

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 U.S. Auto Parts Network, Inc. (hereinafter "U.S. AUTO") with its principal place of business at 17150 Margay Avenue, Carson, California 90746.

RECITALS

1. California Vehicle Code (VC) section 27156(c) 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, a required motor vehicle pollution control device or system that 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, apparatus, or mechanism found by resolution of the State Air Resources Board to either not reduce the effectiveness of a required motor vehicle pollution control device or result in emissions from the modified or altered vehicle that are at levels that comply with existing state or federal standards for that model-year of the vehicle being modified or converted.
3. California Code of Regulations (CCR), title 13, section 2222(h)(1) provides, "Prior to 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 Non-Original Equipment Catalytic Converters' as adopted by the state board on August 19, 1988."
4. CCR, title 13, section 2222(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' as adopted by the state board on October 25, 2007."
5. CCR, title 13, section 2222(h)(3) provides, "No person shall install, sell, offer for sale or advertise, any new aftermarket catalytic converter in California unless it has been exempted pursuant to the procedures as provided in this subsection."
6. CCR, title 13, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of VC Section 27156 or other laws or regulations, as applicable.

7. Health and Safety Code (HSC) section 43016 provides, in pertinent part, that "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, between January 1, 2009 and March 10, 2010, U.S. AUTO sold, offered for sale, and/or advertised certain aftermarket catalytic converters that were not exempted by ARB pursuant to CCR, title 13, section 2222.
9. U.S. AUTO promptly and fully cooperated with ARB throughout its investigation.
10. U.S. AUTO has no prior enforcement record with ARB.
11. ARB alleges that if the facts described in recital paragraph 8 were proven, civil penalties could be imposed against U.S. AUTO as provided in HSC section 43016.
12. U.S. AUTO admits the facts described in recital paragraph 8 but denies any liability arising therefrom.
13. In the spirit of settlement and compromise and to avoid the expense and uncertainty of litigation, U.S. AUTO is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB, without admitting liability, and on condition that neither this Agreement nor any provision hereof nor compliance herewith shall be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of U.S. AUTO. Further, 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 U.S. AUTO for the violations alleged above, and in consideration of the other terms set out below, ARB and U.S. AUTO agree as follows:

1. As a condition of this Settlement Agreement, U.S. AUTO shall pay the total sum of two hundred and thirty-three thousand dollars (\$233,000.00) as a penalty. This amount shall be payable on or before October 31, 2011 by check payable to the California Air Pollution Control Fund and

addressed to:

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

2. U.S. AUTO shall not install, sell, offer for sale, or advertise in California any aftermarket part in violation of CCR, title 13, section 2222 or VC section 27156.
3. This Agreement shall apply to and be binding upon U.S. AUTO 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 U.S. AUTO to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases U.S. AUTO and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and allegations described in recital paragraph 8, above, provided that this release shall not extend to Eastern Manufacturing Company and shall extend to U.S. AUTO's other suppliers only with respect to aftermarket catalytic converters supplied to U.S. AUTO or its predecessors or affiliates. The undersigned represent that they have the authority to enter this Agreement.
5. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by ARB or any person or entity in privity with ARB against U.S. AUTO and its affiliates and their respective principals, officers, directors, receivers, trustees, employees, agents, successors and assignees, subsidiaries and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in HSC section 42400.7(a).
6. This Agreement constitutes the entire agreement and understanding between ARB and U.S. AUTO 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 U.S. AUTO 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. 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; HSC 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 HSC 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 932 units. This reflects the facts that this was

an unintentional, first time violation, U.S. AUTO's unusually diligent efforts to comply and to cooperate with the investigation, U.S. AUTO's efforts to institute prompt corrective measures, 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, HSC section 43016, is appropriate because U.S. AUTO allegedly acquired, sold, and/or offered for sale, and/or advertised the subject non-California certified catalytic converters that were not exempted pursuant to CCR, title 13, section 2222.

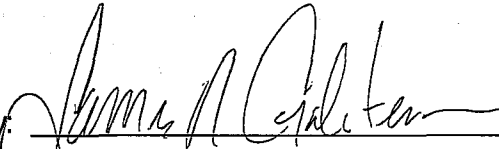
Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

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 converters. However, since the catalytic converters 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.

14. U.S. AUTO 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 HSC 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 U.S. AUTO made unusually 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.

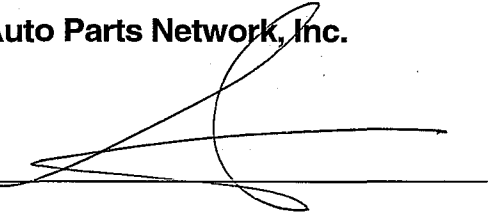
16. The penalty in this case was based in part on confidential business information provided by U.S. AUTO that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and U.S. AUTO that ARB does not retain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

California Air Resources Board

By: 

Name: James N. Goldstene
Title: Executive Officer
Date: 11-14-2011

U.S. Auto Parts Network, Inc.

By: 

Name: Shane Evangelist
Title: Chief Executive Officer
Date: 10-26-11