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8 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
9 **REGION IX**

75 Hawthorne Street
10 San Francisco, California 94105

11 IN THE MATTER OF:) DOCKET NO. CAA-09-2018-0005
)
12 PIAGGIO GROUP AMERICAS, INC.,) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
13 Respondent.)
14)

15 **CONSENT AGREEMENT**

16 **A. Preliminary Statement**

17 1. This is a civil administrative penalty assessment proceeding instituted under
18 section 205(c)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7524(c)(1), and 40 C.F.R. Part 22.

19 2. The United States Environmental Protection Agency (“EPA”), Region IX and
20 Piaggio Group Americas, Inc., (“Respondent”) (collectively the “Parties”) agree to settle this
21 matter and consent to the entry of this consent agreement and Final Order (“CAFO”) which
22 commences this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). Pursuant
23 to 40 C.F.R. § 22.18(b)(3), this proceeding will conclude upon the issuance of a final order by
24 the Regional Judicial Officer.

25 //

1 3. Complainant is the Assistant Director of the Air, Waste & Toxics Branch of the
2 Enforcement Division, United States Environmental Protection Agency, Region IX (“EPA”),
3 who has been duly delegated the authority to initiate and settle civil administrative penalty
4 proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-19
5 (January 18, 2017); EPA, Region IX Redelegation R9-7-19 (October 5, 2017).

6 4. Respondent is Piaggio Group Americas, Inc., a motor vehicle manufacturer, as
7 defined at 42 U.S.C. § 7550(1), headquartered at 257 Park Avenue South, New York, NY 10010.

8 **B. Jurisdiction**

9 5. Pursuant to section 205(c)(1) of the CAA, 42 U.S.C. § 7424(c)(1), EPA has
10 determined that it is appropriate to pursue administrative action in this matter.

11 6. The Regional Judicial Officer is authorized to issue consent orders memorializing
12 settlements between EPA and Respondent resulting from administrative enforcement actions
13 under the CAA, and to issue final orders assessing penalties. 40 C.F.R. § 22.18(b)(2).

14 **C. Applicable Statutes and Regulations**

15 7. This proceeding arises under Part A of Title II of the CAA, sections 202 to 219,
16 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce
17 emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and
18 carbon monoxide.

19 8. “Motor vehicle” means any self-propelled vehicle designed for transporting
20 persons or property on a street or highway. CAA section 216(2), 42 U.S.C. § 7550(2).

21 9. “Motorcycle” means any motor vehicle with a headlight, taillight, and stoplight
22 and having: two wheels, or three wheels and a curb mass less than or equal to 793 kilograms
23 (1749 pounds). 40 C.F.R. § 86.402-98.

24 10. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits manufacturers
25 and persons from selling, offering for sale, or introducing or delivering for introduction into

1 commerce any new motor vehicle or new motor vehicle engine unless the vehicle or engine is
2 covered by a certificate of conformity (“COC”) in effect and issued by EPA under regulations
3 prescribed by the CAA.

4 11. A COC covers only those vehicles which conform, in all material respects, to the
5 design specifications that applied to those vehicles described in the documentation required by
6 40 C.F.R. Part 86.

7 12. Section 203(a)(2)(A) of the CAA prohibits any person from failing to make
8 reports or provide information required under CAA § 208, 42 U.S.C. § 7542.

9 13. Section 208(a) of the CAA provides that manufacturers of new motor vehicles are
10 required to make reports and provide information the EPA Administrator may reasonably require
11 to determine whether the manufacturer has acted in compliance with the Motor Vehicle Emission
12 and Fuel Standards requirements of the CAA, 42 U.S.C. §§ 7521-7554.

13 14. Among the information required in an application for a COC is a description of
14 “the vehicles covered by the application [and] their engine, emission control system and fuel
15 system components.” 40 C.F.R. § 86.416-80(a)(2)(i).

16 15. Section 207(c)(3)(C) of the CAA provides that the manufacturer shall indicate by
17 means of a label or tag permanently affixed to such vehicle that such vehicle is covered by a
18 COC.

19 16. Section 203(a)(4)(A) of the CAA, 42 U.S.C. § 7522(a)(4)(A) prohibits any
20 manufacturers from selling new motor vehicles unless a label or tag is affixed to the vehicle in
21 accordance with CAA § 207(c), 42 U.S.C. § 7541(c).

22 17. Pursuant to CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1) EPA may assess an
23 administrative penalty for violations of CAA § 203.

