

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office at 1001 I Street, Sacramento, California, 95814, and JEG'S AUTOMOTIVE, INC. (hereinafter "JEGS") with its principal place of business at 101 Jegs Place, Delaware, Ohio 43015, collectively, "The Parties." This Agreement shall be effective on the date last executed below ("Effective Date").

RECITALS

1. California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system."
2. VC section 27156(h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. California Code of Regulations, title 13, section 2222(b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisements contains a legally adequate disclaimer."
4. California Code of Regulations, title 13, section 2222(e) provides, "The Executive Officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the 'Procedures for Exemption of Add-on and Modified Parts.' [The Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."
5. The Procedures provide, "Examples of emission related parts are shown in Appendix 1 of these procedures. Such parts require an exemption from the prohibitions of section 27156 and 38391 of the Vehicle Code...in order to be legally advertised, offered for sale, sold, or installed in California."
6. California Code of Regulations, title 13, section 2222(f) provides, "Each person engaged in the business of retail sale or installation of an add-on modified part which has not been exempted from Vehicle Code section 27156 shall maintain records of such activity which indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records shall be open for reasonable inspection by the Executive Officer of his/her representative. All such records shall be maintained for four years from the date of sale or installation."
7. In addition, California Code of Regulations, title 13, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of California Vehicle Code Section 27156 or other laws or regulations, as applicable.

8. California Health and Safety Code (HSC) section 43008.6 states, in pertinent part, "The state board may collect a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code."
9. HSC section 43016 states, prior to January 1, 2017, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations."
10. CARB alleges that during calendar years 2011 through 2014, JEGS sold, offered for sale, and/or advertised certain add-on and modified aftermarket parts for use on highway motor vehicles, but these parts were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2220 et seq. (hereinafter "Subject Parts").
11. CARB alleges that the Subject Parts altered or modified the original design or performance of devices, apparatuses, or mechanisms intended for use with, or as part of, required on-road vehicle, engine, or equipment pollution control devices or systems.
12. CARB alleges that the advertisements, offers for sale, sales, and installations of the Subject Parts were unlawful and in violation of California Vehicle Code section 27156(c), and CCR, title 13, section 2220 et seq.
13. CARB alleges that if the facts described in recital paragraphs 1-12 were proven, civil penalties could be imposed against JEGS pursuant to California Health and Safety Code section 43016.
14. JEGS is an Ohio corporation.
15. JEGS willfully and fully cooperated with CARB in its investigation of the Subject Parts.
16. JEGS has no prior enforcement record with CARB.
17. JEGS admits the facts described in recital paragraphs 1-12 but denies any and all liability or wrongdoing arising thereunder.
18. JEGS is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CARB. CARB accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against JEGS for the violations alleged above, and in consideration of the other terms set out below, CARB and JEGS agree as follows:

1. As a condition of this Agreement, JEGS shall pay the total penalty sum of eight hundred

fifty thousand two hundred fifty dollars (\$850,250.00) to the **California Air Pollution Control Fund** in two installments. The first installment of four hundred twenty-five thousand one hundred twenty-five dollars (\$425,125.00) shall be paid to the California Air Pollution Control Fund on the Effective Date. The second installment of four hundred twenty-five thousand one hundred twenty-five dollars (\$425,125.00) shall be paid to the **California Air Pollution Control Fund** within eighteen months of the date of the Effective Date.

JEGS shall send the signed Agreement and any future mailing or documents required per the terms of this Agreement to:

Gretchen Ratliff, Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

JEGS shall send a copy of the signed Agreement, and each payment using the attached "**Settlement Agreement Payment Transmittal Form**" (ATTACHMENT A) to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436

2. As a further condition of this Agreement, The JEGS Foundation has agreed to undertake a Supplemental Environmental Project (SEP) (ATTACHMENT B), which CARB has approved as mitigation for alleged past violations. Pursuant to this Agreement, The JEGS Foundation shall, on the Effective Date:
 - a. Send a check in the amount of four hundred twenty-five thousand one hundred twenty-five dollars (\$425,125.00) payable to the **Placer County Air Pollution Control District**, with the annotation "Placer Community Based Supplemental Environmental Project Program" in the check's note or memo line to:

Placer County Air Pollution Control District
ATTN: Ms. AJ Nunez
110 Maple Street
Auburn, California 95603
 - b. Send a copy of the payment check and Payment Transmittal Form (ATTACHMENT A) to CARB's Accounting Office listed above.
3. As a further condition of this Agreement, The JEGS Foundation has agreed to undertake a SEP (ATTACHMENT C), which CARB has approved as mitigation for alleged past violations. Pursuant to this Agreement, The JEGS Foundation shall, within eighteen months of the Effective Date:
 - a. Send a check in the amount of four hundred twenty-five thousand one hundred twenty-five dollars (\$425,125.00) payable to the **South Coast Air Quality Management District**, with the annotation "Installation of Air Filtration Systems in Schools SEP" in the check's note or memo line to:

South Coast Air Quality Management District
ATTN: Ms. Patricia Kwon
21865 Copley Drive
Diamond Bar, California 91765

