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Attorneys for Plaintiff California Air Resources Board (CARB)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. THE CALIFORNIA AIR RESOURCES BOARD,

Plaintiff,

v.

DYNOJET RESEARCH, INC., individually and doing business as DYNOJET, DYNOJET RESEARCH, DYNATEK, DYNATEK HIGH PERFORMANCE ELECTRONICS, and DYNA PERFORMANCE ELECTRONICS; DYNATEK IGNITIONS, INC., individually and doing business as DYNOJET, DYNOJET RESEARCH, DYNATEK, DYNATEK HIGH PERFORMANCE ELECTRONICS, AND DYNA PERFORMANCE ELECTRONICS; ROBERT VLCEK, individually and as officer; DAVID MATTHEW WINIARCZYK, individually and as officer; DANIEL (AKA DANNY, OR DAN) WILLIAM HOURIGAN, individually and as officer; SHAWN TOD ARNOLD, individually and as officer; DOES 1-100, inclusive,

Defendants.

FILED
Superior Court of California
County of Los Angeles
01/24/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: J. Clavero Deputy

*Exempt From Filing Fees
Pursuant to Gov. Code, § 6103*

CASE NO.: 20STCV36850

Assigned: Hon. Dennis Landin
Dept.: 51
Action Filed: September 25, 2020

STIPULATION FOR ENTRY OF JUDGMENT; [PROPOSED] ORDER AND JUDGMENT

1 **STIPULATION FOR ENTRY OF JUDGMENT**

2 Plaintiff People of the State of California ex rel. the California Air Resources Board
3 (CARB) brought this action against Defendants Dynojet Research, Inc., individually and doing
4 business as Dynojet, Dynojet Research, Dynatek, Dynatek High Performance Electronics, and
5 Dyna Performance Electronics (Dynojet), Dynatek Ignitions, Inc., individually and doing
6 business as Dynojet, Dynojet Research, Dynatek, Dynatek High Performance Electronics, and
7 Dyna Performance Electronics (Dynatek), Robert Vlcek, David Matthew Winiarczyk, Daniel (aka
8 Danny, or Dan) William Hourigan, and Shawn Tod Arnold , for violations of Vehicle Code
9 sections 27156 and 38391 and California Code of Regulations, title 13, sections 2220, et seq. and
10 2470 et seq. CARB, Dynojet, and Dynatek are hereinafter referred to as the “Parties.” CARB
11 alleges that Dynojet and Dynatek violated the law by advertising, selling, offering to sell, and/or
12 advertising parts or devices that alter or modify the original design or performance of required
13 motor vehicle pollution control devices or systems on California vehicles that have not been
14 exempted by CARB from Vehicle Code section 27156 or 38391.

15 Following arm’s length negotiations between the Parties and their respective counsel, the
16 Parties have reached and entered into a settlement agreement by way of this Stipulation for Entry
17 of Judgment (Stipulated Judgment) in a good faith effort to avoid the uncertainty and expense of
18 protracted litigation. CARB will dismiss Robert Vlcek, David Matthew Winiarczyk, Daniel (aka
19 Danny, or Dan) William Hourigan, and Shawn Tod Arnold from this case with prejudice upon
20 entry of this Stipulated Judgment by the Court.

21 By entering into this Stipulated Judgment, Dynojet and Dynatek do not admit any of the
22 matters alleged in the Complaint on this matter, nor does CARB admit that the claims it has
23 alleged are without merit or that there exists any viable defense to those claims. Except as
24 expressly set forth herein, nothing in this Stipulated Judgment shall prejudice, waive, or impair
25 any right, remedy, argument, or defense any Party may have in any current or future legal
26 proceeding unrelated to these proceedings. CARB believes that this settlement is in the best
27 interests of its agency and the People of the State of California.

1 THEREFORE, the Parties stipulate to entry of judgment in this matter as follows:

2 1. Jurisdiction and Venue. Los Angeles County is a proper venue for this action and any
3 further action that may be necessary to enforce or modify the terms of this Stipulated
4 Judgment. This Court has jurisdiction over the parties to and subject matter of this
5 action, and shall retain jurisdiction for purposes of any further action that may be
6 necessary to enforce or modify the terms of this Stipulated Judgment.

7 2. Effective Date. The Effective Date of this Stipulated Judgment is the date that it is
8 entered as a Judgment by the Superior Court.

9 3. Penalty Payment.

