

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JEREMY RAYMO, *et al.*,  
individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

FCA US LLC, a Delaware  
corporation, and CUMMINS INC., an  
Indiana corporation,

Defendants.

No. 2:17-cv-12168-TGB-SDD

Judge Terrence G. Berg

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS, CUMMINS INC., AND  
FCA US LLC**

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## SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release is entered into between and among (1) Jeremy Raymo, Forrest Poulson, Gary Gaster, Brendon Goldstein, Manuel Pena, John Reyes, Dennis Kogler, Clarence “Todd” Johnson, Stephen Zimmerer, Justin Sylva, Ian Hacker, Jason Gindele, James Blount, Luke Wyatt, Chris Wendel, Darin Ginther, and Matt Baffunno (“Plaintiffs”) on behalf of themselves and as representatives of the Class; (2) Defendant Cummins Inc. (“Cummins”); and (3) Defendant FCA US LLC (“FCA US”) in order to effect a full and final settlement and dismissal with prejudice of all claims against Cummins and FCA US alleged in the Action comprising the litigation proceeding known as *Raymo et al. vs. FCA US LLC and Cummins Inc.*, Case No. 1:13-cv-05795 (E.D. Mich.) (the “*Raymo Matter*”), on the terms set forth below and to the full extent reflected herein. Capitalized terms shall have the meaning ascribed to them in Section II of this Agreement.

### I. RECITALS

**WHEREAS**, on July 3, 2017, Plaintiffs filed a Class Action Complaint in the *Raymo Matter*, which was superseded on October 4, 2018 with Plaintiffs’ First Amended Class Action Complaint (“FAC”); and

**WHEREAS**, the FAC alleged, among other things, that Cummins and FCA US (collectively, “Defendants”) defrauded consumers by developing, advertising, and selling Model Year 2013 – 2017 Dodge Ram 2500 and 3500 trucks with a Cummins 6.7-liter diesel engine (the “Trucks”) with a Selective Catalytic Reduction System that did not perform as advertised and failed to disclose two material defects in the Trucks, namely a “washcoat defect” and “flash defect,” as described in the FAC; and

**WHEREAS**, the FAC asserted claims on behalf of a putative nationwide class under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(C)-(D) and the

Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2301 *ET SEQ.*, and on behalf of various individual state subclasses asserting claims for breach of contract, violations of state consumer protection statutes, unjust enrichment, fraudulent misrepresentation, and fraudulent concealment as set forth in the FAC; and

**WHEREAS**, on July 30, 2020 the Court entered an Order granting in part and denying in part Defendants’ motions to dismiss the FAC, in which the Court dismissed without prejudice:

- 1) Plaintiffs’ claims against FCA US and Cummins for violations of the RICO and MMWA statutes,
- 2) Plaintiffs’ state law claims for breach of contract in all states;
- 3) Plaintiffs’ claims for unjust enrichment asserted under the laws of California and Texas;
- 4) Plaintiffs’ claims for fraudulent omission in all states;
- 5) Plaintiffs’ claims for violations of state consumer protection statutes in all states; and

**WHEREAS**, the Court’s July 30, 2020 Order preserved claims for unjust enrichment under Alabama, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, and Washington state law, and also preserved Plaintiffs’ state law claims against FCA US and Cummins for affirmative representation to the extent they do not rest on alleged misrepresentations specifically found by the Court in its July 30, 2020 Order to be puffery or otherwise non-actionable;

**WHEREAS**, as the result of extensive arm’s length negotiations, including a mediation session before Judge Morton Denlow (Ret.) and numerous follow-up negotiations via email and by telephone, Plaintiffs, Plaintiffs’ Class Counsel and Cummins entered into a settlement

agreement (“Partial Settlement Agreement”), wherein Plaintiffs agreed to release all claims against Cummins and reserved all claims against FCA US;

**WHEREAS**, on September 30, 2023, the Court granted preliminary approval of the Partial Settlement Agreement;

**WHEREAS**, as the result of further extensive, arm’s length negotiations, including a mediation session before Tom McNeill, Plaintiffs, Plaintiffs’ Class Counsel, Cummins, and FCA US have entered into this global Settlement Agreement (the “Agreement”), which is intended to supersede the Partial Settlement Agreement and effectively resolve any remaining issues in the *Raymo* matter;

**WHEREAS**, Plaintiffs’ Class Counsel have investigated the facts and underlying events relating to the subject matter of the claims, have carefully analyzed the applicable legal principles and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs of further prosecution of their claims and taking into account the substantial benefits to be received pursuant to this Agreement as set forth below, which, in the view of the Plaintiffs and Plaintiffs’ Class Counsel, is designed for the purpose of putting to rest all controversies with Defendants alleged in the *Raymo* matter and that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Plaintiffs and the Class;

**WHEREAS**, Defendants deny and continue to deny each and every allegation of liability, wrongdoing and damages, and further denies that the Action may be properly maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding any liability or damages whatsoever and without admitting any wrongdoing and without conceding the appropriateness of class treatment for claims asserted in any future

complaint, Defendants have agreed to settle the Action on the terms and conditions set forth in this Agreement solely to avoid the substantial expense, inconvenience, burden and disruption of continued litigation;

**WHEREAS**, Plaintiffs' Class Counsel represent and warrant that they are fully authorized to enter into this Agreement on behalf of Plaintiffs and the Class and that Plaintiffs' Class Counsel have consulted with and confirmed that all Plaintiffs fully support and have no objection to this Agreement; and

**WHEREAS**, it is agreed that this Agreement shall not be deemed or construed to be an admission, concession or evidence of any violation of any federal, state or local statute, regulation, rule or other law or principle of common law or equity or of any liability or wrongdoing whatsoever by Defendants or any of the Released Parties or of the truth or validity of any of the claims that Plaintiffs have asserted;

