

## 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 located at 1001 I Street, Sacramento, California 95814 and Pep Boys: Manny, Moe & Jack (hereinafter "PEP BOYS"), with its principal place of business located at 3111 W Allegheny Avenue, Philadelphia, Pennsylvania 19132 (collectively, "The Parties").

### RECITALS

1. Vehicle Code section 27156, subdivision (c) provides that "[n]o person shall install, sell, offer for sale, or advertise any device 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."
2. Vehicle Code section 27156, subdivision (h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device 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 that 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, subdivision (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 advertisement contains a legally adequate disclaimer..." (Aftermarket Parts Regulation).
4. Pursuant to California Code of Regulations, title 13, section 1900(b), an "Emissions-related part" is "any automotive part, which affects any regulated emissions from a motor vehicle which is subject to California or federal emission standards. This includes, at a minimum, those parts specified in the "Emissions-Related Parts List," adopted by the State Board on November 4, 1977, as last amended June 1, 1990." This includes but is not limited to catalytic converters, oxygen sensors, and fuel and air controller modules.
5. If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an emissions related part for use on highway vehicles or motorcycles in California in violation of the Aftermarket Parts Regulation, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section

43017 of the Health and safety Code and California Code of Regulations, title 13, section 2225. The Executive Officer may also assess civil penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code.”

6. In addition, California Code of Regulations, title 13, section 2225, subdivision (a) provides, in pertinent part, that the Executive Officer may seek fines for violations of Vehicle Code section 27156 or other laws or regulations, as applicable.
7. Health and Safety Code section 43008.6(b) authorizes a penalty up to one thousand five hundred dollars (\$1,500) for each violation of section 27156 of the Vehicle Code and Health and Safety Code section 43016 authorizes a penalty of five hundred dollars (\$500) for violations of any order, rule, or regulation, per vehicle, portable fuel container, spout, engine, or other unit subject to regulation.
8. PEP BOYS is a Pennsylvania corporation doing business in California.
9. CARB alleges that, between August 1, 2012 and the Effective Date, PEP BOYS sold, offered for sale, and/or advertised aftermarket critical emission control parts for use on highway vehicles in California (hereinafter “Subject Parts”).
10. CARB alleges that the Subject Parts were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2222 et seq.
11. CARB alleges that the Subject Parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
12. CARB alleges that the advertisements, offers for sale, and sales Subject Parts were unlawful and in violation of Vehicle Code section 27156 and California Code of Regulations, title 13, section 2222 et seq.
13. CARB alleges that if the allegations described in recital paragraphs 1-12 were proven, civil penalties could be imposed against PEP BOYS as provided in Health and Safety Code sections 43008.6(b) and 43016.
14. PEP BOYS admits the facts in recital paragraphs 1 through 13, but disagrees with the allegations and denies any liability arising thereunder.
15. 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 Agreement, without the need for formal litigation. PEP BOYS has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this Agreement in termination and settlement of this matter.

### TERMS AND RELEASE

In settlement of any and all claims that CARB has against PEP BOYS for the violations alleged above, and in consideration of CARB not filing a legal action as well as the other terms set out below, CARB and PEP BOYS agree as follows:

1. The Parties shall exchange signed copies of this Agreement by **December 4, 2018**. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. PEP BOYS shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Tony Zeng/Air Resources Engineer  
California Air Resources Board, Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, CA 91731  
Tony.Zeng@arb.ca.gov

2. PEP BOYS shall pay the total sum of three hundred fifty-six thousand dollars (**\$356,000.00**) as a penalty by certified check or wire transfer to the **California Air Pollution Control Fund** by **January 4, 2019**.

Each check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

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

Each wire transfer shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

State of California Air Resources Board  
c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Asha Sharma Fax: (916) 322-9612  
Reference: CARB Case # MSES-16-009

*Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.*

Notification of each wire transfer shall be provided to Tony Zeng at the email address in paragraph 1 of the Terms and Conditions.