10 a. Dynojet and Dynatek shall pay a civil penalty of \$2,100,000 (Total Penalty
11 Amount) to CARB, as a joint and several liability. Dynojet and Dynatek shall
12 make timely payment of the Total Penalty Amount to CARB as follows:
13 \$525,000 within 90 days of the Effective Date (Due Date), and \$315,000 per
14 year for five (5) years thereafter, due on the anniversary of the Effective Date
15 (Due Date). CARB shall provide to Dynojet and Dynatek a signed
16 Acknowledgment of Satisfaction of Judgment as to Section 3 of this Stipulated
17 Judgment within 30 days of receipt of the final payment.

18 b. Payments shall be made by certified or cashier's check to the California Air
19 Resources Board, delivered along with the attached Payment Transmittal Form
20 (Exhibit A) to:

21 California Air Resources Board
22 Accounting Office
23 P.O. Box 1436
24 Sacramento, CA 95812-1436

25 or made by wire transfer according to the instructions on the Payment
26 Transmittal Form, with a photocopy of all payments sent to:

27 California Department of Justice, Office of the Attorney General
28 Attn: Ryan Hoffman, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

1 c. In the event that Dynojet and Dynatek fail to remit any payment (or portion
2 thereof) described in Section 3(a), above, on or before any Due Date, Dynojet
3 and Dynatek shall be deemed to be in material breach of their obligations under
4 this Stipulated Judgment. CARB shall provide written notice of the delinquent
5 payment to Dynojet and Dynatek pursuant to Section 15, below. If Dynojet and
6 Dynatek fail to deliver the delinquent payment within ten (10) business days of
7 CARB's provision of written notice of the delinquent payment (Cure Period),
8 the entire unpaid remainder of the Total Penalty Amount shall become due and
9 owing, and shall accrue interest at the statutory judgment interest rate provided
10 in Code of Civil Procedure section 685.010, commencing on the first day after
11 the applicable Due Date. At any time after the Cure Period, CARB or its
12 counsel may make an ex parte application, without further notice to any Party, to
13 the Court for an Order that Dynojet and/or Dynatek pay the Total Penalty
14 Amount (plus accrued interest) within thirty (30) calendar days following entry
15 of the Order, less credit for any payment(s) already received by CARB pursuant
16 to Section 3.

17 d. The payments described in Section 3 are made pursuant to the provisions of
18 Health and Safety Code section 43008.6 and/or 43016. Therefore, it is agreed
19 that the payments, and any interest accrued thereon, are non-dischargeable under
20 the United States Code, title 11, section 523, subdivision (a)(7), which provides
21 an exception from discharge for any debt to the extent such debt is for a fine,
22 penalty, or forfeiture payable to and for the benefit of a governmental unit, and
23 is not compensation for actual pecuniary loss, other than certain types of tax
24 penalties.

25 4. Injunction.

26 a. Dynojet, Dynatek, and each of them, are permanently enjoined from violating
27 Health and Safety Code section 43017 and Code of Civil Procedure section 525
28 et seq., Vehicle Code sections 27156 and 38391, and California Code of

1 Regulations, title 13, sections 2222 and 2474, and from engaging in or
2 performing, directly or indirectly, any and all of the following acts:

3 i. Installing, offering for sale, or selling any device, apparatus, or
4 mechanism which alters or modifies the original design or performance
5 of any required motor vehicle, off-road vehicle, off-road engine, or off-
6 road equipment pollution control device or system in California unless
7 such part, apparatus, or mechanism has been certified or exempted by
8 CARB, directly or indirectly through any person, whether such person
9 is a dealer, distributor, reseller, or otherwise, to any other person that
10 reasonably may install such device, apparatus, or mechanism on a
11 registered motor vehicle, registered off-road vehicle, certified off-road
12 engine, or certified off-road equipment in California.

13 ii. Making or disseminating in California any advertisement that
14 references any device, apparatus, or mechanism that alters or modifies
15 the original design or performance of any required motor vehicle
16 pollution control device or system and not exempted from Vehicle
17 Code section 27156 or 38391 unless each advertisement contains a
18 conspicuous disclaimer. The disclaimer shall be in a minimum font
19 size 10, and shall appear on each page that any non-certified/non-
20 exempt part appears. The disclaimer shall be one of the following:

- 21 1. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA."
- 22 2. "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON
23 ANY POLLUTION CONTROLLED MOTOR VEHICLE."
- 24 3. "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES
25 WHICH MAY NEVER BE USED, OR REGISTERED OR
26 LICENSED FOR USE, UPON A HIGHWAY."
- 27 4. "FOR CLOSED COURSE COMPETITION USE ONLY. NOT
28 INTENDED FOR STREET USE."

1 b. Dynojet and Dynatek shall communicate to all of their agents, dealers,
2 distributors, and resellers that they must cease and desist the offering for sale,
3 installation and/or sale of all Dynojet and Dynatek add-on or modified
4 aftermarket parts in California, unless the parts have been certified or
5 exempted by CARB.

