

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 VMP TUNING, INC. (hereinafter "VMP"), with its principal place of business located at 170 South SR 415, New Smyrna Beach, Florida 32168 (collectively, "The Parties," or individually as a "Party"). This Agreement shall be effective on the date executed by all parties ("Effective Date").

RECITALS

1. 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. CARB adopted the "Add-On Parts and Modified Parts" Regulation (Cal. Code Regs., tit. 13, §§ 2220 et seq.) to ensure that vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
3. 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." The sale, use, or installation of these parts may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3)).
4. 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.
5. 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..."
6. Pursuant to California Code of Regulations, title 13, section 1900, subdivision (b)(3), 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."

7. The Executive Officer may assess civil penalties for violations of Vehicle Code Section 27156. (Health & Saf. Code § 43008.6(b); Cal. Code Regs., tit. 13, § 2225(a).)
8. Health and Safety Code section 43016, as in effect through December 31, 2016, states, 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."
9. Health and Safety Code section 43016, as in effect January 1, 2017, states, 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 thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part."
10. Health and Safety Code section 43008.6(b) 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."
11. Between February 2016 and September 2017, VMP sold, offered for sale, and/or advertised aftermarket parts designed for use on highway vehicles in California (hereinafter "Subject Parts") that were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2220 et seq., and that these Subject Parts altered or modified the original design or performance of the motor vehicle pollution control devices or systems.
12. The Subject Parts were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2222(e).
13. The advertisements, offers for sale, and sale of the Subject Parts were unlawful and in violation of Vehicle Code sections 27156 and California Code of Regulations, title 13, sections 2220 et seq.
14. VMP is incorporated in Florida and doing business in California.

15. VMP cooperated with CARB throughout its investigation.
16. VMP has no prior enforcement record with CARB.
17. If the allegations described in recital paragraphs 1–13 were proven, civil penalties could be imposed against VMP as provided in Health and Safety Code sections 43008.6(b) and 43016.
18. VMP admits to the facts in recital paragraphs 1–17, but denies any liability arising thereunder.
19. 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 for the Subject Parts and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. VMP 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 VMP 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 VMP agree as follows:

1. As a condition of this agreement, VMP shall pay the total sum of thirty-six thousand three hundred forty dollars (\$36,340.00) to the **California Air Pollution Control Fund**. Payment will be made within thirty (30) days of executing this Settlement Agreement. This penalty took into consideration VMP's claim of financial hardship.

VMP shall mail the original signed Agreement and any future mailings or documents per the terms of this Agreement to:

Mr. Nathan Biasotti
Air Pollution Specialist
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, California 95828

VMP shall 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

2. VMP agrees that this penalty imposed on VMP 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 the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
3. VMP shall not install, sell, offer for sale, or advertise in California any aftermarket part in violation of Vehicle Code sections 27156 or California Code of Regulations, title 13, sections 2220 et seq.
4. To prevent the sale or use of non-exempted parts in California, VMP shall advertise each and every non-exempted part with one of the following disclaimers in a minimum font size 8, appearing on each page that any non-exempted part appears:
 - a. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA. THE SALE, USE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - b. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE. THE SALE, USE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - c. "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY. THE SALE, USE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - d. "FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE. THE SALE, USE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."

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).

5. This Agreement shall apply to and be binding upon VMP 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.
6. Now, therefore, in consideration of the payment by VMP to the California Air Pollution Control Fund in the amount specified above in Terms and Release paragraph 1, CARB hereby releases VMP 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 and based on the allegations described in recital paragraphs 1–18.
7. This Agreement constitutes the entire agreement and understanding between CARB and VMP 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 VMP concerning these claims.
8. 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.
9. 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.
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. 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.
12. 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 this settlement.
13. 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.

14. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
15. This Agreement shall further serve to toll any and all time limits and/or time-related defenses, either in law or equity, including but not limited to statute of limitations, statute of repose, and/or the doctrine of laches until all terms and conditions of this Agreement have been fulfilled.

16. **Penalty Determination**

Health and Safety Code § 39619.7 requires 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 VMP sold, offered for sale, and/or advertised the Subject Parts that were not exempted pursuant to Vehicle Code sections 27156 and California Code of Regulations, title 13, sections 2220 et seq.

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 5 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.

The per unit penalty in this case for violations that occurred prior to January 1, 2017, is a maximum of five hundred dollars (\$500) per unit per strict liability violation. The per unit penalty in this case for violations that occurred on or after January 1, 2017, is a maximum of thirty-seven thousand five hundred dollars (\$37,500) per unit per strict liability violation. The penalty obtained in this case is two hundred thirty dollars (\$230) per unit for 158 Subject Parts. This reflects the fact that this was a first time violation for VMP; VMP's cooperation with the investigation; and VMP was able to substantiate financial hardship circumstances.

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 Subject Parts. However, since the Subject Parts were not certified for sale in California, emissions attributable to them are illegal and excess as well. In the interest of settlement and because of the time and expense involved, The Parties elected not to do such testing.

17. VMP acknowledges that CARB has complied with Health and Safety Code section 39619.7 in 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.
18. 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 risks 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.
19. The penalty in this case was based in part on confidential business information provided by VMP 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 VMP 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 VMP, and the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that VMP may have secured from its alleged actions. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.
20. Each of the undersigned represents that he or she has full power and authority to enter this Agreement.

California Air Resources Board

By: _____ /S/ _____

Name: Ellen M. Peter

Title: Chief Counsel

Date: 10/27/19

VMP Tuning, Inc.

By: _____ /S/ _____

Name: Justin Starkey

Title: President

Date: 10/11/19