24 **D. Statement of Facts**

25 18. Respondent is a person as defined by CAA § 302(e), 42 U.S.C. § 7602(e).

1 19. Respondent is a manufacturer of motor vehicles as defined by CAA § 216(1),
2 42 U.S.C. § 7550(1).

3 20. Respondent obtained COCs in Model Years 2013 through 2018 for several
4 models of motorcycles with an engine size under 50cc.

5 21. Respondent's applications for the COCs in Model Years 2013 through 2017 did
6 not describe the resonator hole in the exhaust system of these under 50cc vehicles.

7 22. Respondent imported and/or sold at least 5,009 under 50cc motorcycles which are
8 subject to Title II of the CAA and certification requirements of 40 C.F.R. Part 86 between 2013
9 and 2017.

10 23. All of these under 50cc motorcycles imported and/or sold between 2013 and 2017
11 contained a resonator hole in the exhaust system.

12 24. 2,638 of the under 50cc motorcycles Respondent imported between 2013 and
13 2017 contained catalysts that were materially different than those specified by Respondent in the
14 applicable applications for certification.

15 25. Between 2013 and 2017 respondent sold 2,666 motorcycles with labels which
16 were not permanently affixed.

17 26. Between September 2016 and February 2017, EPA conducted inspections of
18 motorcycles imported by Respondent into the U.S.

19 27. Upon inquiry by EPA, Respondent sent letters describing the resonator hole on
20 February 27, 2017.

21 28. Respondent subsequently provided design details for the resonator hole in its
22 COC applications for Model Year 2018.

23 29. Respondent provided additional information, upon request by EPA on September
24 11, November 17, and December 22, 2017.

25 //

1 **E. Allegations**

2 30. EPA alleges that on at least 5,009 occasions since 2013, Respondent violated
3 CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1), by importing and selling motor vehicles in the US
4 which did not conform in all material respects to the relevant EPA issued COC. Specifically,
5 EPA alleges that Respondent sold or imported for sale 5,009 motorcycles that contained a
6 resonator hole that was not described in Respondent's application for the COC, and 2,638 of
7 those motorcycles also contained a catalyst that was materially different than from the
8 description in the relevant COC application.

9 31. EPA alleges that on 14 occasions since 2013, Respondent violated CAA §
10 203(a)(2)(A), 42 U.S.C. § 7522(a)(2)(A), by failing to provide EPA with a full and accurate
11 description of a vehicle's engine, emission control system and fuel system components, as
12 required in an application for certification.

13 32. EPA alleges that on at least 2,666 occasions, Respondent violated
14 CAA § 203(a)(4)(A), 42 U.S.C. § 7522(a)(4)(A), by selling motorcycles with labels that were
15 not permanently affixed.

16 **F. Terms of Agreement**

17 33. Based on analysis of the factors specified in Section 205(c) of the CAA,
18 consideration of EPA's Clean Air Act Mobile Source Penalty Policy, dated January 2009, the
19 facts of this case, and Respondent's cooperation in providing information requested by EPA,
20 EPA has determined an appropriate civil penalty to settle this action is \$240,000. Respondent
21 agrees to pay this civil penalty in settlement of this proceeding.

22 34. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),
23 Respondent:

- 24 (a) admits the jurisdictional allegations in this CAFO;
25 (b) admits the facts stipulated in Section D;

- 1 (c) neither admits nor denies the specific factual allegations in Section E;
2 (d) consents to the assessment of a civil penalty as stated below; and
3 (e) consents to the conditions specified in this CAFO.

4 35. For the purpose of this proceeding, Respondent:

5 (a) agrees that this Consent Agreement states a claim upon which relief may be
6 granted against Respondent;

7 (b) waives any and all remedies, claims for relief and otherwise available rights to
8 judicial or administrative review that Respondent may have with respect to any
9 issue of fact or law set forth in this Consent Agreement, including any right of
10 judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. §
11 7607(b)(1);

12 (c) waives any rights it may possess at law or in equity to challenge the authority
13 of the EPA to bring a civil action in a United States District Court to enforce this
14 Agreement or Order, or both, and to seek an additional penalty for such
15 noncompliance, and agrees that federal law shall govern in any such civil action;

16 (d) consents to personal jurisdiction in any action to enforce this Agreement or
17 Order, or both, in the United States District Court for the Northern District of
18 California;

19 (e) agrees that Respondent may not delegate duties under this Consent Agreement
20 to any other party without the written consent of the EPA, which may be granted
21 or withheld at EPA's unfettered discretion. If the EPA so consents, the Consent
22 Agreement is binding on the party or parties to whom the duties are delegated;

