

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Duramax Store, Inc. (hereinafter "DMAX"), with its principal location at 6693 Merchandise Way Diamond Springs, California 95619, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles. (Health & Saf. Code §§ 43000, 43000.5, 43011.)
- (2) Regulation. CARB adopted the "*Add-On Parts and Modified Parts*" Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (Aftermarket Parts Regulation) to ensure that these vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
- (3) Regulatory Provisions. The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanisms that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.) The Executive Officer may issue a cease and desist order and enjoin the sale, import, install, advertising, supply, distribution, or install in California of any aftermarket part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit. 13, § 2225; Health & Saf. Code 43017.) The sale of this product may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3).)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500) for each violation of the Vehicle Code and forty thousand, seven hundred twenty-five dollars (\$40,725) per action, for strict liability violations, respectively, for each day in which the violation occurs. (Cal. Code Regs., tit. 13, §§ 2220-2225; Health & Saf. Code, §§ 43008.6, 43016; Vehicle Code § 27156.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, DMAX was organized under the laws of California as a Corporation and conducted business in the State of California.

- (6) **Allegations.** This Settlement Agreement resolves Notice of Violation (NOV) EPES-2020-C00134 which was issued on September 24, 2020. CARB alleges DMAX violated the Aftermarket Parts Regulation by advertising, offering for sale, selling, or installing 249 air intakes, exhaust gas regulation (EGR) coolers, exhausts, manifold/up pipes, tuners, turbochargers, turbo downpipes, intercooler downpipes, diesel exhaust fluid relocation kit, and fuel pumps, resulting in 249 violations. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against DMAX for each and every vehicle involved in the violations and each day.
- (7) **Acknowledgment.** DMAX admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) **Consideration.** 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, DMAX has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against DMAX for the alleged violations referred to above in the Legal Background and Case Background, and DMAX's agreement to complete all terms and conditions set forth below, CARB and DMAX agree as follows:

- (9) **Settlement Amount.** DMAX shall pay a civil penalty of sixty-two thousand, two hundred fifty dollars (\$62,250.00 USD). DMAX shall make all payments in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule).
- (10) **Payment Plan and Schedule.** Pursuant to this Settlement Agreement, DMAX shall make payments below.

Payment Due Date:	In the Amount Of and Payable To:	
Within thirty (30) days of the Effective Date	\$15,562.50	California Air Resources Board
October 8, 2021	\$15,562.50	California Air Resources Board
January 10, 2022	\$15,562.50	California Air Resources Board
April 8, 2022	\$15,562.50	California Air Resources Board

- (11) Civil Penalty Payment Method. DMAX shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. DMAX is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to DMAX in accordance with Paragraph 14 (Notices).
- (12) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (13) Documents. DMAX shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 14 (Notices).
- (14) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Engine and Parts Enforcement Section
9480 Telstar Avenue, Suite 4
El Monte, California 91731
Settlement_Agreement@arb.ca.gov

As to Duramax Store:
Duramax Store, Inc.
6693 Merchandise Way
Diamond Springs, California 95619

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (15) Repeat Violations. DMAX agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 34 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds DMAX, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (21) Choice of Law. This Settlement 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.
- (22) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (23) Not Tax Deductible. For purposes of this Settlement Agreement, DMAX shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.

- (24) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (25) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (26) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (27) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (28) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (29) Release. In consideration of the full completion of civil penalty and all other undertakings above, CARB hereby releases DMAX and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (30) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (31) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty thousand, seven hundred twenty-five dollars (\$40,725) per action under Health and Safety Code section 43016, and/or one thousand, five hundred dollars (\$1,500) per unit under California Health and Safety Code section 43008.6, for

violations of the Aftermarket Parts Regulation and Vehicle Code section 27156. (Cal. Code Regs., tit.13, §§ 2220-2225.) The penalty of \$62,250.00 over an unspecified number of days of violation is for 249 noncompliant aftermarket parts. The per unit penalty in this case is approximately \$250 per noncompliant unit.

- (32) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. Since CARB has alleged that the product did not meet the regulatory requirements, the emissions above the specified limit were excess and illegal.
- (33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by DMAX and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: 7/23/2021

Duramax Store, Inc.

Signature: /S/

Name: Michael Durand

Title: President

Date: 7/12/2021