**NOW, THEREFORE**, without any admission or concession by Plaintiffs or Plaintiffs' Class Counsel of any lack of merit to their allegations and claims and without any admission or concession by Defendants of any liability or wrongdoing or lack of merit in its defenses on the merits or to the propriety of class treatment of Plaintiffs' claims in a non-settlement context, in consideration of the mutual covenants and terms contained herein and subject to the Final Approval of the Court, Plaintiffs, Plaintiffs' Class Counsel, Cummins, and FCA US agree as follows:

## **II. DEFINITIONS**

A. As used in and solely for the purposes of this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. “Action” means all class, mass and individual actions, however denominated, that were asserted in the United States District Court for the Eastern District of Michigan in *Raymo et al. vs. FCA US LLC and Cummins Inc.*, Case No. 1:13-cv-05795 (E.D. Mich.), before the Honorable Judge Terence G. Berg.

2. “Agreement” means this Settlement Agreement and Release as well as the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments.

3. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to compensate any and all attorneys representing parties who claim to have assisted in conferring benefits upon the Class, as described in Section IV of this Agreement.

4. “Claim” means the claim of a Class Member or his, her, or its representative.

5. “Class” means, for settlement purposes only:

All persons and entities who purchased or leased a new 2013, 2014, or 2015 Dodge Ram 2500 or 3500 truck with Cummins Diesel between November 26, 2014 to July 13, 2016 in the following states: Alabama, Colorado, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, and Washington.

Excluded from the Settlement Class are: Cummins and FCA; any affiliate, parent, or subsidiary of Cummins or FCA US; any entity in which Cummins or FCA US has a controlling interest; any officer, director, or employee of Cummins or FCA US; any successor or assign of Cummins or FCA US; and any judge to whom this Action is assigned, and his or her spouse; individuals and/or entities who validly and timely opt out of the settlement; Class Members who previously released their claims in an individual settlement with respect to the issues raised in the Action.

6. “Class Action Settlement Administrator” means the third-party agent or administrator agreed to by the Parties and appointed by the Court to implement the notice and other settlement requirements of this Agreement including but not limited to issuing checks in the appropriate amounts to each Class Member for that Class Member’s share of the Settlement



Fund, subject to the Court's approval. The Parties agree that JND Legal Administration shall serve as Class Action Settlement Administrator, subject to approval by the Court.

7. "Class Member" means a member of the Class who has not Opted Out of the Class.

8. "Class Notice" means the notice program described in Section V.

9. "Class Period" means November 26, 2014 to July 13, 2016.

10. "Court" means the United States District Court for the Eastern District of Michigan.

11. "Defendants" means Cummins and FCA US, collectively.

12. "Escrow Agent" means the entity proposed by the Parties and designated by the Court to address and hold for distribution the funds identified in this Agreement pursuant to the terms of an Escrow Agreement.

13. "Escrow Account" means the custodial or investment account administered by the Class Action Settlement Administrator in which the funds to be deposited will be held, invested, administered, and disbursed pursuant to this Agreement and an Escrow Agreement.

14. "Escrow Agreement" means the agreement by and among Plaintiffs' Class Counsel, Cummins's Counsel, FCA US's Counsel, and the Class Action Settlement Administrator with respect to the escrow of the funds to be deposited into the Escrow Account pursuant to this Agreement.

15. "Fairness Hearing" means the hearing for the purposes of the Court determining whether to approve this Agreement as fair, reasonable, and adequate.

16. “Final Approval” means an Order entered in the Action granting the Court’s final approval of the Settlement, appointing Plaintiffs’ Class Counsel, and awarding Attorneys’ Fees and Expenses and Incentive Awards, if any, pursuant to Federal Rule of Civil Procedure 23.

17. “Final Effective Date” means the date on which the Final Order and/or Final Judgment approving this Agreement becomes final. For purposes of this Agreement the Final Effective Date will be:

a. The date on which the time to appeal therefrom has expired, if no appeal has been taken from the Final Order and/or Final Judgment; or

b. The date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment, if any appeal has been taken from the Final Order and/or Final Judgment; or

c. Any other date agreed to in writing by Plaintiffs’ Class Counsel, Cummins’s Counsel, and FCA US’s Counsel.

18. “Final Judgment” means the Court’s final judgment as described in Section IX.B of this Agreement.

19. “Final Order” means the Court’s order approving the Settlement and this Agreement, as described in Section IX.B of this Agreement.

20. “Long Form Notice” means the Long Form Notice substantially in the form attached hereto as Exhibit 2.

21. “Net Settlement Fund” means the amount paid by Cummins and FCA US pursuant to this Agreement, less Notice and Administrative Costs, Attorneys’ Fees, and costs of litigation approved by the Court for payment out of the Settlement Fund.

22. “Notice And Administrative Costs” means the reasonable and authorized costs and expenses of effecting notice in accordance with this Agreement and the Preliminary Approval Order and all reasonable and authorized costs and expenses incurred by the Class Action Settlement Administrator in administering the Agreement, including but not limited to costs and expenses associated with assisting Class Members, processing claims, escrowing funds, issuing and mailing awards, paying taxes and tax expenses and other reasonable and authorized fees and expenses of the Class Action Settlement Administrator.

23. “Notice Date” means the first day on which the Class Action Settlement Administrator or its designee disseminates the Short Form Notice.

24. “Opt-Out” means member of the Class who properly and timely submits a request for exclusion from the Class as set forth in Section VI.

25. “Opt-Out List” means the list compiled by the Class Action Settlement Administrator pursuant to Section VI, identifying those members of the Class who properly and timely submits a request for exclusion from the Class.