23 (f) acknowledges that this Agreement constitutes an enforcement action for
24 purposes of considering Respondent's compliance history in any subsequent
25 enforcement actions;

1 (g) acknowledges that this Consent Agreement and attached Final Order will be
2 available to the public and agree that it does not contain any confidential business
3 information or personally identifiable information;

4 (h) acknowledges that its tax identification number may be used for collecting or
5 reporting any delinquent monetary obligation arising from this CAFO (see
6 31 U.S.C. § 7701);

7 (i) certifies that the information it has supplied concerning this matter was at the
8 time of submission true, accurate, and complete; and

9 (j) acknowledges that there are significant penalties for knowingly submitting
10 false, fictitious, or fraudulent information, including the possibility of fines and
11 imprisonment (see 18 U.S.C. § 1001).

12 36. For purposes of this proceeding, the parties each agree that:

13 (a) this Consent Agreement constitutes the entire agreement and understanding of
14 the parties and supersedes any prior agreements or understandings, whether
15 written or oral, among the parties with respect to the subject matter hereof;

16 (b) this Consent Agreement may be signed in any number of counterparts, each of
17 which will be deemed an original and, when taken together, constitute one
18 agreement; the counterparts are binding on each of the parties individually as fully
19 and completely as if the parties had signed one single instrument, so that the
20 rights and liabilities of the parties will be unaffected by the failure of any of the
21 undersigned to execute any or all of the counterparts; any signature page and any
22 copy of a signed signature page may be detached from any counterpart and
23 attached to any other counterpart of this Consent Agreement.

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25 //

1 (c) its undersigned representative is fully authorized by the Party whom he or she
2 represents to bind that Party to this Consent Agreement and to execute it on behalf
3 of that Party;

4 (d) each party's obligations under this Consent Agreement and attached Final
5 Order constitute sufficient consideration for the other party's obligations under
6 this Consent Agreement and attached Final Order; and

7 (e) each party will bear their own costs and attorney fees in the action resolved by
8 this Consent Agreement and attached Final Order.

9 37. Respondent agrees to pay a civil penalty of TWO HUNDRED FORTY
10 THOUSAND DOLLARS (\$240,000) within 30 calendar days of the Effective Date of this
11 CAFO.

12 38. Respondent may pay the penalty by check, wire transfer, automated clearing
13 house, or online payment. Payment instructions are provided on the website
14 <https://www.epa.gov/financial/makepayment>.

15 39. Within 24 hours of payment Respondent must provide a letter containing the title
16 and docket number of this action and proof of payment made pursuant to Paragraph 38 to:

17 Regional Hearing Clerk
18 U.S. Environmental Protection Agency
19 Region IX – Office of Regional Counsel (ORC-1)
75 Hawthorne Street
San Francisco, CA 94105

20 Elfego Felix
21 U.S. Environmental Protection Agency
22 Region IX – Enforcement Division (ENF-2-1)
75 Hawthorne Street
23 San Francisco, CA 94105
felix.elfego@epa.gov (electronic copy)

24 "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or
25 debit card payment, confirmation of wire or automated clearinghouse transfer, and any other

1 information required to demonstrate that payment has been made according to the EPA
2 requirements.

3 40. If Respondent fails to pay the civil administrative penalty specified in Paragraph
4 38 of this CAFO within 30 days of the effective date of this CAFO, then Respondent shall pay to
5 EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day
6 the default continues, upon written demand by EPA.

7 41. If Respondent fails to timely pay any portion of the penalties in Paragraphs 38 or
8 39 of this CAFO, EPA may:

9 (a) refer the debt to a credit reporting agency or a collection agency,
10 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

11 (b) request that the Attorney General bring a civil action in an appropriate district
12 court to recover: the amount assessed; interest at rates established pursuant to
13 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses and
14 administrative costs for handling and collecting Respondent's overdue debt;
15 and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

16 (c) collect the debt by administrative offset (i.e., the withholding of money
17 payable by the United States to, or held by the United States for, a person to
18 satisfy the debt the person owes the Government), which includes, but is not
19 limited to, referral to the Internal Revenue Service for offset against income
20 tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

21 (d) suspend or revoke Respondent's licenses or other privileges, or suspend or
22 disqualify Respondent from doing business with EPA or engaging in
23 programs EPA sponsors or funds, 40 C.F.R. § 13.17.