- b. Send a copy of the payment check and Payment Transmittal Form (ATTACHMENT A) to CARB's Accounting Office listed above.
4. The JEGS Foundation has agreed that by funding the Installation of Air Filtration Systems in Schools SEP and the Placer Community Based Supplemental Environmental Project Program, they will not receive any direct or indirect benefit, and that whenever it publicizes the SEPs or the results of the SEPs, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
5. Upon agreeing to the terms set forth in the SEP Agreements, funding the Installation of Air Filtration Systems in Schools SEP, and funding the Placer Community Based Supplemental Environmental Project Program, The JEGS Foundation is released of all liabilities as they relate to the Installation of Air Filtration Systems in Schools SEP and the Placer Community Based Supplemental Environmental Project Program as reflected in this underlying Settlement Agreement.
6. In the event the SEPs are not fully implemented in accordance with the terms of the SEP Agreements, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEPs from the SEP implementers, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s), to be deposited into the California Air Pollution Control Fund. Accordingly, The JEGS Foundation shall assign any and all rights against the SEP implementers to CARB.
7. Effect of Untimely Payment. If the penalty or SEP payments described in Terms and Release paragraphs 1-3, respectively, is more than fifteen (15) days late, the entire remaining balance shall become immediately due and payable without notice or demand. In addition, if the Attorney General files a civil action to enforce this settlement agreement, JEGS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
8. It is agreed that if JEGS at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving JEGS, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against JEGS as a result of such adverse event, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of JEGS's properties, or if any deposit account or other property of JEGS be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or JEGS takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
9. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on JEGS by CARB arising from the facts described in recital paragraphs 1-12 are nondischargeable under 11

U.S.C § 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.

10. JEGS agrees to develop and implement a compliance plan to ensure that its distributors, dealers, and customers understand which add-on and modified aftermarket parts are legal or illegal for specific applications, including both street use and for racing vehicles. For all parts which JEGS claims are exempt from the regulations and laws because they will be installed, sold, or offered for sale exclusively on racing vehicles, JEGS shall, commencing with the publication of its January 2018 catalog and within 30 days for all other advertisements, advertise each and every non-exempt part in California with one of the following disclaimers ("Racing Only Disclaimer") in approximately font size 8 on each page on which any aftermarket non-exempt part appears:
 - A. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA"
 - B. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE"
 - C. "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY"
11. JEGS shall not install, sell, offer for sale, or advertise in California any add-on or modified aftermarket part in violation of California Code of Regulations, title 13, section 2220 et seq. or California Vehicle Code section 27156.
12. This Agreement shall apply to and be binding upon JEGS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
13. Now, therefore, contingent on the payment in full by JEGS to the California Air Pollution Control Fund and by The JEGS Foundation to the Installation of Air Filtration Systems in Schools SEP and the Placer Community Based Supplemental Environmental Project Program in the amounts specified above, CARB hereby releases and forever discharges JEGS and its shareholders, principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors ("the Released Parties") from any and all actions, causes of actions, suits, claims, and demands whatsoever in law or equity for any and all violations of California Code of Regulations, title 13, section 2220 et seq., and California Vehicle Code section 27156 that CARB may have against the Released Parties based on the facts and allegations described in recital paragraphs 1-12, above.
14. This Agreement constitutes the entire agreement and understanding between CARB and JEGS concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and JEGS concerning these claims.
15. No agreement to modify, amend, extend, supersede, terminate, or discharge this

Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.

16. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
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. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
19. Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.
20. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
21. The Parties agree that this Agreement may be executed by facsimile and in multiple counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page.
22. 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.

23. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB to provide information on the basis for the penalties it seeks. This required 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 Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of \$2,000 per unit per strict liability violation. The penalty obtained in this case is \$250 per unit for approximately 6,802

Subject Parts. This reflects the fact that this was an unintentional, first time violation by JEGS, and JEGS's full and willing cooperation with the investigation.

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

CARB alleged that the penalty provisions being applied in this case, Health and Safety Code sections 43008.6 and 43016, are appropriate because JEGS allegedly sold, offered for sale, and/or advertised the Subject parts that were not exempted pursuant to California Code of Regulations, title 13, section 2220 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.

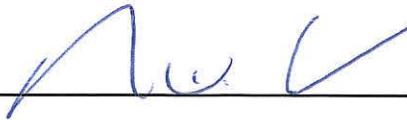
The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the Subject Parts. However, since the Subject Parts were not exempt from applicable anti-tampering laws in California, all emissions attributable to them are illegal. The Parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

24. JEGS acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code 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 not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
25. 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 case negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because JEGS made diligent efforts to comply and to cooperate with CARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.
26. The penalty in this case was based in part on confidential business information provided by JEGS that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and JEGS that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against JEGS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that JEGS may have secured from its alleged actions.
27. The undersigned represent that they have the authority to enter this Agreement.

28. This Agreement consists of 8 pages, 18 Recitals, and 28 Terms and Release paragraphs.

California Air Resources Board

JEG'S AUTOMOTIVE, INC.

By: 

By: 

Name: Richard W. Corey

Name: Paul W. Roberts

Title: Executive Officer

Title: HR Director

Date: 12/6/2017

Date: 11/3/2017