

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 BASSANI MANUFACTURING. (hereinafter "BASSANI") with its principal place of business at 2900 East La Jolla Street, Anaheim, California 92806, collectively, "The Parties."

RECITALS

1. California Vehicle Code (VC) section 27156(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. VC section 27156(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 Code of Regulations (CCR), title 13, section 2222(j) provides, "The Executive Officer shall exempt aftermarket critical emission control parts on highway motorcycles from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the "California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles" (The Procedures), as adopted on January 22, 2009, which is incorporated by reference herein."
4. The Procedures provide, "If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an aftermarket critical emission control part for use on highway motorcycles in California in violation of these evaluation procedures, 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. 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, title 13, CCR, section 2225(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.

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7. Health and Safety Code (HSC) 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."
8. ARB alleges that prior to January 1, 2013, BASSANI sold, offered for sale, and/or advertised certain aftermarket critical emission control parts for on-highway motorcycles, more particularly, motorcycle exhaust systems ("subject parts") that were not exempted by ARB pursuant to title 13, CCR, section 2222.
9. The ARB alleges that the subject parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
10. The subject parts were not exempted by ARB pursuant to title 13, CCR, section 2222 et seq.
11. ARB alleges that the advertisements, offers for sale, sales, and installation of the subject parts were unlawful and in violation of VC section 27156(c), VC section 38391, and title 13, CCR section 2222 et seq.
12. BASSANI promptly and fully cooperated with ARB throughout its investigation.
13. BASSANI has no prior enforcement record with ARB.
14. The retail prices of the subject parts ranged from roughly \$300 to \$950, with the average retail price of roughly \$400.
15. The current global recession has been substantial and to date, the recovery has been disappointing. This recession has detrimentally impacted BASSANI's business and finances. Under ordinary circumstances, full penalties may be warranted. However, given today's economy, reduced penalties are warranted. 5-6-13
DCB
5/8/13
16. In addition, BASSANI is a small, family-owned business consisting of four employees. The current economic downturn resulted in a loss of more than half of BASSANI's work force and over sixty-five percent of its sales. Considering BASSANI's financial hardship, reduced penalties are warranted.
17. ARB alleges that if the facts described in recital paragraphs 1-11 were proven, civil penalties could be imposed against BASSANI as provided in Health and Safety Code section 43016.
18. BASSANI denies any liability arising from the contentions of ARB described in recital paragraphs 1-11.

19. BASSANI 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 consideration of ARB not filing a legal action against BASSANI for the violations alleged above, and in consideration of the other terms set out below, ARB and BASSANI agree as follows:

1. As a condition of this Settlement Agreement, BASSANI shall pay the total sum of three thousand dollars (\$3,000.00) as a penalty to the California Air Pollution Control Fund. This amount shall be payable within 10 calendar days of the full execution of this settlement agreement and by check payable to the **California Air Pollution Control Fund**, addressed to:

Dean Hermano
Air Resources Board
9460 Telstar Avenue
El Monte, CA 91731
2. BASSANI shall not install, sell, offer for sale, or advertise in California any aftermarket critical emission control part in violation of title 13, CCR, section 2222 or Vehicle Code section 27156.
3. This Agreement shall apply to and be binding upon BASSANI and its principals, officers, 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.
4. Now, therefore, in consideration of the payment by BASSANI to the California Air Pollution Control Fund in the amount specified above, ARB hereby fully and forever releases BASSANI and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims, known or unknown that ARB has or may have had based on the facts and allegations described in recital paragraphs 1-11, above, in relation to any alleged acts and/or omissions by BASSANI on or before January 1, 2013. Contingent on payment in full of the penalty set forth in paragraph 1, ARB agrees to release BASSANI's customers, distributors and dealers from liability but only with regard to BASSANI's subject parts. The undersigned represent that they have the authority to enter this

Agreement.

5. Nothing contained in or referred to in this Agreement shall be deemed to constitute an admission of violations of law or other liability by BASSANI, and it is recognized that this Agreement and the promises, covenants and conditions set forth herein as entered into by the parties hereto are for the purpose of avoiding the time and expense of litigation.
6. This Agreement constitutes the entire agreement and understanding between ARB and BASSANI 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 BASSANI concerning these claims.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.

13. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
14. 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.

15. 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, on average, approximately \$250.00 per unit for approximately 12 units. This reflects the facts that this was an unintentional, first time violation, BASSANI's diligent efforts to comply and to cooperate with the investigation, and the impact of current economic conditions on the industry.

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 BASSANI allegedly sold, and/or offered for sale, and/or advertised the subject non-California certified aftermarket critical emission control parts that were not exempted pursuant to Title 13, CCR section 2222.

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.

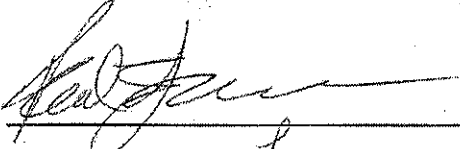
The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the uncertified aftermarket critical emission control parts. However, since the aftermarket critical emission control parts were not certified for sale in California, emissions attributable to them are illegal. The parties had

adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

16. BASSANI 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.
17. 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 BASSANI 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.
18. The penalty in this case was based in part on confidential business information provided by BASSANI 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 BASSANI 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 BASSANI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that BASSANI may have secured from its alleged actions.

California Air Resources Board

BASSANI MANUFACTURING

By: 

Name: James Ryden
Title: Enforcement Division Chief
Date: 5-6-13

By: 

Name: DARRYL C BASSANI
Title: PRESIDENT
Date: APRIL 15, 2013