26. “Opt-Out and Objection Date” means the date, to be set by the Court, by which a request for exclusion from the Class must be filed with the Class Action Settlement Administrator in order for a member of the Class to be excluded from the Class and the date by which Class Members must file objections, if any, to the Settlement.

27. “Parties” means Plaintiffs, Cummins, and FCA US, collectively, as each of those terms is defined in this Agreement.

28. “Plaintiffs” means Jeremy Raymo, Forrest Poulson, Gary Gaster, Brendon Goldstein, Manuel Pena, John Reyes, Dennis Kogler, Clarence “Todd” Johnson, Stephen

Zimmerer, Justin Sylva, Ian Hacker, Jason Gindele, James Blount, Luke Wyatt, Chris Wendel, Darin Ginther, and Matt Baffunno.

29. “Plaintiffs’ Class Counsel” means counsel for Plaintiffs in the Actions, Hagens Berman Sobol Shapiro LLP, Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Seeger Weiss LLP, and The Miller Law Firm, P.C.

30. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement as outlined in Section IX of this Agreement.

31. “Release” means the release and waiver set forth in Section VIII of this Agreement and in the Final Order and Final Judgment.

32. “Released Parties” or “Released Party” means Defendants and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, advertisers, service providers, distributors and sub-distributors, agents, insurers, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

33. “Service Awards” means such funds as may be awarded by the Court to Plaintiffs to compensate them for their participation in the Action, as described in Section IV of this Agreement.

34. “Settlement” means the settlement set forth in this Agreement.

35. “Settlement Fund” means the amount paid by Defendants pursuant to this Agreement.

36. “Short Form Notice” means the Short Form Notice substantially in the form as attached hereto as Exhibit 2.

37. “FAC” means the First Amended Class Action Complaint filed in *Raymo et al. vs. FCA US LLC and Cummins Inc.*, Case No. 1:13-cv-05795 (E.D. Mich.).

38. “Cummins” means Cummins Inc.

39. “Cummins’s Counsel” means Foley & Lardner LLP.

40. “FCA US” means FCA US LLC.

41. “FCA US’s Counsel” means Klein Thomas Lee & Fresard.

B. Other capitalized terms used in this Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

C. All terms defined in this Agreement have the definition asserted herein solely for the purposes of this Agreement.

D. The terms “he or she” and “his or her” include “it” or “its” where applicable.

E. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

### III. SETTLEMENT RELIEF

In consideration for the dismissal of the Action with prejudice as against Defendants, as contemplated in this Agreement, and for the full and complete Release, Final Order and Final Judgment provided below, Defendants agrees to provide the following:

A. **Cummins’ Settlement Consideration.** Pursuant to the terms and conditions set forth herein, Cummins agrees to pay the sum of four million eight hundred thousand United States Dollars (\$4,800,000.00) (“Cummins’ Consideration”).

B. **FCA US's Settlement Consideration.** Pursuant to the terms and conditions set forth herein, FCA US agrees to pay the sum of one million two hundred thousand United States Dollars (\$1,200,000) ("FCA US's Consideration").

C. Together, Cummins's payment of the Cummins' Consideration and FCA US's payment of FCA US's Consideration (collectively, the "Settlement Amount") shall be in full satisfaction of all Settlement costs including, without limitation, all payments to Class Members, Notice and Administrative Costs, Attorneys' Fees and Expenses, Service Awards and Taxes. In no event shall Defendants be obligated to contribute in excess of the Settlement Amount for any aspect of this Settlement.

D. In entering this Agreement, the Plaintiffs, on behalf of the Class, and Cummins acknowledge and agree that the Partial Settlement Agreement is hereby terminated and rendered null and void.

E. The Parties acknowledge that this Settlement Agreement, if finally approved, will result in the dismissal with prejudice of the Action against Defendants by all Class Members.

F. **Establishment of Qualified Settlement Fund.** The Parties shall move the Court to establish and create a Qualified Settlement Fund, pursuant to Internal Revenue Code § 468B and the Regulations issued thereto. Defendants' respective payments for the Settlement Amount shall be made by check or wire transfer into an Escrow Account, as warranted, established and controlled consistent with and pursuant to an Escrow Agreement at a mutually-agreed upon bank. The Escrow Agent shall invest this payment in short-term United States Agency or Treasury Securities (or a mutual fund invested solely in such instruments), or in an account fully insured by United States Government, and shall collect and reinvest any and all interest accrued thereon, if applicable, unless interest rates are such that they would effectively preclude

investment in interest-bearing instruments as defined herein. All (i) taxes on the income of the Escrow Account and (ii) expenses and costs incurred with taxes paid from the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) (collectively, "Taxes") shall be timely paid out of the Settlement Amount and Escrow Account without prior order of the Court. The Parties agree that the Escrow Agent shall be responsible for filing tax returns for the Qualified Settlement Fund and paying from the Escrow Account any Taxes owed with respect to the Qualified Settlement Fund. The Parties hereto agree that the Escrow Account shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Escrow Account as a Qualified Settlement Fund from the earliest date possible.

**G. Cash Payment to Class Members.** The Class Action Settlement Administrator will distribute the Settlement Amount from the Escrow Account in accordance with the terms of this Agreement.

1. The Parties acknowledge that, following preliminary approval of the Partial Settlement Agreement, Cummins deposited \$500,000 in an escrow account to support settlement administration of the Partial Settlement Agreement. As provided in section III.D, above, the Partial Settlement Agreement is hereby terminated and rendered null and void. The Parties hereby agree, with Court approval, to utilize (and transfer if necessary) any funds in the escrow account created for the Partial Settlement Agreement as funding for the Settlement Amount and Escrow Account for this Settlement, with the \$500,000 that Cummins previously deposited into the escrow account credited toward its required Cummins' Consideration due under this Agreement. Within thirty (30) days of the Final Effective Date, Cummins will deposit

into the Escrow Account the remaining sum of \$4,300,000, and FCA US will deposit into the Escrow Account the remaining sum of \$1,200,000, to complete the Settlement Fund.

