

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and LKQ Corporation (hereinafter "LKQ"), 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. CARB and LKQ shall be referred to collectively as the "Parties."

I. RECITALS

This Agreement is made with reference to the following facts:

- (1) California Vehicle Code Section 27156(c) (VC § 27156 (c)) states 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 VC § 27156 is required before any add-on or modified part can be sold in California. Aftermarket parts exemptions are regulated under California Code of Regulations, title 13 sections 2220-2225 (Aftermarket Parts Regulations), (13 CCR §§ 2220-2225).
- (2) VC § 27156(h) states: 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 do either of the following: (1) Not to reduce the effectiveness of a required motor vehicle pollution control device. (2) To result in emissions from the modified or altered vehicle that are at levels that comply with existing state or federal standards for that model-year of the vehicle being modified or converted.
- (3) 13 CCR §2222(c) states: No person shall advertise, offer for sale, or install a part as a motor vehicle pollution control device or as an approved or certified device, when in fact such part is not a motor vehicle pollution control device or is not approved or certified by the state board.
- (4) 13 CCR §2222(d) states: No person shall advertise, offer for sale, sell, or install an add-on or modified part as a replacement part.
- (5) LKQ offered for sale and sold 147 diesel particulate filters (DPF) from December 29, 2011 to January 19, 2015 without obtaining an exemption from CARB. CARB alleges that this conduct constitutes a violation of the Aftermarket Parts Regulations and VC § 27156. LKQ admits these facts, but denies liability arising from these facts.
- (6) Health and Safety Code Section 43016 (HSC § 43016) provides a penalty of up to \$500 per unit for violation of the Aftermarket Parts Regulations.

- (7) HSC § 43008.6 provides for penalties of up to \$1,500 per vehicle for violations of VC § 27156.
- (8) In order to resolve these alleged violations, LKQ has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (9) It is the intention of the Parties to settle and dispose of, fully and completely, any and all claims, disputes, obligations, demands and causes of action relating to the above-listed alleged violations, and specifically to settle and resolve all claims, disputes and obligations relating to the sale of DPFs by LKQ described above in paragraph (5) of the Recitals. Specifically, CARB and LKQ agree as follows:

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against LKQ for the alleged violations referred to above, and CARB's release of LKQ as set forth herein, and LKQ's payment of the penalties set forth in Section 1 below, CARB and LKQ agree as follows:

- (1) Upon execution of this Agreement, the sum of two hundred ninety-four thousand dollars (\$294,000.00) shall be paid on behalf of LKQ no later than December 20, 2017, as follows:
 - \$294,000.00 payable to the **Air Pollution Control Fund**

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

**Mr. Christopher Patno
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731**

Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

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- (2) If the Attorney General files a civil action to enforce this settlement agreement, LKQ shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, 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 penalty is intended to deter and punish LKQ for violations of state environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on LKQ by CARB arising from the facts described in recital paragraphs (1) through (7) 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) LKQ shall not violate Aftermarket parts exemption procedures established in 13 CCR §§ 2220-2225.
- (5) LKQ shall not violate VC § 27156.
- (6) This Agreement shall apply to and be binding upon LKQ, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (7) This Agreement constitutes the entire agreement and understanding between CARB and LKQ concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and LKQ concerning the subject matter hereof.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.

- (12) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 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 HSC §§ 42403 and 43024.

The penalty in this case is \$294,000.00 over an unspecified number of days of violation for offering for sale and selling 147 non-certified DPFs that did not meet the requirements of the Aftermarket Parts Regulations and VC § 27156. In this case, the per unit penalty is \$2,000.00 for offering for sale and selling DPFs in a non-certified configuration.

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

The penalty provisions being applied in this case are HSC §§ 43016 and 43008.6 because LKQ failed to comply with the Aftermarket Parts Regulations (13 CCR §§ 2220-2225) and VC § 27156.

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 noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (13) LKQ acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, CARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, 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.

- (14) 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, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (15) The penalty was based on confidential settlement communications between CARB and LKQ that CARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between CARB and LKQ and reflects CARB's assessment of the relative strength of its case against LKQ, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that LKQ may have secured from its actions.
- (16) Now therefore, in consideration of the payment on behalf of LKQ to the Air Pollution Control Fund, CARB hereby generally releases, remises, and discharges forever, LKQ and its principals, officers, agents, predecessors and successors from any and all claims CARB has or may have in the future based on the sale of DPFs by LKQ as described in paragraph (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

III. ACKNOWLEDGMENTS AND WARRANTIES

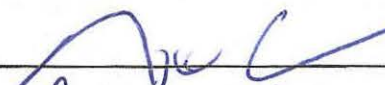
The Parties acknowledge and warrant as follows:

- (1) No representations or promises of any kind or character have been made by any Party or anyone else to induce the execution of this Agreement, except where as expressly provided in this Agreement.
- (2) No assignment of any claim, demand, claim for relief or cause of action which is the subject matter of this Agreement, and no assignment of the releases contained herein, have been made prior to the effective date hereof. Each Party represents and warrants that it is the sole lawful holder, possessor, owner, and real party in interest, whether by assignment, purchase or otherwise, of all claims, demands, claims for relief, or causes of action that could be asserted by either Party to this Agreement.
- (3) No Third Party Beneficiaries. No third parties shall be entitled to claim or enforce any rights under this Agreement.
- (4) Counterparts and Effective Date. This Agreement may be executed in any number of counterparts, and each such counterpart will be deemed an original for all purposes. When executed by all Parties, this Agreement will be binding on

all Parties even though each may have executed separate counterparts.
Although the Parties may execute this Agreement on different dates, all Parties
acknowledge that this Agreement shall be deemed effective as of the date of the
last required signature given.

California Air Resources Board

LKQ Corporation

Signature: 

Signature: 

Print Name: Richard W. Long

Print Name: Victor M. Casini

Title: Executive Officer

Title: Senior VP - General Counsel

Date: 1/15/2018

Date: Dec. 8, 2017