3. PEP BOYS agrees that this penalty imposed on PEP BOYS by CARB is 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.
4. PEP BOYS shall not install, sell, offer for sale, or advertise in California any critical emission control part in violation of California Code of Regulations, title 13, section 2222 or Vehicle Code section 27156.
5. PEP BOYS shall implement a compliance plan to ensure non-compliant aftermarket parts are not sold in the State of California.
6. PEP BOYS shall advertise each and every non-exempt part in California with one of the following disclaimers in a minimum font size 8, appearing on each page that any 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."
  - D. "FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE."

Use of one of the above disclaimers shall be deemed a "legally adequate disclaimer" pursuant to California Code of Regulations, title 13, section 2222(b)(2). Nothing in the foregoing constitutes a waiver of, or precludes CARB from pursuing, other violations such as false advertising, including, but not limited to statements suggesting that the device performs better than the original equipment (OEM) installed by the manufacturer of that vehicle, the device is compliant with On-Board Diagnostics II (OBD II), and the device was approved by CARB unless an additional disclaimer in a minimum font size 8 stating "[t]he CARB Executive Order or exemption is not an endorsement or approval of any emission reduction claims for the catalytic converter and is only a finding that the catalytic converter is exempt from the prohibitions of Vehicle Code section 27156" appears on each page that suggests the device was approved by CARB.

7. This Agreement shall apply to and be binding upon PEP BOYS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the

subject matter of this Agreement.

8. Now, therefore, in consideration of the payment by PEP BOYS to the California Air Pollution Control Fund in the amounts specified above, CARB hereby releases PEP BOYS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have relating to the Subject Parts or based on the allegations described in recital paragraphs 1-12.
9. This Agreement constitutes the entire agreement and understanding between CARB and PEP BOYS 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 PEP BOYS concerning these claims.
10. The effective date of this Agreement shall be the date upon which it is fully executed.
11. 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.
12. 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.
13. 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.
14. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
15. 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.
16. 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.
17. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.

18. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

**19. Penalty Determination**

Health and Safety Code § 39619.7 requires the CARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this Agreement, is summarized here.

**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 Health and Safety Code sections 43008.6 and 43016, because PEP BOYS sold, and/or offered for sale, and/or advertised the subject non-California certified critical emission control parts that were not exempted pursuant to California Code of Regulations, title 13, section 2222, in violation of Vehicle Code section 27156, subdivision (c).

The penalty provisions of Health and Safety Code sections 43008.6 and 43016 apply to violations of the Aftermarket Parts Regulations because the regulations were adopted under authority of Health and Safety Code section 43013, which is in Part 4 of Division 26 of the Health and Safety Code.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or vehicle basis for the 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 \$599 per unit for 594 units.

**Whether the penalty is 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 uncertified critical emission control parts. However, since the critical emission control parts were not certified for sale in California, emissions attributable to them are illegal and excess as well.

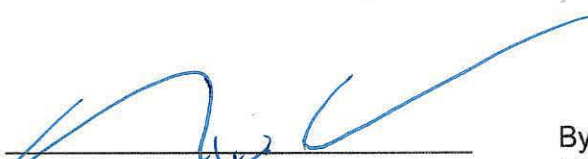
PEP BOYS acknowledges that CARB has complied with Health and Safety Code § 39619.7 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (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.

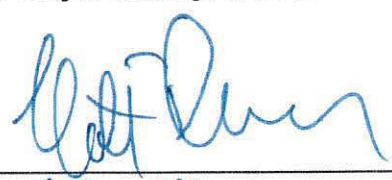
20. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, 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.
21. The penalty in this case was based in part on confidential business information provided by PEP BOYS 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 PEP BOYS 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 PEP BOYS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that PEP BOYS may have secured from its alleged actions.
22. Each of the undersigned represents that he or she has full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

**Pep Boys: Manny, Moe & Jack**

By:   
Name: Richard W. Corey  
Title: Executive Officer  
Date: 12/14/2018

By:   
Name: Matthew C. Planner  
Title: SUP. GC Secretary  
Date: 11/30/2018