2. Each Class Member shall be entitled to one *pro rata* share of the Net Settlement Fund for each Eligible Truck, identified by VIN, the Class Member purchased or leased during the Class Period. Thus, a Class Member who purchased one Eligible Truck during the Class Period will be entitled to one *pro rata* share of the Net Settlement Fund, while a Class Member who purchased two Eligible Trucks during the Class Period will be entitled to two *pro rata* shares of the Net Settlement Fund.

3. FCA US agrees to provide a listing of original purchasers and lessees to identify Class Members. Defendants agree to work cooperatively and in good faith with Plaintiffs to obtain documents or data sufficient to identify all Class Members, and if possible, provide available contact information for all Class Members.

4. The Settlement Administrator shall mail checks to each Class Member who has not opted-out of the Settlement in accordance with the terms of this Agreement and any applicable Order entered by the Court for their respective *pro rata* share of the Net Settlement Fund. No claim forms shall be required.

H. **Timing of Cash Payments.** The Class Action Settlement Administrator shall use its best efforts to begin to pay Class Members' shares of the Settlement proceeds by issuing a check to each Class Member within fifteen (15) business days from the date the Settlement Funds become available.

1. **Check Cashing Deadlines & Reissuance.** The checks mailed by the Class Action Settlement Administrator to Class Members shall be valid for one hundred fifteen



(115) days, after which time the checks shall be void. Reissued checks will be valid for ninety (90) days from the reissue date.

2. **Reminder Notices.** Approximately ninety (90) days after the issuance date of a check, a reminder notice will be sent by the Class Action Settlement Administrator to Class Members who have not cashed their checks. The reminder notice shall inform the Class Member of the following: (i) that a check was previously mailed to the Class Member; (ii) that the deadline for cashing the check is one hundred fifteen (115) days from the issuance date of the check; (iii) if the Class Member no longer possesses the check, the Class Member can request a reissuance of the check if it timely notifies the Class Action Settlement Administrator; and (iv) if the check is not cashed before the deadline the funds will be redistributed in accordance with this Settlement Agreement.

3. **Redistribution of Unclaimed Settlement Proceeds.** After all issued and reissued checks have expired, the amounts of all uncashed checks will be returned to the Net Settlement Fund, and any remaining proceeds from the Net Settlement Fund (“Remaining Net Settlement Fund”) will be distributed as follows:

a. The Remaining Net Settlement Fund will first be used to pay any remaining Notice and Administrative Costs.

b. Next, a second distribution will be made to Class Members who cashed their initial checks, provided that the cost of administering such a distribution is less than 50% of the Remaining Net Settlement Fund. Each eligible Class Member’s share of any second distribution will be calculated in the same manner as the initial distribution was calculated (as set forth in Section III.C), except that only Class Members who cashed their initial checks shall be used in calculating the *pro rata* shares for the second distribution.

c. If the cost of administering such a second distribution is greater than 50% of the Remaining Net Settlement Fund or if after a second distribution the Net Settlement Fund has not been exhausted, the remainder of the Net Settlement Fund shall be distributed as *cy pres* to such recipients that are agreed upon by the Parties and reported to the Court. Any recipient of such funds shall be required to provide the Parties and the Court with annual reports, and a final report, on the project(s) or service(s) funded by the *cy pres* award.

#### **IV. ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' SERVICE AWARDS**

A. Plaintiffs will apply for reasonable Service Awards to be paid from the Settlement Fund for the time and efforts spent by Plaintiffs in this matter. Plaintiffs will request Service Awards of \$5,000 for each Plaintiff. Any such awards shall be subject to Court approval and will be paid from the Settlement Fund. Defendants will not object to or contest any awards made pursuant to the terms of this Paragraph.

B. Plaintiffs' Class Counsel will apply to the Court for an award of Attorneys' Fees and Expenses from the Settlement Fund. Plaintiffs' Class Counsel's application for Attorneys' Fees shall not exceed 30% of the Settlement Fund, and shall include time already spent in prosecuting this case and time estimated to be expended through final implementation of this Settlement Agreement. Plaintiffs' Class Counsel will also seek an award of out-of-pocket expenses already incurred in prosecuting this case and estimated expenses through the final implementation of this Settlement Agreement. Any award of Class Counsel Attorneys' Fees and Expenses from the Settlement Fund shall be subject to Court approval and will be paid from the Settlement Fund.

C. Any Attorneys' Fees and Expenses that are awarded by the Court shall be paid to Plaintiffs' Class Counsel immediately upon award, subject to availability of funds in the Escrow Account, notwithstanding the existence of any timely filed objections thereto, or potential from

appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Agreement, or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of Attorneys' Fees and Expenses is reduced or reversed and such order reducing or reversing the award has become final. Plaintiffs' Class Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after (a) receiving from Cummins' Counsel or FCA US's Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of Attorneys' Fees and Expenses has become final. An award of Attorneys' Fees and Expenses is not a necessary term of this Agreement or the Settlement embodied herein. Plaintiffs' Class Counsel may not terminate or cancel this Agreement based on the Court's or any appellate court's ruling with respect to Attorneys' Fees and Expenses.

## **V. NOTICE TO THE CLASS**

### **A. Settlement Notice and Claims Administration.**

1. Notice and Administrative Costs, as agreed to by the Parties, will be paid from the Settlement Fund.
2. If this Agreement does not for any reason achieve a Final Effective Date or is otherwise rescinded, withdrawn, or abrogated before a Final Effective Date, then all amounts that have been paid by Defendants out of the Settlement Fund into Escrow pursuant to Section III.B above that are not necessary to pay Notice and Administrative Costs already incurred shall be returned to Defendants.

