02777-EMC**

Honorable Assistant Attorney General Clark:

We are writing on behalf of the National Tribal Air Association's (NTAA) Executive Committee (EC) and the Tribal Air Monitoring Support (TAMS) Center's Steering Committee (SC) to submit comments regarding the Consent Decree *RE: Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation* regarding alleged Fiat Chrysler violations of the Clean Air Act.

The NTAA EC and TAMS SC have learned about the consent decree from the January 10, 2019, news release from EPA's Press Office entitled, "States and California, Fiat Chrysler to Settle Allegations of Cheating on Federal and State Vehicle Emissions Tests."<sup>11</sup>

While the TAMS SC and NTAA EC understand that the FCA Consent Decree earmarks the majority of the penalties towards the U.S. Department of the Treasury, we would like to offer some recommendations to consider when distributing other funds for mitigation under the FCA Consent Decree.

The FCA Consent Decree describes the Emissions Modification Recall Program that establishes a program to modify subject vehicles. The Consent Decree also requires that if FCA does not

<sup>11</sup> <https://www.epa.gov/newsreleases/civil-settlements-united-states-and-california-fiat-chrysler-settle-allegations>

meet the scheduled recall rate target of 85%, then FCA shall make a payment of \$5,500,000 for each 1% that the recall rate falls short.

The DOJ and other parties could allocate these funds to the VW Environmental Mitigation Tribal Trust to ensure that mitigation from FCA's harm to air quality could be implemented nationwide through an existing program meant to mitigate NOx emissions. The VW Environmental Mitigation Trust is a functioning trust that is effectively allocating funds to Tribes until 2021.

The NTAA EC and TAMS SC recommends that the DOJ amend the FCA consent decree on page 67 of 224 to allocate penalties from the National Recall Rate Payment towards the VW Environmental Mitigation Tribal Trust to ensure penalties are directed towards mitigation efforts by the 573 federally recognized Tribes.

Additionally, the NTAA EC and TAMS SC encourage EPA and DOJ to consider a similar funding mechanism to the VW Environmental Mitigation Tribal Trust for other automakers who might be charged with similar violations of the Clean Air Act in the future. Establishing a trust can be used to divert similar CAA-related penalties in the future, including those identified in the FCA Consent Decree.

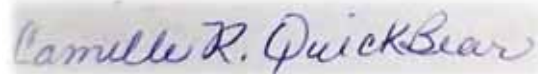
The NTAA EC and TAMS SC appreciate this opportunity to provide the DOJ and EPA with the necessary justification to direct potential funds toward the specific and unique needs of Tribal air programs. We thank you for your ongoing support of Tribal Air Programs.

Sincerely,

---



Wilfred J. Nabahe, Chairman  
National Tribal Air Association's  
Executive Committee



Camille QuickBear, Chair  
Tribal Air Monitoring Support Center's  
Steering Committee

Cc: Kathryn Caballero  
Office of Civil  
Enforcement, US EPA