

## 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 Weistec Engineering, Inc. (hereinafter "WEISTEC"), with its principal place of business at 1266 North La Loma Circuit, Anaheim, California 92806, collectively, "The Parties."

### RECITALS

1. Vehicle Code section 27156, subdivision (c) provides, in pertinent part, that "No 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 which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. Vehicle Code section 38391 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...any required off-highway 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."
4. 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."
5. 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."
6. The Procedures provide, in pertinent part, "Examples of emission related parts are

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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."

7. 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 or 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 or his/her representative. All such records shall be maintained for four years from the date of sale or installation."
8. 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.
9. Health and Safety Code 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. Health and Safety Code 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."
11. CARB enforcement staff received an anonymous tip that WEISTEC was advertising, offering for sale, distributing and selling aftermarket exhaust systems, tuners/programmers, and other aftermarket parts that had not been exempted by CARB for sale in California and use on highway vehicles in California.
12. CARB investigation discovered WEISTEC sold, supplied, distributed, offered for sale, and/or advertised in California one hundred and twenty-one (121) calibrations, or tunes, for stock electronic control units (ECUs) 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").
13. CARB alleges that the Subject Parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
14. CARB alleges that the Subject Parts were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2220 et seq.

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15. CARB alleges that the advertisements, offers for sale, sales, and installation of the Subject Parts were unlawful and in violation of Vehicle Code sections 27156, subdivision (c) and California Code of Regulations, title 13, section 2220 et seq.
16. CARB alleges that if the allegations described in recital paragraphs 1-15 were proven, civil penalties could be imposed against WEISTEC as provided in Health and Safety Code section 43016 and/or 43008.6.
17. WEISTEC is a company located and doing business in California along with US and international sales.
18. WEISTEC cooperated with CARB in its investigation of the Subject Parts.
19. WEISTEC admits the facts in recital paragraphs 1 through 15, but denies any liability arising thereunder.
20. 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. WEISTEC 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 WEISTEC for the violations alleged above, and in consideration of CARB not filing a legal action and the other terms set out below, CARB and WEISTEC agree as follows:

1. As a condition of this Agreement, WEISTEC shall pay the total sum of \$6,500.00 by certified check or wire transfer payable to the California Air Pollution Control Fund. The full payment must be *received* by CARB on or before May 10, 2019. Alternatively, WEISTEC may divide the total into two payments of \$3,250 each, provided that the checks or wire transfers are *received* no later than May 6, 2019 and June 6, 2019.
2. The signed Agreement and any future mailings or documents required per the terms of this Settlement Agreement shall be mailed to:

**Tony Zeng, Air Resources Engineer**  
**Air Resources Board, Enforcement Division**  
**9480 Telstar Avenue, Suite 4**  
**El Monte, CA 91731**

**Each check shall be accompanied with a copy of 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**

2. **Effect of Untimely Payment.** If a payment or payment installment is not made within ten (10) business days of the dates specified above, the entire remaining balance, plus a penalty interest rate of 10 percent per annum on the entire remaining balance from the date initially due 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, WEISTEC shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
3. It is agreed that if WEISTEC at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving WEISTEC, 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 WEISTEC, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of WEISTEC's properties, or if any deposit account or other property of WEISTEC be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or WEISTEC takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
4. It is agreed that the penalty described in terms and release, paragraph 1 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.
5. WEISTEC 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 2222 or Vehicle Code sections 27156.
6. WEISTEC 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 VEHICLES."

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 "The 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 WEISTEC 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 WEISTEC to the California Air Pollution Control Fund in the amounts specified above, CARB hereby releases WEISTEC 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 1-15, above, including any claims under Vehicle Code sections 27156.
9. This Agreement constitutes the entire agreement and understanding between CARB and WEISTEC 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 WEISTEC concerning these claims.
10. The effective date of this Agreement shall be the date upon which it is fully executed.
11. Modification. 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.

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12. **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.
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. **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 in any jurisdiction, 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.
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. **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.
17. The parties agree that this Agreement may be executed by facsimile and in 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.
18. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
19. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

**20. The Penalty's Basis.**

Health & Saf. 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 provision being applied in this case is Health and Safety Code

section 43016, because WEISTEC sold, and/or offered for sale, and/or advertised the Subject Parts that were not exempted pursuant to California Code of Regulations, title 13, section 2222, in violation of Vehicle Code sections 27156, subdivision (c).

The penalty provisions of Health and Safety Code sections 43016 and 43008.6 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 HSC.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per 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 \$2000 per unit per strict liability violation. The penalty obtained in this case is approximately \$54 per unit for 121 units. The penalty was reduced in light of the fact that CARB has not previously found WEISTEC in violation of its standards, the enforcement action has imposed a significant hardship on the company, WEISTEC cooperated with the investigation, and WEISTEC promptly obtained certification for its products.

**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 certified for sale in California, all emissions attributable to them are illegal.

21. WEISTEC 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.
22. 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.

23. The penalty in this case was based in part on confidential business and financial information provided by WEISTEC 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 WEISTEC that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of its case against WEISTEC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that WEISTEC may have secured from its alleged actions.
24. The undersigned represent that they have full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: \_\_\_\_\_

Name: Dr. Todd P. Sax  
Title: Chief, Enforcement Division  
Date: 5/31/19

Weistec Engineering, Inc.

By: \_\_\_\_\_

Name: Michael Weiss  
Title: CEO  
Date: 4/29/19