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1 **G. Effect of Consent Agreement and Attached Final Order**

2 42. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO
3 resolves only Respondents' liability for federal civil penalties for the violations and facts
4 specifically alleged above.

5 43. Penalties paid pursuant to this CAFO shall not be deductible for purposes of
6 federal taxes.

7 44. Nothing in this CAFO shall relieve Respondent of the duty to comply with all
8 applicable provisions of the CAA and other federal, state, or local laws, nor shall it restrict EPA's
9 authority to seek compliance with any applicable laws or regulations, nor shall it be construed to
10 be a ruling on, or determination of, any issue related to any federal, state, or local permit.

11 45. EPA reserves the right to revoke this Consent Agreement and accompanying
12 settlement penalty if and to the extent EPA finds, after signing this CAFO, that any information
13 provided by Respondents was materially false or inaccurate at the time such information was
14 provided to EPA, and EPA reserves the right to then assess and collect any and all civil penalties
15 for any violation described herein. EPA shall give Respondents notice of its intent to revoke,
16 which shall not be effective until received by Respondents in writing.

17 46. Nothing in this CAFO, whether express or implied, is intended or will be
18 construed to confer on or give to any party, other than the EPA and Respondents, any rights,
19 remedies, or other benefits.

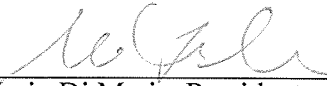
20 **H. Effective Date**

21 47. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall
22 become effective on the date that the Final Order contained in this CAFO, having been approved
23 and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

24 48. This CAFO shall terminate only after Respondent has complied with all
25 requirements of the CAFO and after EPA has issued a written notice of termination.


1 FOR THE CONSENTING PARTIES:

2 PIAGGIO GROUP AMERICAS, INC.:

3 
4 Mario Di Maria, President and CEO
5 Piaggio Group Americas, Inc.
6 257 Park Avenue South, 4th Floor
7 New York, NY 10010

Date: 8/6/2018

7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

8 
9 Joel E. Jones
10 Assistant Director, Air Waste & Toxics Branch
11 Enforcement Division, Region IX
12 U.S. Environmental Protection Agency
13 75 Hawthorne Street
14 San Francisco, CA 94105

Date: 8-14-18

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
2 **REGION IX**

3 75 Hawthorne Street
4 San Francisco, California 94105

5 IN THE MATTER OF:)

DOCKET NO. CAA-09-2018-0005

6 PIAGGIO GROUP AMERICAS, INC.)

CONSENT AGREEMENT

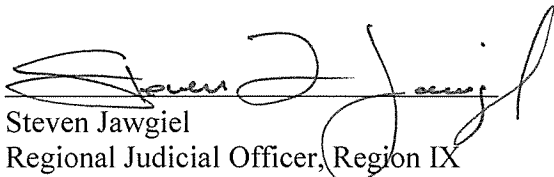
7 Respondent.)

AND
FINAL ORDER

8 **FINAL ORDER**

9 The United States Environmental Protection Agency ("EPA"), Region IX and
10 Piaggio Group Americas, Inc., ("Respondent"), having entered into the foregoing Consent
11 Agreement,

12 It Is Hereby Ordered that this Consent Agreement and Final Order be entered, and that
13 Respondent shall pay a civil penalty in the amount of TWO HUNDRED FORTY THOUSAND
14 DOLLARS (\$240,000) in accordance with the terms of this Consent Agreement and Final Order.

15 
16 Steven Jawgiel
17 Regional Judicial Officer, Region IX
18 U.S. Environmental Protection Agency

Date: 08/20/18

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In re Piaggio Group Americas, Inc.

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Piaggio Group Americas, Inc. (**Docket No. CAA-09-2018-~~0005~~**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mario Di Mario
President and CEO
Piaggio Group Americas, Inc.
257 Park Avenue South, 4th Floor
New York, New York 10010

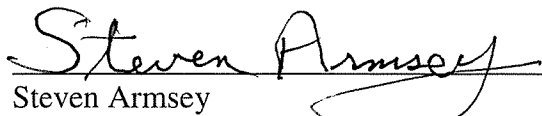
By U.S. Postal Service to:

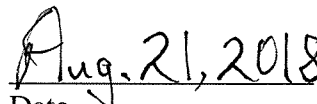
Wendy Feng
Covington & Burling LLP
One Front Street
San Francisco, California 94111

Gary Guzy
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Kimberly Wells
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105


Steven Armsey
Regional Hearing Clerk Signature


Date