3. The Class Action Settlement Administrator shall use its best efforts to send such Notices to the Class as are described in this Agreement, and as may be ordered by the Court.

**B. Components and Cost of Class Notice.**

Class Notice will be accomplished through a combination of the Short Form Notices, notice through the Settlement Website, Long Form Notice, and other applicable notice, each of which is described below, as specified in the Preliminary Approval Order and this Agreement and in order to comply with all applicable laws, including but not limited to, Fed. R. Civ. P. 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule.

**C. Short Form Notices.**

Beginning not later than thirty (30) days after Preliminary Approval, the Class Action Settlement Administrator shall send the Short Form Notices in postcard format, substantially in the form attached hereto as Exhibit 2, by U.S. Mail, proper postage prepaid, to members of the Class identified using Defendants' customer transaction databases. In addition, the Class Action Settlement Administrator shall: (1) re-mail any notices returned by the United States Postal Service with a forwarding address no later than the deadline found in the Preliminary Approval Order and (2) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research such returned mail for better addresses and promptly mail copies of the applicable notice to any better addresses so found. The Class Action Settlement Administrator shall complete the mailing of Short Form Notices to class members no later than fifty-one (51) days after Preliminary Approval.

**D. Settlement Website.**

The Class Action Settlement Administrator shall establish a Settlement Website that will inform Class Members of the terms of this Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court.

**E. Long Form Notice.** The Long Form Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibit 1. The Long Form Notice shall be available on the Settlement Website. The Class Action Settlement Administrator shall send, via first-class mail, the Long Form Notice to those persons who request it in writing or through the toll-free telephone number.

**F. Toll-Free Telephone Number.** The Class Action Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to members of the Class.

**G. Class Action Fairness Act Notice.** The Class Action Settlement Administrator shall send to each appropriate State and Federal official, the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms. The identities of such officials and the content of the materials shall be mutually agreed to by the Parties.

**H. Duties of the Class Action Settlement Administrator.**

1. The Class Action Settlement Administrator shall be responsible for, without limitation: (a) printing, mailing or arranging for the mailing of the Short Form Notices; (b) handling returned mail not delivered to members of the Class; (c) attempting to obtain updated address information for any Short Form Notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Agreement; (e) responding to

requests for Long Form Notice; (f) receiving and maintaining on behalf of the Court any correspondence from members of the Class regarding requests for exclusion and/or objections to the Settlement; (g) forwarding written inquiries to Plaintiffs' Class Counsel or their designee for a response, if warranted; (h) establishing a post-office box for the receipt of any correspondence; (i) responding to requests from Plaintiffs' Class Counsel, Cummins's Counsel, and/or FCA US's Counsel; (j) establishing a website and toll-free voice response unit with message capabilities to which Class Members may refer for information about the Actions and the Settlement; (k) fulfilling any escheatment obligations that may arise; (l) consulting on Class Notice; and (m) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement.

2. If the Class Action Settlement Administrator fails to perform adequately on behalf of Defendants or the Class, the Parties may agree to remove the Class Action Settlement Administrator. Under such circumstances, no Party shall unreasonably withhold consent to removing the Class Action Settlement Administrator, but this event shall occur only after Cummins's Counsel, FCA US's Counsel, and Plaintiffs' Class Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Class Action Settlement Administrator in good faith, and, if they are unable to do so, after the matter has been referred to the Court for resolution.

3. Subject to the approval of the Parties, the Class Action Settlement Administrator may retain persons and/or entities necessary to assist in the completion of its responsibilities.

4. Not later than thirty (30) days before the date of the Fairness Hearing, the Class Action Settlement Administrator shall file with the Court a document detailing the scope,

method, and results of the notice program along with a list of those persons who have opted out or excluded themselves from the Settlement.

5. The Class Action Settlement Administrator and the Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

## **VI. REQUESTS FOR EXCLUSION**

A. Any member of the Class who wishes to be excluded from the Class must mail a written request for exclusion to the Class Action Settlement Administrator at the address provided in the Long Form Notice, postmarked no later than the date ordered by the Court, specifying that he or she wishes to be excluded from the Settlement and otherwise complying with the terms stated in the Long Form Notice and Preliminary Approval Order. The Class Action Settlement Administrator shall forward copies of any written requests for exclusion to Plaintiffs' Class Counsel, Cummins's Counsel, and FCA US's Counsel. A list reflecting all requests for exclusion shall be filed with the Court by the Class Action Settlement Administrator no later than thirty (30) days before the date of the Fairness Hearing. If a potential Class Member files a request for exclusion, he or she may not file an objection under Section VII. A member of the Class may opt-out on an individual basis only. So-called "mass" or "class" opt-outs, whether filed by third parties on behalf of a "mass" or "class" of class members or multiple class members where no personal statement has been signed by each and every individual Class Member, shall not be allowed.

B. Any member of the Class who does not file a timely written request for exclusion as provided in Section VI.A shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Order and Final Judgment in the Actions, even if

he, she or it has litigation pending or subsequently initiates litigation against Cummins or FCA US relating to the claims released in the Actions.

## **VII. OBJECTIONS TO SETTLEMENT**

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, the award of Attorneys' Fees and Expenses or the individual awards to the Plaintiffs must deliver to Plaintiffs' Class Counsel, Cummins's Counsel, and FCA US's Counsel and file with the Court on a date ordered by the Court a written statement of his or her objections. Any such objection shall include the specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention, any evidence or other information the Class Member wishes to introduce in support of the objections, a statement of whether the Class Member intends to appear and argue at the Fairness Hearing, and the Class Member(s) to which the objection applies. Class Members may do so either on their own or through an attorney retained at their own expense.