6 c. Dynojet and Dynatek shall communicate to all of their agents, dealers,
7 distributors, and resellers that they must cease and desist the advertising and/or
8 representing of all Dynojet and Dynatek add-on or modified aftermarket parts
9 in California, unless the advertisements include the disclaimer listed above.

10 5. Subsequent Violations.

11 a. If CARB believes that any violation(s) of the injunctive relief provisions set
12 forth in Section 4, above, have taken place, then CARB or its counsel shall
13 provide Dynojet and Dynatek written notice of the alleged violation(s) and
14 request to meet and confer with Dynojet and Dynatek in a good-faith attempt to
15 resolve any dispute without Court intervention. During this meet and confer
16 process, Dynojet and Dynatek shall provide to CARB any records regarding
17 advertisement, sale, shipment, or installation of products into or within
18 California that CARB requests for the purpose of determining the extent of the
19 violation(s).

20 b. After providing Dynojet and Dynatek with written notice of alleged violation(s)
21 and request to meet and confer pursuant to Section 5(a), CARB may bring a
22 regularly noticed motion in this Court for an order that Dynojet and/or Dynatek
23 pay a further civil penalty as provided below if the following situations occur:

24 i. Dynojet and/or Dynatek fail to meet and confer with CARB or its
25 counsel within thirty (30) calendar days of CARB's provision of written
26 notice of alleged violation(s) pursuant to Section 15, below, the further
27 civil penalty shall be \$5,000,000.
28

1 ii. After meeting and conferring, CARB reasonably determines that, subject
2 to Sections 5(d)-(h), Dynojet and/or Dynatek committed more than five
3 (5) violations (with each individual item offered for sale, sold, installed,
4 or advertised constituting a separate violation) within any period of
5 twelve (12) consecutive months, and that the violations have not been
6 resolved to CARB's satisfaction. Under those circumstances, if there are
7 more than five (5) violations, but less than 50 violations within any
8 period of twelve (12) consecutive months, the further civil penalty shall
9 be \$1,500 per violation. If there are more than 50 violations within any
10 period of twelve (12) consecutive months, then the further civil penalty
11 shall be \$5,000,000.

12 c. After hearing CARB's motion brought pursuant to Section 5(b), the Court shall
13 Order Dynojet and/or Dynatek to pay the further civil penalty amount requested
14 in CARB's motion within thirty (30) calendar days after entry of the Order if the
15 Court determines that either of the following situations have occurred:

16 i. More than five (5) violations of the injunctive relief (with each individual
17 item sold, installed, or advertised for sale constituting a separate
18 violation) have occurred within any period of twelve (12) consecutive
19 months, and Dynojet and/or Dynatek knew or should have known about
20 the violations.

21 ii. Dynojet and/or Dynatek failed to meet and confer with CARB or its
22 counsel within thirty (30) calendar days of CARB's provision of written
23 notice of alleged violation(s) pursuant to Section 15, below, and the
24 violation(s) of the injunctive relief provisions set forth in Section 4,
25 above, independently identified by CARB have occurred.

26 d. The terms of Section 5(a)-(c) do not apply to violations by individual
27 Defendants who are no longer employed by Dynojet or Dynatek at the time they
28 commit such violations.

- 1 e. The terms of Section 5(b)-(c) do not apply where Dynojet and Dynatek can
2 demonstrate that the actions constituting violation(s) of Section 4 if undertaken
3 by Dynojet or Dynatek were directly committed by a dealer, distributor, or
4 reseller that was prohibited from undertaking such actions by a binding
5 agreement with Dynojet and Dynatek, and that Dynojet and Dynatek have taken
6 the following corrective actions upon learning of the dealer, distributor, or
7 reseller's actions:
- 8 i. Terminating their business relationship with that dealer, distributor, or
9 reseller.
 - 10 ii. Immediately recalling all remaining inventory of parts sold to the dealer,
11 distributor, or reseller that were not certified by CARB.
- 12 f. The terms of Section 5(b)-(c) do not apply where Dynojet and Dynatek can
13 demonstrate that the actions constituting violation(s) of Section 4 if undertaken
14 by Dynojet or Dynatek were instead undertaken by a third-party reseller that
15 obtained Dynojet or Dynatek products from a dealer, distributor, or reseller with
16 which Dynojet and/or Dynatek have a business relationship, and that Dynojet
17 and Dynatek have taken the following sequence of corrective actions upon
18 learning of the third-party reseller's actions:
- 19 i. Ordered their dealer, distributor, or reseller to terminate its business
20 relationship with the third-party reseller that took the actions, and
21 received written confirmation that the relationship was terminated.
 - 22 ii. Terminated their business relationship with their dealer, distributor, or
23 reseller if the dealer, distributor, or reseller failed to terminate its
24 business relationship with the third-party reseller that took the actions.
 - 25 iii. Immediately recalling all remaining inventory of parts that were not
26 certified by CARB that were sold to the dealer, distributor, or reseller.
- 27 g. The terms of Section 5(b)-(c) do not apply where a dealer, distributor, reseller or
28 installer violates Vehicle Code sections 27156 and 38391 and/or California

