

## 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 ED TUCKER DISTRIBUTOR, INC., DBA BIKER'S CHOICE AND TUCKER ROCKY DISTRIBUTING (hereinafter "TUCKER ROCKY") with its principal place of business at 4900 Alliance Gateway Fairway, Fort Worth, Texas 76177, 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. VC section 38391 provides, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-highway 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."
4. VC section 38395 provides, "This article [of which VC section 38391 is a part] shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board either: (a) To not reduce the effectiveness of any required off-highway motor vehicle pollution control device; or (b) To result in emissions from any such modified or altered off-highway vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted."
5. California Health & Safety Code (H&S) section 39048 provides, "'Racing vehicle' means a competition vehicle not used on public highways."
6. H&S section 43001 provides, "The provisions of this part shall not apply to...racing vehicles."
7. California Code of Regulations (CCR), title 13, section 1900(b)(20) provides,

“Replacement part” means any aftermarket part intended to replace an original equipment emissions-related part and which is functionally identical to the original equipment part in all respects which in any way affect emissions (including durability), or a consolidated part.”

8. 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.”
9. For purposes of this Agreement, “aftermarket critical emission control part” means any add-on or modified part or system that is intended to replace or modify any original part or system that is designed and used primarily for the reduction of emissions (exhaust, evaporative, or both) from a highway motorcycle, and includes but is not limited to catalytic converters, oxygen sensors, and fuel and air controller modules.
10. 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.”
11. 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.
12. 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.”
13. ARB alleges that, between January 1, 2009 and June 5, 2013, TUCKER ROCKY sold, offered for sale, and/or advertised aftermarket critical emission control parts for use on highway and off-road motorcycles in California (hereinafter “Subject Parts”).
14. ARB alleges that the Subject Parts altered or modified the original design or

performance of the motor vehicle pollution control device or system.

15. ARB alleges that the Subject Parts were not exempted by ARB pursuant to title 13, CCR, section 2222 et seq.
16. 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.
17. TUCKER ROCKY promptly and fully cooperated with ARB throughout its investigation.
18. TUCKER ROCKY has no prior enforcement record with ARB.
19. The retail prices of the Subject Parts ranged from roughly \$129 to \$1,288, with the average, prorated retail price of roughly \$395.
20. TUCKER ROCKY is implementing a compliance plan to ensure that its dealers and customers understand which aftermarket parts are legal or illegal for specific applications.
21. ARB alleges that if the allegations described in recital paragraphs 1-16 were proven, civil penalties could be imposed against TUCKER ROCKY as provided in Health and Safety Code section 43016.
22. TUCKER ROCKY admits the facts but denies the rest of the preceding allegations and makes no admission of liability whatsoever with respect to the allegations described in recital paragraphs 1-21.
23. TUCKER ROCKY 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 that ARB has against TUCKER ROCKY 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 TUCKER ROCKY agree as follows:

1. As a condition of this Settlement Agreement, TUCKER ROCKY shall pay the total sum of five hundred thousand dollars (\$500,000.00) as a penalty. This amount shall be payable on or before June 30, 2013 by check payable to the **California Air Pollution Control Fund** and addressed to:

Diane H. Kiyota, Senior Attorney  
Air Resources Board  
1001 I Street  
Sacramento, CA 95814

2. TUCKER ROCKY shall not install, sell, offer for sale, or advertise in California any critical emission control part in violation of title 13, CCR, section 2222 or Vehicle Code section 27156 or 38391. If ARB believes that TUCKER ROCKY has installed, sold, offered for sale, or advertised in California critical emission control parts in violation of these laws and regulations, ARB may at any time serve a Notice of Deficiency on Defendants that, to the extent available information allows, (1) identifies the specific instance and dates of non-compliance, (2) identifies proposed action(s) that TUCKER ROCKY might take to remedy that non-compliance, if the non-compliance is alleged to be ongoing, and (3) requests that Defendants remedy the non-compliance. If, after a reasonable cure period, ARB believes that TUCKER ROCKY remains deficient in compliance with this Agreement, the Attorney General may file a civil action to enforce this settlement agreement and TUCKER ROCKY shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
3. This Agreement shall apply to and be binding upon TUCKER ROCKY 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 TUCKER ROCKY to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases TUCKER ROCKY and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims, whether known or unknown, that ARB may have relating to the Subject Parts or based on the allegations described in recital paragraphs 1-22, above. Subject to full payment as described above, ARB further releases TUCKER ROCKY's dealers and end-use customers, as well as certain suppliers specifically identified in Exhibit A, but only with regard to the Subject Parts. The undersigned represent that they have the authority to enter this Agreement.
5. No provision of the Agreement shall be construed as an admission of any wrongdoing, or of a violation of any statute, regulation, ordinance, order, or legal requirement by TUCKER ROCKY, its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors. TUCKER ROCKY does not admit the truth of any of the alleged facts contained herein.
6. This Agreement constitutes the entire agreement and understanding between ARB

and TUCKER ROCKY 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 TUCKER ROCKY 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. The Parties 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 bar to, and precluding, any action by ARB against Tucker Rocky, its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, retailers, end-use customers, and suppliers specifically identified in Exhibit A.
9. 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. 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.
12. 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.

### **13. 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 \$369 per unit for approximately 1,356 units. This reflects the facts that TUCKER ROCKY is a distributor that does not sell directly to end-use consumers, this was an unintentional, first time violation, TUCKER ROCKY's diligent efforts to comply and to cooperate with the investigation, and the impact of recent economic conditions on TUCKER ROCKY.

**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 TUCKER ROCKY allegedly sold, and/or offered for sale, and/or advertised the subject non-California certified 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 critical emission control parts. However, since the critical emission control 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.

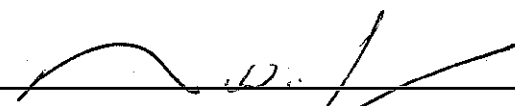
14. TUCKER ROCKY acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a 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.
15. 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

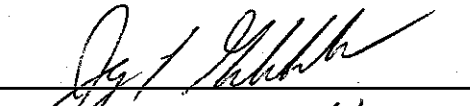
compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because TUCKER ROCKY 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.

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

**California Air Resources Board**

**TUCKER ROCKY DISTRIBUTING**

By:   
Name: ~~James N. Goldstone~~ Richard W. Corey  
Title: Executive Officer  
Date: 6/24/2013

By:   
Name: JAY L Goldstein  
Title: CHIEF FINANCIAL OFFICER  
Date: 6/17/2013

**EXHIBIT A**

- 1. Yoshimura Research and Development of America, Inc.**  
5420 Daniels St. Suite A  
Chino, California 91710
  
- 2. Two Brothers Racing**  
401 South Grand Avenue  
Santa Ana, California 92705
  
- 3. Cobra Engineering, Inc.**  
23801 E La Palma Ave.  
Yorba Linda, California 92887
  
- 4. Rush Racing Products**  
Division of Exhaust Productions, Inc.  
2777 E 83rd Place  
Merrillville, Indiana 46410

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