B. Any Class Member who files and serves a written objection, as described in the preceding Section VII, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or the Service Awards to Plaintiffs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to one of Plaintiffs' Class Counsel identified in the Class Notice and to Cummins's Counsel and FCA US's Counsel, and file said notice with the Court, on a date ordered by the Court.

C. Any Class Member who fails to comply with the provisions of Sections VI or VII above shall waive and forfeit any and all rights he or she may have to appear separately and/or to



object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, the Final Order and the Final Judgment in the Actions. The exclusive means for any challenge to this Settlement shall be through the provisions of this Section. Without limiting the foregoing, any challenge to the Settlement, Final Approval Order or Final Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

D. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members.

### **VIII. RELEASE AND WAIVER**

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Order and Final Judgment.

B. In consideration of the Settlement and except as stated below in Sections VIII(C) and VIII(I), Plaintiffs and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type regarding the subject matter of the Action, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim of any kind related arising from, related to, connected with, and/or in

any way involving the Action, Defendants' alleged conduct respecting the claims at issue in the Action, that are defined, alleged or described in the FAC, the Action or any amendments of the Action.

C. Notwithstanding the foregoing, Plaintiffs and Class Members are not releasing claims relating to Defendants' performance of the obligations imposed upon them by virtue of this Agreement, or their compliance with the terms of this Agreement.

D. The Final Order and Final Judgment will reflect these terms.

E. Plaintiffs and Class Members expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

F. Plaintiffs and Class Members shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this Settlement.

G. In connection with this Agreement, Plaintiffs and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Actions and/or the Release herein. Nevertheless, it is the intention of Plaintiffs' Class Counsel and Class Members in executing this Agreement fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Actions, except as otherwise stated in this Agreement.

H. Plaintiffs expressly understand and acknowledge, and all Plaintiffs and Class Members will be deemed by the Final Order and Final Judgment to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

I. The Parties acknowledge that the following cases have been filed: *Biederman, et al., v FCA US LLC and Cummins Inc.*, Case No. 1-23cv6640 (“Biederman”); *People of the State of California v. Cummins, Inc.*, Case No. 1:24- cv-0090 (“Federal Consent Decree Litigation”); and *People of the State of California v. Cummins, Inc.*, Case No. 1:24- cv-0090 (“CA Consent Decree Litigation”, and collectively, with the Federal Consent Decree Litigation, the “Consent Decree Litigation”). The Parties further acknowledge that the allegations in *Biederman* and the Consent Decree Litigation include certain allegations regarding software updates, running changes, or flash updates in MY 2013-2023 vehicles (“New Flash Claims”). The Parties agree that the release set forth in this Section VIII of this Settlement Agreement does not operate as a release of the New Flash Claims by any Party. Except as expressly set forth herein, Plaintiffs do not waive and expressly preserve any other arguments, positions, defenses, claims, or remedies, including in the Consent Decree Litigation, *Biederman*, and any other litigation. Except as expressly set forth herein, Cummins does not waive and expressly preserves any other arguments, positions, defenses, claims, or remedies, including in the Consent Decree Litigation,

*Biederman*, and any other litigation. Except as expressly set forth herein, FCA US does not waive and expressly preserves any other arguments, positions, defenses, claims, or remedies, including in the Consent Decree Litigation, *Biederman*, and any other litigation.

J. Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions. Class Members receiving payments from the Settlement Fund shall, by cashing the payment check, represent and warrant therein that they are the sole and exclusive owner of all claims that they are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions.

K. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, attorneys' liens, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by any attorneys,

Plaintiffs' Class Counsel, Plaintiffs or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

L. In consideration for the Settlement, Defendants and their past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Approval Order shall have, released Plaintiffs' Class Counsel and each current and former Plaintiffs from any and all causes of action that were asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Action.

M. Plaintiffs, Plaintiffs' Class Counsel and any other attorneys who receive attorneys' fees and costs from this Settlement acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

N. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

O. Plaintiffs and Plaintiffs' Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

**IX. PRELIMINARY APPROVAL ORDER, FINAL ORDER, FINAL JUDGMENT AND RELATED ORDERS**

A. The Parties shall seek from the Court, within fourteen (14) days after the execution of this Agreement or by such time as the Court may set, a Preliminary Approval Order.

The Preliminary Approval Order shall, among other things:

1. Preliminarily approve the Settlement;
2. Require the dissemination of the Notice and the taking of all necessary and appropriate steps to accomplish this task;
3. Determine that the Class Notice complies with all legal requirements, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution;
4. Schedule a date and time for a Fairness Hearing to determine whether the Settlement should be finally approved by the Court;
5. Require that members of the Class who wish to exclude themselves to submit an appropriate and timely written request for exclusion as directed in this Agreement and Long Form Notice and that a failure to do so shall bind those Class Members who remain in the Class;
6. Require Class Members who wish to appear to object to this Agreement to submit an appropriate and timely written statement as directed in the Agreement and Long Form Notice;
7. Require attorneys representing Class Members, at the Class Members' expense, to file a notice of appearance as directed in this Agreement and Long Form Notice;
8. Issue a preliminary injunction enjoining potential Class Members, pending the Court's determination of whether the Settlement should be given Final Approval, from challenging in any action or proceeding any matter covered by this Settlement, except for proceedings in this Court to determine whether the Settlement will be given Final Approval;
9. Appoint the Class Action Settlement Administrator;

10. Authorize Defendants to take all necessary and appropriate steps to establish the means necessary to implement the Agreement; and

11. Issue other related orders to effectuate the preliminary approval of the Agreement.

B. After the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment. The Final Order and Final Judgment shall, among other things:

1. Find that the Court has personal jurisdiction over all Plaintiffs and Class Members, that the Court has subject matter jurisdiction over the claims asserted in the FAC and the Action, and that venue is proper;