1 Code of Regulations, title 13, sections 2220, et seq. and 2470 *et seq.* that has no
2 business relationship with Dynojet and Dynatek. Dynojet and Dynatek must
3 substantiate that they had no business relationship with the alleged third-party
4 violator(s) at the time the alleged violation(s) occurred, and provide the original
5 record(s) of sale for product unit(s) that CARB alleges were involved in the
6 violation(s) (i.e. the invoice(s) reflecting the party or parties to whom Dynojet
7 and Dynatek first sold the products to).

8 h. The terms of Section 5(b)-(c) do not apply where an individual consumer resells
9 Dynojet or Dynatek products through third-party online market places such as
10 eBay or a similar website in violation of Vehicle Code section 27156 or 38391
11 and/or California Code of Regulations, title 13, sections 2220, *et seq.* or 2470, *et*
12 *seq.*, and where Dynojet and Dynatek can demonstrate that that they prohibited
13 future sales to that individual consumer upon learning of the individual
14 consumer's actions.

15 i. No provision of the injunction set forth in Section 4, above, shall bar CARB
16 from seeking other and/or further judicial remedies (including, but not limited
17 to, injunctive relief) as to future violations.

18 j. No provision of this Section 5 shall bar CARB from separately enforcing
19 California law with regard to any future act(s) constituting violation(s) of the
20 injunctive relief provisions set forth in Section 4, above, in lieu of pursuing
21 remedy via the process set forth in Section 5.

22 6. Release. In consideration of the settlement payments by Dynojet and Dynatek, the
23 injunctive relief specified in Section 4 and the procedures for any subsequent violations
24 specified in Section 5, the State of California and CARB hereby releases Defendants
25 and their principals, officers, shareholders, directors, agents (as defined in Cal. Civil
26 Code § 2295, and specifically meaning a person that is authorized by Dynojet or
27 Dynatek to represent them in dealings with third persons), successors and assignees,
28 subsidiary and parent corporations, and predecessors, (excluding any and all dealers,

1 distributors, or resellers of Dynojet and Dynatek products), from any and all claims,
2 demands, actions, or causes of action pertaining to any violations alleged in CARB's
3 First Amended Complaint filed January 27, 2021 through the Effective Date.

- 4 7. Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred in
5 this matter.
- 6 8. Scope of Stipulated Judgment. This Stipulated Judgment is made and entered into by
7 and on behalf of the People of the State of California ex rel. the California Air
8 Resources Board only. Except as expressly provided in this Stipulated Judgment,
9 nothing in this Stipulated Judgment is intended or shall be construed to preclude the
10 Attorney General from exercising his or her authority as an independent
11 Constitutional officer under any law, statute, or regulation. Except as expressly
12 provided in this Stipulated Judgment, nothing in this Stipulated Judgment is intended
13 or shall be construed to preclude any state, local, or federal agency, board,
14 department, office, commission, or entity from exercising its authority under any law,
15 statute, regulation, or ordinance.
- 16 9. No Admission of Liability. This Stipulated Judgment is the result of a compromise
17 and shall not in any way be construed as an admission of liability, fault, or
18 responsibility by any of the Parties as to any claims or contentions.
- 19 10. Interpretation. This Stipulated Judgment shall be deemed to have been drafted
20 equally by the Parties and shall not be interpreted for or against any Party on the
21 ground that any such Party drafted it. This Stipulated Judgment shall be governed,
22 interpreted, and construed in accordance with the laws of the State of California.
- 23 11. Integration. This Stipulated Judgment contains all of the terms and conditions agreed
24 upon by the Parties and supersedes any and all prior and contemporaneous
25 agreements, negotiations, correspondence, understandings, and communications of
26 the Parties, whether oral or written, respecting the matters covered by this Stipulated
27 Judgment. This Stipulated Judgment may be amended or modified only by a writing
28 signed by the Parties or their representatives and then by order of this Court.

