

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and JOHNSON MATTHEY, INC. (hereinafter "JMI"), 900 Forge Avenue, Suite 100, Audubon, Pennsylvania 19403-2305.

I. RECITALS

- (1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure"), as codified in California Code of Regulations, title 13, sections 2700-2711 (13 CCR §§ 2700-2711), currently provides in § 2706(j) that the applicant must ensure that identical, legible, and durable labels are affixed on both the DECS and the engine (or an alternate location approved by the Executive Officer) on which the verified DECS is installed. The required labels must identify the name, address, and phone number of the manufacturer, the DECS family name of the installed system, a unique serial number, and the month and year of manufacture. A sample scale drawing of the original and replacement labels must be submitted with the verification application. All labels must be approved by the Executive Officer and must only be used with an ARB verified DECS. Unless an alternative is approved by the Executive Officer, the label information must be in the following format:

Name, Address, and Phone Number of Manufacturer
Diesel Emission Control Strategy Family Name
Product Serial Number
ZZ-ZZ (Month and Year of manufacture, e.g., 06-02)

- (2) The installation of a DECS that does not meet the system labeling requirements set forth in 13 CCR § 2706(j) is a violation of the Verification Procedure, and such a DECS is not verified for that application.
- (3) By letter dated November 15, 2013, ARB alleged that JMI had violated the Verification Procedure and California Vehicle Code section 27156. Accordingly, ARB staff, with the cooperation of JMI, has alleged certain violations of the Verification Procedure with respect to JMI's DECS systems that allegedly do not conform to the current system labeling requirements. In particular, JMI allegedly failed to ensure that proper labels, as described in 13 CCR § 2706(j), were installed on the DECS systems in the three DECS families: CA/JMI/2001/PM3/N00/ON/DPF01, CA/JMI/2005/PM3/N00/ON/DPF01, and CA/JMI/2007/PM3/N00/ON/DPF01. ARB alleges that, on several DECS systems, DECS family names are missing; on several DECS systems, product serial numbers are missing; on several DECS systems, manufacture phone numbers are missing; on several DECS systems, DECS labels are not affixed on the engines.

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- (4) Health and Safety Code, sections 39674 (a) and (b) (HSC §§ 39674 (a) and (b)) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (5) In order to resolve these alleged violations, JMI has taken, or agrees to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (6) 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and JMI agree as follows:

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against JMI for the alleged violations referred to above, and JMI's payment of the penalties set forth in Section 1 below, ARB and JMI agree as follows:

- (1) Within forty-five (45) days after execution of this Agreement, the sum of fifty thousand dollars (\$50,000.00) shall be paid on behalf of JMI as follows:
 - \$37,500.00 payable to the **Air Pollution Control Fund**
 - \$12,500.00 payable to the **San Joaquin Valley School Bus Supplemental Environmental Project**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Mr. Xiangyi Li, Ph.D., P.E.
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 95812**

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Please 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, CA 95812-1436**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, JMI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney’s costs, and costs.
- (3) It is further agreed that the penalties described in “Terms and Release”, paragraph 1 are intended to deter and punish JMI for alleged violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on JMI by ARB arising from the facts described in recital paragraphs (1) through (4) are non-dischargeable under 11 United States Code § 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) JMI shall not violate any provision of California Vehicle Code section 27156.
- (5) JMI shall not violate Aftermarket Parts Exemption Procedures established in 13 CCR §§ 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (6) JMI shall not violate the Verification Procedure (13 CCR §§ 2700-2711) or any Executive Orders issued by ARB.
- (7) JMI shall ensure that the terms and conditions specified in all current and future applicable Executive Orders are met prior to its installing, selling, offering for sale, or advertising any DECS in California.
- (8) JMI shall not violate the system labeling requirements set forth in 13 CCR § 2706 (j).
- (9) JMI shall comply with the DECS warranty requirements set forth in 13 CCR § 2707.
- (10) Within 15 days of execution of this Agreement, JMI shall initiate a relabeling program consistent with the service bulletin attached hereto as **Attachment B** to address the issues of all the mislabeled DECS systems described in paragraph (3) of the Recitals. If JMI does not have knowledge of or contact information for an affected end user, JMI shall request this information from its distributors, for the

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purpose of tracking the progress of the relabeling program. JMI shall send out a service bulletin to all its distributors and end users for whom it has an address, including those for whom the distributor provided an address, regarding the affected DECS systems, requesting the current noncompliant labels to be replaced with labels that are compliant with the labeling requirements set forth in 13 CCR § 2706 (j), free of charge of the end users. In addition, JMI shall direct its distributors to replace the DECS labels when an end user brings an affected vehicle for service at a JMI distributor. If ARB discovers an end user with a DECS system that requires relabeling, ARB, in its discretion, shall notify JMI and JMI shall contact the end user pursuant to this relabeling program.

- (11) Within 180 days of execution of this Agreement, JMI shall provide a written report to ARB, addressed to Mr. Xiangyi Li, Ph.D., P.E., Air Resources Engineer, Air Resources Board, Enforcement Division, El Monte, California 91731, documenting JMI's effort pursuant to paragraph (10) above. JMI must track DECS, engines, vehicles and corrective actions involved in this enforcement case, and correlate them to one another.
- (12) This Agreement shall apply to and be binding upon JMI, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (13) This Agreement constitutes the entire agreement and understanding between ARB and JMI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and JMI concerning the subject matter hereof.
- (14) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This

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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 HSC §§42403 and 43024.

The per unit penalty in this case is a maximum of \$1,000 per unit per day for strict liability violations and \$10,000 per unit per day for negligent or intentional violations. The penalty in this case is \$50,000.00 for unspecified number of units. The penalty was calculated by considering all factors specified in HSC § 43024, including the fact that these are unintentional violations.

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 HSC § 39674 because JMI allegedly failed to comply with the labeling requirements set forth in 13 CCR § 2706(j) within in the Verification Procedure, which was adopted under authority of HSC § 39600, *et seq.*

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.

- (19) JMI acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, 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 good faith of JMI and 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

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- (21) The penalty was based on confidential settlement communications between ARB and JMI that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and JMI and reflects ARB's assessment of the relative strength of its case against JMI, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that JMI may have secured from its actions.
- (22) This Agreement is for the purpose of resolving disputed claims and to avoid litigation over those claims. JMI makes no admission of any wrongdoing or of the validity of any of ARB's allegations contained herein and no such inference should be drawn therefrom.
- (23) Now therefore, in consideration of the payment on behalf of JMI to the Air Pollution Control Fund and the San Joaquin Valley School Bus Supplemental Environmental Project, and the relabeling program in paragraph (10), ARB hereby releases JMI and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (4) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: 

Print Name: Ellen M. Peter

Title: Chief Counsel

Date: 10/5/2015

Johnson Matthey, Inc.

Signature: 

Print Name: Diane McKeon Bailey

Title: VP & Business Director, HDDNA

Date: September 17, 2015