2. Finally approve the Agreement and Settlement, pursuant to Fed. R. Civ. P. 23;

3. Finally certify the Class for settlement purposes only;

4. Find that the notice and the notice dissemination methodology complied with all laws, including, but not limited to, Fed. R. Civ. P. 23 and the Due Process Clause of the United States Constitution;

5. Dismiss the Action with prejudice and without costs (except as provided for herein as to costs) against Defendants;

6. Incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;

7. Issue a permanent injunction enjoining Class Members from challenging in any action or proceeding any matter covered by this Settlement;

8. Authorize the Parties to implement the terms of the Agreement;

9. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and

10. Issue related Orders to effectuate the Final Approval of the Agreement and its implementation.

**X. MODIFICATION OR TERMINATION OF THIS AGREEMENT**

A. Within fifteen (15) days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Agreement:

1. If the Court fails to approve the Agreement as written or if on appeal the Court's approval is reversed or modified;

2. If the Court materially alters any of the terms of the Agreement, except that a reduction in an award of Attorneys' Fees and Expenses or Plaintiffs' Service Awards shall not be deemed to be a material alteration; or

3. If the Preliminary Approval Order or the Final Order and Judgment is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason.

In the event of a withdrawal pursuant to this Paragraph, any certification of a Class for purposes of settlement will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Litigation to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement.

B. If members of the Class properly and timely submit requests for exclusion from the Class as set forth in Section VI, thereby becoming Opt-Outs, and are in a number more than the confidential number submitted to the Court by the Parties under seal at the time of filing the



Motion For Preliminary Approval, then at its sole election, Cummins or FCA US may withdraw from the Settlement and terminate this Agreement. In that event, all of Cummins' or FCA US's obligations under this Agreement shall cease to be of any force and effect, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement. In order to elect to withdraw from the Settlement and terminate this Agreement on the basis set forth in this Paragraph, Cummins or FCA US must notify Class Counsel in writing of its election to do so within ten business days after the Opt-Out List has been served on the Parties. In the event that Cummins or FCA US exercises such right, Class Counsel shall have twenty (20) business days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number of members of the Opt-Out List subsequently becomes and remains fewer than the number of Class Members submitted to the Court under seal at the time of filing the Motion For Preliminary Approval, Cummins or FCA US shall withdraw its election to withdraw from the Settlement and terminate the Agreement. In no event, however, shall Cummins or FCA US have any further obligation under this Agreement to any Opt-Out unless such Class Member withdraws his/her request for exclusion. For purposes of this Paragraph, Opt-Outs shall not include (1) persons who are specifically excluded from the Class; (2) Class Members who elect to withdraw their request for exclusion and (3) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim or any other claim that would otherwise be a Released Claim as defined in this Agreement.

C. In the event of withdrawal by Cummins or FCA US in accordance with the terms set forth in Section X.A. and X.B. above, the Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action and shall not be offered in

evidence or used in any litigation for any purpose, including the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment. In the event of such withdrawal, this Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to Cummins, FCA US, Plaintiffs, and the Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

#### **XI. GENERAL MATTERS AND RESERVATIONS**

A. Defendants have denied and continue to deny each and all of the claims and contentions alleged in the Actions and have denied and continue to deny that they have committed any violation of law or engaged in any wrongful act that was alleged in the Actions. Defendants believe that they have valid and complete defenses to the claims asserted against it in the Actions and deny that they committed any violations of law, engaged in any unlawful act or conduct or that there is any basis for liability for any of the claims that have been, are or might have been alleged in the Actions. Without in any way limiting the scope of this denial, Defendants deny that their actions or omissions were, are or have been in violation of the laws of any state or of the United States. Nonetheless, Defendants have concluded that it is desirable that the Action be fully and finally settled in the matter and upon the terms and conditions set forth in this Agreement.

B. The obligation of the Parties to conclude the proposed Settlement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Order and Final Judgment approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and

2. Any other conditions stated in this Agreement.

C. The Parties and their counsel agree to keep the contents of this Agreement confidential until the date on which the Motion for Preliminary Approval is filed; provided, however, that this Section shall not prevent (1) Defendants from disclosing such information, prior to the date on which the Motion for Preliminary Approval is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys; (2) Defendants from disclosing such information based on the substance of this Agreement; and/or (3) the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement.

D. Plaintiffs and Plaintiffs' Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Plaintiffs nor their counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with the Actions); that it not be the subject of public comment; that it not be used by Plaintiffs or Plaintiffs' Class Counsel in any way in this litigation or otherwise should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Plaintiffs from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Action.

E. Information provided by Defendants, Cummins's Counsel, or FCA US's Counsel to Plaintiffs, Plaintiffs' Class Counsel, any individual Class Member, counsel for any individual Class Member and/or administrators, pursuant to the negotiation and implementation of this Agreement, may include trade secrets and highly confidential and proprietary business information and shall be deemed "Highly Confidential" pursuant to the protective orders that have been or will be entered in the Actions, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon Defendants' request, be promptly returned to Cummins's Counsel and/or FCA US's Counsel, and there shall be no implied or express waiver of any privileges, rights and defenses.

F. Six (6) months after the distribution of the settlement funds to Class Members, the Class Action Settlement Administrator shall return or destroy all documents and materials to Defendants, Cummins Counsel, FCA US's Counsel, and/or Plaintiffs' Class Counsel that produced the documents and materials, except that it shall not destroy any and all information and/or documentation submitted by Class Members. Nothing in this Agreement shall affect any confidentiality order or protective order in the Action.

G. Defendants' execution of this Agreement shall not be construed to release – and Defendants expressly does not intend to release – any claim either Defendant may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs.

H. Plaintiffs' Class Counsel represent that: (1) they are authorized by the Plaintiffs to enter into this Agreement with respect to the claims in these Actions; and (2) they are seeking to protect the interests of the Class.

