

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 Meyer Distributing, Inc. (Meyer), with its principal location at 560 East 25th Street, Jasper, Indiana 47546 (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 add-on or modified 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 of up to one thousand five hundred dollars (\$1,500.00 USD) for each violation of the Vehicle Code and forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action, for strict liability violations, respectively, for each noncompliant add-on or modified part. (Cal. Code Regs., tit. 13, §§ 2220-2225; Health & Saf. Code, §§ 43008.6, and 43016; and Vehicle Code § 27156.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, Meyer was organized as a corporation under the laws of the State of Indiana and conducted business in the State of California.
- (6) **Allegations.** This Settlement Agreement resolves Notice of Violation (NOV) # EPES-2022-C00436, which was issued on May 31, 2022. CARB alleges Meyer

violated the Aftermarket Parts Regulation by selling non-exempted aftermarket devices, add-on or modified parts, and/or emissions-related parts, resulting in the violations outlined in NOV # EPES-2022-C00436. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Meyer for each and every aftermarket device, add-on or modified part, and emissions-related part involved in the violations.

- (7) Acknowledgment. Meyer 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, Meyer 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 Meyer for the alleged violations referred to above in the Legal Background and Case Background, and Meyer's agreement to complete all terms and conditions set forth below, CARB and Meyer agree as follows:

- (9) Settlement Amount. Meyer shall pay a civil penalty of two hundred eighty-two thousand one hundred twenty-five dollars (\$282,125.00 USD) and agrees to fund two Supplemental Environmental Projects (SEP) entitled Fresno TREES Phase 5 – Outreach Education in the amount of seventy-one thousand four hundred dollars (\$71,400.00 USD), consistent with CARB's SEP Policy; and Diesel Idling Deterrence & Education in LA Unified School District - Phase II in the amount of two hundred ten thousand seven hundred twenty-five dollars (\$210,725.00 USD), consistent with CARB's SEP Policy, for a total settlement of five hundred sixty-four thousand two hundred fifty dollars (\$564,250.00 USD). Meyer shall make all payments within 30 calendar days from the date CARB notifies Meyer of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Meyer shall pay the civil penalty by check, credit card, wire transfer, or CARB payment portal, using instructions provided separately by CARB in a Payment Transmittal Form. Payment shall be made payable to the California Air Resources Board. CARB will deposit the civil penalty amount into CARB's 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. Meyer is responsible for all payment processing fees that are in addition to the civil penalty payments. Payment shall be accompanied by the

Payment Transmittal Form to ensure proper application. At the time payment is made, Meyer shall email CARB with proof of payment, including a copy of the Payment Transmittal Form, to the email address for CARB listed in Paragraph 16 (Notices). Should payment instructions change, CARB will provide notice to Meyer in accordance with Paragraph 16 below (Notices).

- (11) SEP Payment Method(s). Meyer shall fund the SEP entitled Fresno TREES Phase 5 – Outreach Education by wire transfer, payable to the SEP Recipient Administrator, Tree Fresno, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Meyer shall fund the SEP entitled Diesel Idling Deterrence & Education in LA Unified School District - Phase II by wire transfer, payable to the SEP Recipient Administrator, Community Initiatives, using instructions provided separately by CARB in a SEP Payment Transmittal Form. Meyer is responsible for all payment processing fees that are in addition to the SEP payments. Payments shall be accompanied by the SEP Payment Transmittal Form to ensure proper application. At the time the SEP payments are made to the SEP Recipient Administrators, Meyer shall provide CARB with proof of payments being made, including a copy of the SEP Payment Transmittal Forms, using the email address for CARB provided in Paragraph 16 (Notices). Should SEP payment instructions change, CARB will provide notice to Meyer in accordance with Paragraph 16 (Notices).
- (12) Prohibition Against Financial Benefit. Meyer has agreed that by funding the SEPs entitled Fresno TREES Phase 5 – Outreach Education and Diesel Idling Deterrence & Education in LA Unified School District - Phase II, Meyer will not receive any direct or indirect financial benefit, and that whenever Meyer publicizes or refers to the SEPs or the results of the SEPs, Meyer will state that the SEPs are being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipients/Administrators do not fully implement or complete the SEPs in accordance with the terms of the SEP Agreements, CARB shall be entitled to recover the full amount of the SEPs from the SEP implementers, 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, Meyer assigns any and all rights against the SEP implementers to CARB.
- (14) Disclaimer. Meyer shall add one or more of the following disclaimers to all advertised non-exempted devices, add-on or modified parts, and/or emissions-related parts:

- "NOT LEGAL FOR SALE OR USE IN CALIFORNIA. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."

(15) Documents. Meyer shall promptly email the signed and dated Settlement Agreement directly to the CARB Enforcement Investigator managing the settlement or to the CARB email address provided in Paragraph 16 (Notices); alternatively, Meyer may mail the signed and dated Settlement Agreement to the address provided in the Payment Transmittal Form.

(16) 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 (Send Proof of Payment)

As to Meyer:

Meyer Distributing, Inc.
560 East 25th Street
Jasper, Indiana 47546
Julia.HeitzCassidy@meyerdistributing.com

As to Meyer's Legal Representation:

William J. Sauers
King & Spalding LLP
1700 Pennsylvania Avenue, NW Suite 900
Washington, D.C. 20006
WSauers@kslaw.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.

- (17) Repeat Violations. Meyer agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 9 pages and 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds Meyer, 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.
- (20) Effective Date. The effective date shall be the last date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.

- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of full payment of the civil penalty, SEP payments, and all other undertakings above, CARB hereby releases Meyer 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.

- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (32) Per Unit Penalty. The per unit penalty in this case is up to a maximum of forty thousand seven hundred twenty-five dollars (\$40,725.00 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 \$564,250.00 is for 2,257 noncompliant aftermarket devices, add-on, or modified parts, and/or emissions-related parts. The per unit penalty in this case is \$250.00 per noncompliant aftermarket device, add-on, or modified part, and/or emissions-related part.
- (33) 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 products did not meet the regulatory requirements, the emissions were excess and illegal.
- (34) 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.
- (35) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Meyer or confidential settlement communications.

(36) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Meyer with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Meyer with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Meyer to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Meyer shall not assert, and will not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Meyer or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Meyer, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Meyer is responsible

for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Meyer's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Meyer's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/
Name: Steven S. Cliff, Ph.D.
Title: Executive Officer
Date: October 9, 2023

Meyer Distributing, Inc.

Signature: /S/
Name: Jeffrey M Braun
Title: Chief Executive Officer
Date: August 31, 2023