

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Lane Automotive, Inc. (Lane), with its principal location at 8300 Lane Drive, Watervliet, Michigan 49098 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) **Purpose.** The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles. (Health & Saf. Code §§ 43000, 43000.5, 43011.)
- (2) **Regulation.** CARB adopted the "*Add-On Parts and Modified Parts*" Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (Aftermarket Parts Regulation) to ensure that these vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
- (3) **Regulatory Provisions.** The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanisms that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.) The Executive Officer may issue a cease and desist order and enjoin the sale, import, install, advertising, supply, distribution, or install in California of any add-on or modified part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit. 13, § 2225; Health & Saf. Code 43017.) The sale of this product may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3).)
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500.00 USD) for each violation of the Vehicle Code and forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action, for strict liability violations, respectively, for each noncompliant add-on or modified part. (Cal. Code Regs., tit. 13, §§ 2220-2225; Health & Saf. Code, §§ 43008.6, 43016; Vehicle Code § 27156.)

CASE BACKGROUND

- (5) **Corporate Entity.** At all relevant times, Lane was organized under the laws of Michigan as a Corporation and conducted business in the State of California.
- (6) **Allegations.** Lane voluntarily self-disclosed potential violations of the Aftermarket Parts Regulation. Upon investigation, CARB alleges Lane violated the Aftermarket Parts Regulation by advertising, offering for sale, or selling 476 non-

exempted add-on or modified parts for on-highway vehicles modifying a California vehicle's emission control system, resulting in 476 violations. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Lane for each and every part involved in the violations and each day.

- (7) Acknowledgment. Lane admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Lane has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against Lane for the alleged violations referred to above in the Legal Background and Case Background, and Lane's agreement to complete all terms and conditions set forth below, CARB and Lane agree as follows:

- (9) Settlement Amount. Lane shall pay a civil penalty of twenty-three thousand eight hundred dollars (\$23,800.00 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled New Voices Are Rising: Improving Air Quality in the Community in the amount of twenty-three thousand eight hundred dollars (\$23,800.00 USD), consistent with CARB's SEP Policy, for a total settlement of forty-seven thousand seven hundred dollars (\$47,600.00 USD). Lane shall make all payments within 90 calendar days from the date CARB notifies Lane of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Lane shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Lane is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Lane in accordance with Paragraph 19 (Notices).

- (11) SEP Payment Method(s). Lane shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, New Voices Are Rising: Improving Air Quality in the Community, using instructions provided separately by CARB in a Payment Transmittal Form. Lane is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Lane in accordance with Paragraph 17 (Notices).
- (12) Prohibition Against Financial Benefit. Lane has agreed that by funding the SEP entitled New Voices Are Rising: Improving Air Quality in the Community, Lane will not receive any direct or indirect financial benefit, and that whenever Lane publicizes or refers to the SEP or the results of the SEP, Lane will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Lane assigns any and all rights against the SEP implementer to CARB.
- (14) Compliance Plan. Lane has presented a corporate compliance plan that includes a new appointment of an Environmental Compliance Coordinator (ECC). The ECC will report directly to Lane's Executive Officer to ensure that all products are compliant with applicable CARB regulatory requirements.
- (15) Disclaimer. Lane shall add one of the following disclaimers to the advertisements of all non-exempt add-on or modified parts advertised, sold, or offered for sale in California. The disclaimer shall be in approximately font size 8 on each page on which any non-exempt add-on or modified part appears:
- "NOT LEGAL FOR SALE OR USE IN CALIFORNIA. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY."

THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3)).”

- “FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3)).”

- (16) Documents. Lane shall promptly email or mail the signed and dated Settlement Agreement and SEP, a copy of the Payment Transmittal Form(s), copy of proof of payment of the penalty to the address or email in Paragraph 17 (Notices).
- (17) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Vehicle, Parts, and Consumer Products Enforcement Branch /
Engine and Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Lane:

Lane Automotive, Inc.
8300 Lane Drive
Watervliet, Michigan 49098

As to Lane’s Representation:

John D. Dunlap, III
690 Market Street, Unit 202
San Francisco, California, 94104
John@dunlapgrp.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (18) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Lane shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys’ fees, and costs.

- (19) Repeat Violations. Lane agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 9 pages and 38 paragraphs.
- (21) Binding Effect. This Settlement Agreement binds Lane, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (22) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (23) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (24) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (25) Choice of Law. This Settlement 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.
- (26) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (27) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (28) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement

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 Settlement Agreement or otherwise provided by law.

- (29) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of full payment of the civil penalty, and SEP payment, and all other undertakings above, CARB hereby releases Lane and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (34) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action under Health and Safety Code section 43016, and/or one thousand, five hundred (\$1,500.00) per unit under California Health and Safety Code section 43008.6, for violations of the Aftermarket Parts Regulation and Vehicle Code section 27156. (Cal. Code Regs., tit.13, §§ 2220-2225.) The penalty of \$47,600 over an unspecified number of days of violation is for 476 noncompliant add-on or modified parts. The per unit penalty in this case is approximately \$100.00 per noncompliant part. The penalty amount was reduced based on the Mitigating Factors described below in paragraph 36.
- (35) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not

practicable to quantify the excess emissions. Since CARB has alleged that the product did not meet the regulatory requirements, emissions above the specified limit were excess and illegal.

- (36) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

Mitigating factors in this case include but are not limited to the following specific examples, one or more of which may apply to each specific issue:

- a) Lane voluntarily disclosed the alleged violation herein to CARB pursuant to a comprehensive compliance audit – which was not directed by CARB – and did so within 21 days of its discovery;
 - b) Lane came into compliance quickly by expeditiously prohibiting the sale and shipping of noncompliant add-on or modified parts to California and fully cooperated with the investigation.
 - c) Lane has taken specific action to prevent recurrence of the allegations by updating its internal processes and appointing an ECC to continue compliance; and,
 - d) Lane's compliance history with CARB
- (37) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Lane or confidential settlement communications.
- (38) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.

- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Lane with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Lane with respect to:
- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Lane to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Lane shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Lane or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Lane, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Lane is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Lane's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this

Settlement Agreement, warrant or aver in any manner that Lane's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: January 27, 2023

Lane Automotive, Inc.

Signature: /S/

Name: James MacEachern

Title: Chief Operating Officer

Date: January 23, 2023