I. Plaintiffs' Class Counsel further represent that the Plaintiffs: (1) have agreed to serve as representatives of the Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited to, being involved in discovery and fact finding; (3) have read the pleadings in the Actions, including the FAC, or have had the contents of such pleadings described to them; (4) are familiar with the results of the fact-finding undertaken by Plaintiffs' Class Counsel; (5) have been kept apprised of settlement negotiations among the Parties, and have either read this Agreement, including the exhibits annexed hereto, or have received a detailed description of it from Plaintiffs' Class Counsel and they have agreed to its terms; (6) have consulted with Plaintiffs' Class Counsel about the Actions and this Agreement and the obligations imposed on representatives of the Class; (7) have authorized Plaintiffs' Class Counsel to execute this Agreement on their behalf; and (8) shall remain and serve as representatives of the Class until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Plaintiffs cannot represent the Class.

J. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Class Members is given or will be given by the Parties nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

K. Cummins represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Cummins.

L. FCA US represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of FCA US.

M. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Plaintiffs' Class Counsel, Cummins's Counsel, and FCA US's Counsel. The Parties expressly acknowledge that no other agreements, arrangements or understandings not expressed in this Agreement exist among or between them and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

N. This Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of Michigan notwithstanding its conflict of law provisions.

O. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the Eastern District of Michigan.

P. Plaintiffs, Plaintiffs' Class Counsel and all other counsel of record for Plaintiffs, Cummins's Counsel, and FCA US's Counsel hereby agree not to issue any press releases regarding this Settlement or publicize it in any way and further agree not to engage in any communications with the media or the press, on the internet, or in any public forum, orally or in writing, that relate to this Settlement or the Litigation other than statements that are fully consistent with the Class Notice.

Q. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

1. If to Cummins, then to:

Jeffrey A. Soble  
Lauren M. Loew  
**Foley & Lardner LLP**  
321 N. Clark St., Suite 3000  
Chicago, IL 60654  
Telephone: 312-832-4500  
Facsimile: 312-832-4700  
jsoble@foley.com  
lloew@foley.com

Michael D. Leffel  
**Foley & Lardner LLP**  
150 East Gilman Street, Suite 5000  
Madison, WI 53703  
Telephone: 608-257-5035  
Facsimile: 608.258.4258  
mleffel@foley.com

If to FCA US, then to:

Stephen A. D'Aunoy  
Thomas L. Azar, Jr.  
**Klein Thomas Lee & Fresard**  
100 N. Broadway, Suite 1600  
St. Louis, MO 63102  
Telephone: (314) 602-6354  
Steve.daunoy@kleinthomaslaw.com  
Tom.azar@kleinthomaslaw.com

Fred J. Fresard  
Ian Kennedy Edwards  
**Klein Thomas Lee & Fresard**  
101 W. Big Beaver, Suite 1400  
Troy, MI 48084  
Telephone: (248) 840-6314  
Fred.fresard@kelinthomaslaw.com  
Ian.edwards@kleinthomaslaw.com

If to Plaintiffs, then to:

Steve W. Berman  
Garth D. Wojtanowicz  
**Hagens Berman Sobol Shapiro LLP**  
1301 Second Avenue, Suite 2000  
Seattle, Washington 98101  
Telephone: 206-623-7292  
Facsimile: 206-623-0594  
steve@hbsslaw.com  
garthw@hbsslaw.com

Christopher A. Seeger  
**SEEGER WEISS LLP**  
77 Water Street  
New York, NY 10005  
Telephone: (212) 584-0700  
cseeger@seegerweiss.com

James E. Cecchi  
**CARELLA, BYRNE, CECCHI, OLSTEIN,  
BRODY & AGNELLO, P.C.**  
5 Becker Farm Road  
Roseland, NJ 07068  
Telephone: (973) 994-1700  
JCecchi@carellabyrne.com

E. Powell Miller (P39487)  
**THE MILLER LAW FIRM, P.C.**  
950 West University Drive, Suite 300  
Rochester, MI 48307  
Telephone: (248) 841-2200  
epm@millerlawpc.com

R. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the



act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, “Federal Holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States or the Clerk of the United States District Court for the Eastern District of Michigan.

S. The Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

T. The Class, Plaintiffs, Plaintiffs’ Class Counsel, Defendants, Cummins’s Counsel, and/or FCA US’s Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm’s length negotiations. No parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

U. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings

relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Actions, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class or as a waiver by the Released Parties, Plaintiffs or the Class of any applicable privileges, claims or defenses.

V. Plaintiffs expressly affirm that the allegations contained in the FAC were made in good faith, but consider it desirable for the Actions to be settled and dismissed because of the substantial benefits that the proposed settlement will provide to Class Members.

W. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

X. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

Y. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

Z. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

AA. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

BB. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Cummins, FCA US, and Plaintiffs' Class Counsel mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

*Agreed to on the date indicated below.*

APPROVED AND AGREED TO BY:

DATED: May 22, 2024

  
\_\_\_\_\_  
Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Email: [steve@hbsslw.com](mailto:steve@hbsslw.com)

\_\_\_\_\_  
E. Powell Miller  
Sharon S. Almonrode  
THE MILLER LAW FIRM PC  
950 W. University Dr., Ste. 300 Rochester, MI  
48307 Telephone: (248) 841-2200

Z. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

AA. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

BB. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Cummins, FCA US, and Plaintiffs' Class Counsel mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

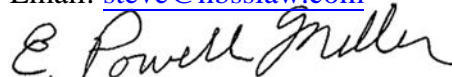
*Agreed to on the date indicated below.*

APPROVED AND AGREED TO BY:

DATED: May 22, 2024

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Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
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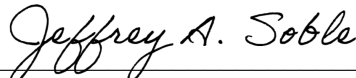
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