

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 "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and Autosales, Incorporated (hereinafter "AUTOSALES") with its principal place of business at 1200 Southeast Avenue, Tallmadge, Ohio 44278, collectively, "the Parties." The "Effective Date" of this Agreement shall mean the date on which the last party has signed this Agreement.

RECITALS

1. California 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. California 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. California Health and Safety Code section 43644(a) provides, in pertinent part, that "No person shall install, sell, offer for sale or advertise, or, except in an application to the state board for certification of a device, represent, any device as a motor vehicle pollution control device for use on any used motor vehicle unless that device has been certified by the state board."
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, subdivision (h)(2) provides, "On or after January 1, 2009, the Executive Officer shall exempt new aftermarket catalytic converters from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the 'California Evaluation Procedures for New Aftermarket Catalytic Converters' [The Catalytic Procedures] as adopted by the state board on October 25, 2007."

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6. The Catalytic Procedures provide, "No catalytic converter shall be sold, offered for sale, advertised, or installed on California vehicles until a complete application has been submitted, and an exemption for the catalytic converter based on the application has been issued by ARB."
7. California Code of Regulations, title 13, section 2222, subdivision (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 Aftermarket Parts Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."
8. The Aftermarket Parts Procedures provide, "Examples of emission related parts are shown in Appendix 1 of these procedures. Such parts require an exemption from the prohibitions of Sections 27156 and 38391 of the California Vehicle Code...in order to be legally advertised, offered for sale, sold, or installed in California."
9. 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.
10. Health and Safety Code section 43016 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."
11. ARB alleges that prior to the date of this Agreement, and more specifically, between January 2013 and November 2013, AUTOSALES sold, offered for sale, and/or advertised aftermarket performance parts and catalytic converters in California (hereinafter "Subject Parts").
12. ARB alleges that the Subject Parts were designed to alter or modify the original design or performance of the motor vehicle pollution control device or system.
13. ARB alleges that the Subject Parts were not exempted from Vehicle Code section 27156 by ARB pursuant to California Code of Regulations, title 13, section 2222 et seq.

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14. ARB alleges that the advertisements, offers for sale, sales, and installation of the Subject Parts were in violation of Vehicle Code section 27156, subdivision (c) and California Code of Regulations, title 13, section 2222 subdivisions (e) and (h)(3).
15. AUTOSALES is an Ohio corporation doing business in interstate commerce.
16. AUTOSALES promptly and fully cooperated with ARB throughout its investigation.
17. AUTOSALES has no prior enforcement record with ARB.
18. AUTOSALES is implementing a compliance plan to ensure that its vendors, manufacturers and customers understand which aftermarket parts are lawful or unlawful for specific applications.
19. ARB alleges that if the allegations described in recital paragraphs 1-14 were proven, civil penalties could be imposed against AUTOSALES as provided in Health and Safety Code section 43016.
20. AUTOSALES admits the facts in recital paragraphs 1 through 14, but denies any liability arising thereunder and makes no admission of liability whatsoever with respect to the allegations described in recital paragraphs 1-14.
21. AUTOSALES is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB 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 settlement of any and all Claims (as hereafter defined) that ARB has against AUTOSALES for the violations alleged above, and in consideration of ARB not filing a legal action as well as the other terms set out below, ARB and AUTOSALES agree as follows:

1. As a condition of this Agreement, AUTOSALES shall pay the sum of four hundred forty-nine thousand two hundred and eighty dollars (\$449,280) as a penalty by certified checks payable to the **California Air Pollution Control Fund**. This amount shall be paid in two installments of \$224,640 each. The first installment shall be due and payable no later than the date five (5) business days after the Effective Date, and the second installment shall be due and payable no later than January 30, 2015 .

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2. As a further condition of this Agreement, AUTOSALES shall pay an additional amount of one hundred forty-nine thousand seven hundred and sixty dollars (\$149,760) to the School Bus and Diesel Emission Reduction Supplemental Environmental Project (SEP). Upon Effective Date, payment shall be made by certified check to the "**San Joaquin Valley Air Pollution Control District**" and "For School Bus and Diesel Emission Reduction SEP" shall be annotated in the Note or Memo line on the check. This portion (\$149,760) of the aggregate settlement amount is not deemed to be a payment of a fine or penalty, but rather a payment by AUTOSALES in settlement of a disputed claim.
3. All checks shall be mailed to the following address along with the attached Settlement Agreement Payment Transmittal Form:

