

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Mr. Muffler, Inc. (hereinafter "MMI"), 2121 Rustin Avenue, Riverside, California 92507.

## I. RECITALS

- (1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure," California Code of Regulations (CCR), title 13, sections 2700-2711) provides in section 2702 that if the Executive Officer of the ARB grants verification of a diesel emission control strategy, he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the diesel emission control strategy to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.
- (2) California Vehicle Code (CVC) section 27156 provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system. An exemption from CVC section 27156 is required before any add-on or modified part can be sold in California. Aftermarket parts exemptions are regulated under title 13 CCR, sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225 (Aftermarket Parts Regulations).
- (3) The Verification Procedure provides in section 2706(u) that any party that installs a diesel emission control strategy must be authorized and trained by the party that holds the verification for the diesel emission control strategy.
- (4) CCR, title 13, section 2711(b) states that no person shall sell, offer to sell, or introduce into commerce any ARB verified diesel emission control strategy unless all of the conditions of the governing EO and this chapter are met.
- (5) CCR, title 13, section 2711(d) states that no person shall represent a device as being an ARB verified diesel emission control strategy unless it has received verification pursuant to this article.
- (6) If a diesel emission control strategy or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the diesel emission control strategy is not verified for that application, rendering it an illegal, non-exempt add-on part.
- (7) The ARB Enforcement Division staff, with the cooperation of MMI, has alleged certain violations of the Verification Procedure, the Aftermarket Parts Regulations and of CVC Section 27156. In particular, these alleged violations involve installations and offers to sell Diesel Particulate Filters (DPF) in a non-verified

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configuration. In addition, MMI was not an authorized installer of verified diesel emission control strategy.

- (8) Health and Safety Code (HSC), sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or not to exceed ten thousand dollars (\$10,000) respectively, for each day in which the violation occurs.
- (9) In order to resolve the violations described herein, MMI has taken, or agreed to take, the actions enumerated below under "TERMS AND CONDITIONS." Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (10) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and MMI agree as follows:

### II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against MMI for the violations referred to above, the ARB and MMI agree as follows:

- (1) A payment (check No. 0138 in the amount of nine thousand dollars (\$9,000.00)) has already been submitted on behalf of MMI, the funds shall be distributed as follows:
  - \$6,750.00 to the **Air Pollution Control Fund**.
  - \$2,250.00 to the **Peralta Colleges Foundation**.

**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Tajinder Gill  
Air Resources Engineer  
Air Resources Board, Enforcement Division  
9480 Telstar Ave., Suite 4  
El Monte, CA 91731**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, MMI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the

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penalty is intended to deter and punish MMI for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on MMI through by ARB arising from the facts described in recital paragraphs (1) through (8) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

- (4) All staff responsible for installation and maintenance of diesel exhaust after-treatment systems (DEATS) attend the California Council on Diesel Education and Technology (CCDET II) class (Diesel Exhaust After Treatment and Maintenance), described on the ARB's webpage <http://www.arb.ca.gov/enf/hdvip/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of DEATS. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.
- (5) MMI shall not violate requirements for installers of diesel emission control strategies set forth in CCR, title 13, section 2706 (u).
- (6) MMI shall not represent a device as being an ARB verified diesel emission control strategy unless it has received verification (CCR, title 13, section 2711 (d)).
- (7) MMI shall recall all unauthorized installations, restore the vehicles to OEM configurations and reimburse the owners in full amounts. First filter shall be recalled within 45 days of execution of this agreement. Thereafter, one filter shall be recalled every 45 days until all unauthorized installations have been recalled. Proof of the first recalled filter shall be submitted to ARB within 45 days of execution of this agreement. Thereafter, proof of each and every recalled filter shall be submitted to ARB until the recall has been completed.
- (8) MMI shall not violate any provision of the CVC section 27156.
- (9) MMI shall not violate Aftermarket parts exemption procedures established in CCR, title 13, sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (10) MMI shall not violate the Verification Procedure (CCR, title 13, sections 2700-2711) or any EOs issued by ARB.

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- (11) MMI shall not advertise, sell, lease, or offer for sale or lease, a used verified diesel emission control strategy pursuant to CCR, title 13, section 2706(i)(3)(G).
- (12) MMI shall comply with the diesel emission control strategy warranty requirements set forth in the title 13 CCR, section 2707.
- (13) MMI shall not violate the system labeling requirements set forth in title 13 CCR, section 2706 (j).
- (14) This Agreement constitutes the entire agreement and understanding between ARB and MMI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and MMI concerning the subject matter hereof.
- (15) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (16) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (17) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (18) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (19) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (*see HSC section 39619.7*). This information, which is provided throughout this settlement agreement, is summarized here.

### **The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in section 43024.

The per violation penalty in this case is a maximum of \$1,000 per day for strict liability violations and \$10,000 per day for negligent or intentional violations. The penalty of \$9,000.00 over an unspecified number of days of violation is \$7240.95

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for installing 9 DPFs in a non-verified configuration and \$1,759.05 for offering for sale 16 DPFs in a non-verified configuration. In this case, the per violation penalty is \$804.55 for installing a DPF in a non-verified configuration and \$109.94 for offering for sale a DPF in a non-verified configuration. This penalty was calculated by considering all factors specified in HSC sections 42403 and 43024.

The penalty was discounted due to extreme financial hardship and based on the fact that this is an innocent, first time violation, MMI has cooperated with the investigation, and has developed a comprehensive compliance and recall plan.

### **The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is HSC section 39674 because MMI failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, title 13, CCR, sections 2700-2711, which was adopted under authority of HSC section 39600, et seq.

### **Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (20) MMI acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.
- (21) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered

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together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

- (22) The penalty in this case was based in part on confidential business information provided by MMI that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and MMI that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against MMI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MMI may have secured from its actions.
- (23) Now therefore, in consideration of the payment on behalf of MMI to the Air Pollution Control Fund and the Peralta Colleges Foundation, the ARB hereby releases MMI and their principals, officers, agents, predecessors and successors from any and all claims for past violations of the Verification Procedure, the Aftermarket Parts Regulations and of CVC Section 27156 alleged in recital paragraph 7. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Mr. Muffler, Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: James R. Ryden


Print Name: \_\_\_\_\_

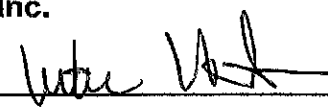
Title: Chief, Enforcement Division

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

  
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