

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 K 2 Motor Corp., dba Spec-D Tuning ("K 2 Motor Corp."), with its principal location at 21901 Ferrero Parkway, City of Industry, California 91789 (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, 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 (\$1,500.00 USD) for each violation of the Vehicle Code and thirty-seven thousand, five hundred dollars (\$37,500.00 USD) per action, for strict liability violations, respectively. (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, K 2 Motor Corp. 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-2019-C00237, which was issued on October 3, 2019. CARB alleges K 2 Motor Corp. violated the Aftermarket Parts Regulation and Vehicle Code by advertising, offering for sale, and selling 2,203 non-exempted aftermarket parts, resulting in 2,203 violations, as outlined in Notice of Violation # EPES-2019-C00237. CARB alleges that if the allegations described in paragraphs (1) through (6) were proven, civil penalties could be imposed against K 2 Motor Corp. for each and every non-exempted aftermarket part involved in the violations.
- (7) **Acknowledgment.** K 2 Motor Corp. 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, K 2 Motor Corp. 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 K 2 Motor Corp. for the alleged violations referred to above in the Legal Background and Case Background, and K 2 Motor Corp.'s agreement to complete all terms and conditions set forth below, CARB and K 2 Motor Corp. agree as follows:

- (9) **Settlement Amount.** K 2 Motor Corp. shall pay a civil penalty of forty-four thousand, three hundred forty-eight dollars (\$44,348.00 USD), and agrees to fund a Supplemental Environmental Project entitled SEI Air Quality Education Program - San Diego (SEP) in the amount of forty-four thousand, three hundred forty-eight dollars (\$44,348.00 USD), consistent with CARB's SEP Policy, for a total settlement of eighty-eight thousand, six hundred ninety-six dollars (\$88,696.00 USD). K 2 Motor Corp. 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, K 2 Motor Corp. shall make the payments below.

Payment Due Date:	In the Amount Of and Payable To:
Within thirty (30) calendar days following the Effective Date	\$44,348 Strategic Energy Innovations

Within one hundred twenty (120) calendar days following the Effective Date	\$11,087 California Air Resources Board
Within two hundred ten (210) calendar days following the Effective Date	\$11,087 California Air Resources Board
Within three hundred (300) calendar days following the Effective Date	\$11,087 California Air Resources Board
Within three hundred ninety (390) calendar days following the Effective Date	\$11,087 California Air Resources Board

- (11) **Civil Penalty Payment Method.** K 2 Motor Corp. 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. K 2 Motor Corp. 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 K 2 Motor Corp. in accordance with Paragraph (17) (Notices).
- (12) **SEP Payment Method(s).** K 2 Motor Corp. shall fund the SEP by wire transfer or check, payable to the SEP implementer/recipient, Strategic Energy Innovations, using instructions provided separately by CARB in a Payment Transmittal Form. K 2 Motor Corp. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to K 2 Motor Corp. in accordance with Paragraph (17) (Notices).
- (13) **Prohibition Against Financial Benefit.** K 2 Motor Corp. has agreed that by funding the SEP entitled SEI Air Quality Education Program - San Diego, K 2 Motor Corp. will not receive any direct or indirect financial benefit, and that whenever K 2 Motor Corp. publicizes or refers to the SEP or the results of the SEP, K 2 Motor Corp. will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) **Assignment of Rights.** In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit

any such recovery into the Air Pollution Control Fund. Accordingly, K 2 Motor Corp. assigns any and all rights against the SEP implementer to CARB.

- (15) 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.
- (16) Documents. K 2 Motor Corp. shall promptly email or mail the signed and dated Settlement Agreement, copy of proof of each payment of the penalty and SEP, and a copy of the Payment Transmittal Form(s) to the address or email in Paragraph (17) (Notices).
- (17) 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
Vehicle, Parts, Consumer Products Enforcement Branch / Engine and
Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to K 2 Motor Corp.:
K 2 Motor Corp.
21901 Ferrero Parkway
City of Industry, California 91789
bryanc@k2motor.com

As to K 2 Motor Corp. Legal Representation:
Michael C. Ford
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004-2202
mford@swlaw.com

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.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, K 2 Motor Corp. shall pay all costs of investigating and

prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

- (19) Repeat Violations. K 2 Motor Corp. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) 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 8 pages and 38 paragraphs.
- (21) Binding Effect. This Settlement Agreement binds K 2 Motor Corp., 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.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) Not Tax Deductible. For purposes of this Settlement Agreement, K 2 Motor

Corp. 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.

- (28) 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.
- (29) 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.
- (30) 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.
- (31) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (32) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (33) Release. In consideration of the full payment of the civil penalty and SEP, and all other undertakings above, CARB hereby releases K 2 Motor Corp. 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.
- (34) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (35) Per Unit Penalty. The per unit penalty in this case is a maximum of thirty-seven thousand, five hundred dollars (\$37,500.00 USD) per action under Health and Safety Code section 43016, and/or one thousand, five hundred (\$1,500.00 USD) 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 \$88,696.00 is for 2,203 non-exempted aftermarket parts. The per unit penalty in this case is approximately \$40.26. CARB has reduced the civil penalty on the basis of financial burden to the violator, specifically information provided by K 2 Motor Corp. to support its claim that it is unable to pay a higher civil penalty and remain in business.
- (36) 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 aftermarket parts did not meet the regulatory requirements, any emissions resulting from the use of the aftermarket parts were excess and illegal.
- (37) 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.
- (38) Confidential Business Information. CARB based this penalty in part on confidential business information provided by K 2 Motor Corp. 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: 9/27/2021

K 2 Motor Corp., dba Spec-D Tuning

Signature: /S/

Name: Jacky Lau

Title: Executive Director

Date: 9/14/2021