Air Resources Board
Accounting Branch
P.O. Box 1436
Sacramento, CA 95812-1436

4. AUTOSALES shall not install, sell, offer for sale, or advertise in California any aftermarket performance parts or catalytic converters in violation of California Code of Regulations, title 13, section 2220 et seq. or Vehicle Code section 27156. If ARB believes that AUTOSALES has installed, sold, offered for sale, or advertised in California aftermarket performance parts or catalytic converters in violation of these laws and regulations or has not complied with any of the terms and conditions of this Agreement, including the payment terms under Paragraphs 1 and 2 of this Agreement, ARB may at any time serve a Notice of Deficiency on AUTOSALES that, to the extent available information allows: (1) identifies the specific instance and dates of non-compliance; (2) identifies proposed action(s) that AUTOSALES might take to remedy that non-compliance, if the non-compliance is alleged to be ongoing; and (3) requests in writing that AUTOSALES remedy the non-compliance. If, after a reasonable cure period, ARB believes that AUTOSALES remains deficient in compliance with this Agreement, the Attorney General may file a civil action to enforce this Agreement and AUTOSALES shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
5. This Agreement shall apply to and be binding upon AUTOSALES and its principals, officers, shareholders, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

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6. Now, therefore, in consideration of the payment by AUTOSALES to the California Air Pollution Control Fund and the San Joaquin Valley Air Pollution Control District in the amounts specified above, ARB hereby releases and forever discharges AUTOSALES and its principals, officers, shareholders, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all causes of action, suits, losses, damages, violations, liabilities and any and all claims of every kind (collectively, the "Claims") that ARB now has, or may have relating to the Subject Parts or based on the allegations described in recital paragraphs 1-19, above. The Parties represent that they have the authority to enter this Agreement.
7. This Agreement constitutes the entire agreement and understanding between ARB and AUTOSALES 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 ARB and AUTOSALES concerning these claims. This Agreement constitutes a compromise, settlement, and release of disputed claims and is being entered into solely to avoid the burden, inconvenience, and expense of litigating those claims. This Agreement shall not be interpreted or construed as a release or waiver by AUTOSALES of any claim that it may have against any person who sold, manufactured or distributed any of the Subject Parts to AUTOSALES, and AUTOSALES expressly reserves its right to pursue any and all claims it may have against any person who sold, manufactured or distributed any of the Subject Parts to AUTOSALES.
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. The Parties to this Agreement stipulate that this Agreement shall be the final resolution of any and all claims ARB may have to date based on the above-described facts and allegations, and shall have the same *res judicata* effect as a judgment in terms of acting as a bar to, and precluding, any action by ARB against AUTOSALES, its principals, officers, shareholders, directors, agents, receivers, trustees, employees, successors and assigns, subsidiary and parent corporations, predecessors, and any purchasers of the Subject Parts from Autosales, including, but not limited to its customers.
10. 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.

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11. 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.
12. 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.
13. 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.
14. 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.
15. The parties agree that this Settlement 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.

16. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB 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 \$500 per unit per strict liability violation. The penalty obtained in this case is \$360 per unit for 1,664 units. This reflects the facts that this was an unintentional, first time violation and AUTOSALES's diligent efforts to comply and to cooperate with the investigation.

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

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because AUTOSALES allegedly sold, and/or offered for sale, and/or advertised the subject non-California certified parts that were not exempted pursuant to California Code of Regulations, title 13, section 2222 and Vehicle Code section 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 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 catalytic converters and aftermarket performance parts. However, since the afore mentioned parts were not certified for sale in California, emissions attributable to them are illegal. In the interests of settlement and because of the time and expense involved, the parties elected not to do such testing.

17. AUTOSALES acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB 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 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. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because AUTOSALES made diligent efforts to comply and to cooperate with the ARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.

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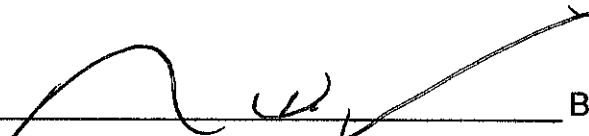
19. The penalty in this case was based in part on confidential business information provided by AUTOSALES that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and AUTOSALES that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against AUTOSALES, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that AUTOSALES may have secured from its alleged actions.

20. This Agreement consists of 8 pages, 20 Recitals, and 20 Terms and Release provisions.

California Air Resources Board

Autosales, Incorporated

By: _____



By: _____



Name: Richard W. Corey

Name: Al M. Noe

Title: Executive Officer

Title: Chief Product Officer

Date: 7-24-14

Date: 7-18-14

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