- 1 12. Knowing, Voluntary Agreement. Each Party to this Stipulated Judgment
2 acknowledges that it has been represented by legal counsel, and that each Party has
3 reviewed, and has had the benefit of legal counsel’s advice, concerning all of the
4 terms and conditions of this Stipulated Judgment.
- 5 13. Authority to Execute. Each Party to this Stipulated Judgment represents and warrants
6 that the person who has signed this Stipulated Judgment on its behalf is duly
7 authorized to enter into this Stipulated Judgment, and to bind that Party to the terms
8 and conditions of this Stipulated Judgment.
- 9 14. Advice of Counsel. Each Party to this Stipulated Judgment has reviewed the
10 Stipulated Judgment independently, has had the opportunity to consult counsel, is
11 fully informed of the terms and effect of this Stipulated Judgment, and has not relied
12 in any way on any inducement, representation, or advice of any other Party in
13 deciding to enter into this Stipulated Judgment.
- 14 15. Notices. Notwithstanding any other provision, notices required by this Stipulated
15 Judgment shall be provided as follows:
- 16 a. For CARB:
- 17 i. California Air Resources Board,
18 Attn: Diane Kiyota, Senior Attorney
19 1001 I Street, P.O. Box 2815
20 Sacramento, CA 95812;
21 and by email to diane.kiyota@arb.ca.gov
- 22 ii. California Air Resources Board
23 Attn: John Ng, Engine and Parts Enforcement
24 1001 I Street, P.O. Box 2815
25 Sacramento, CA 95812;
26 and by email to John.ng@arb.ca.gov
- 27 iii. California Department of Justice, Office of the Attorney General
28 Attn: Ryan Hoffman, Deputy Attorney General
 455 Golden Gate Avenue, Suite 11000
 San Francisco, CA 94102-7004;
 and by email to Ryan.Hoffman@doj.ca.gov
- b. For Dynojet and Dynatek:

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i. Dave Martinez
Chief Executive Officer
Dynojet Research, Inc.
2191 Mendenhall Drive
North Las Vegas, NV 89081;
and by email to DMartinez@dynojet.com

- c. Any Party may change the individual or address for purpose of notice to that Party by written notice specifying the new individual(s) and/or address(es).
- d. Dynojet and Dynatek shall provide written notification to CARB within ten (10) business days of any change in the contact information set forth in Section 15(b), above. If Dynojet or Dynatek fails to timely provide CARB with such written notification, then any notice by CARB to Dynojet or Dynatek required pursuant to any part of this Stipulated Judgment shall constitute sufficient notice if sent to the individual(s) and/or address(es) previously specified for Dynojet or Dynatek.

- 16. Counterparts. This Stipulated Judgment may be executed by the Parties in counterpart originals with the same force and effect as if fully and simultaneously executed as a single, original document.
- 17. No Third Party Benefits. This Stipulated Judgment is made for the sole benefit of the Parties and no other person or entity shall have any rights or remedies under or by reason of this Stipulated Judgment, unless otherwise expressly provided for in this Stipulated Judgment.
- 18. Computation of Time. If the last day for the performance of any act provided or required by the Judgment falls on a weekend or holiday, then that period is extended to the next business day. “Holiday” means all holidays specified in Code of Civil Procedure section 135, and all days that by terms of Code of Civil Procedure section 12b are required to be considered holidays.

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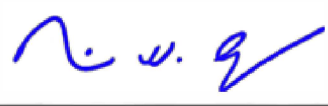
IT IS SO STIPULATED:

DATED: 12-20-21



David Martinez
Chief Executive Officer
Dynojet Research, Inc. and
Dynatek Ignitions, Inc.

DATED: 1/18/2022



Richard Corey
Executive Officer, California Air
Resources Board

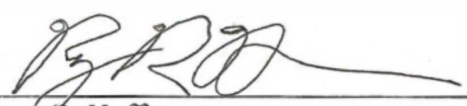
APPROVED AS TO FORM:

DATED: 12/20/2021



Maureen F. Gorsen
Counsel for Dynojet Research, Inc. and
Dynatek Ignitions, Inc.

DATED: 12/20/21



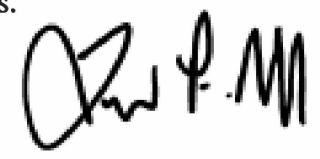
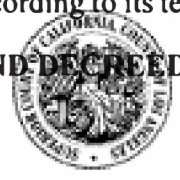
Ryan R. Hoffman
Deputy Attorney General
Counsel for the People of the State of
California ex rel. the California Air
Resources Board

PROPOSED ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Stipulated Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED: January 24, 2022



Lawrence P. Riff / Judge
Hon. Dennis Landin
Judge of the Superior Court