

## 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 "CARB"), with its principal office at 1001 I Street, Sacramento, California, 95814 and J&P CYCLES, LLC. (hereinafter "J&P") with its principal place of business at 651 Canyon Dr., Suite 100 Coppell, Texas 75019 (collectively, "The Parties," or individually as a "Party"). This Agreement shall be effective on the date last executed below ("Effective Date").

### RECITALS

1. 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. CARB adopted the "Add-On Parts and Modified Parts" Regulation (Cal. Code Regs., tit. 13, §§ 2220 et seq.) to ensure that vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
3. California Vehicle Code section 27156, subdivision (c) provides that "[n]o 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."
4. Vehicle Code section 27156, subdivision (h) provides, in pertinent part, that "[t]his 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 a 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.
5. California Code of Regulations, title 13, section 2222, subdivision (b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisements contains a legally adequate disclaimer..."
6. Pursuant to California Code of Regulations, title 13, section 1900, subdivision (b)(3), an "Emissions-related part" is "any automotive part, which affects any regulated emissions from a motor vehicle which is subject to California or federal emission standards. This includes, at a minimum, those parts specified in the 'Emissions-Related Parts List,' adopted by the State Board on November 4, 1977, as last amended June 1, 1990."

7. The Executive Officer may assess civil penalties for violations of Vehicle Code Section 27156. (Health & Saf. Code § 43008.6(b); Cal. Code Regs., tit. 13, § 2225(a).)
8. Health and Safety Code section 43016, as in effect prior to January 1, 2017, 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."
9. Health and Safety Code section 43016, as in effect January 1, 2017, 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 thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part."
10. Health and Safety Code section 43008.6(b) states, in pertinent part, "The state board may collect a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code."
11. J&P is a distributor of, inter alia, new aftermarket non-original equipment parts, including, but not limited to, fuel systems, custom engine calibrations, or tuners, and exhaust kits and/or systems.
12. CARB alleges that between January 1, 2015 and October 23, 2018, J&P, offered, and/or sold in California, supplied, distributed, offered for sale, and/or advertised in California nine hundred and eighteen (918) fuel systems, ECU tuners, and exhaust kits and/or systems (hereinafter "Subject Parts").
13. CARB alleges that the Subject Parts altered or modified the original design or performance of devices, apparatuses, or mechanisms intended for use with, or as part of, required highway vehicles, engines, or motor vehicle pollution control devices or systems.
14. CARB alleges that supplying, distributing, selling, offering for sale, and/or advertising in California of the Subject Parts were unlawful and in violation of Vehicle Code section 27156(c) and California Code of Regulations, title 13, section 2220 et seq.
15. J&P is a limited liability company headquartered in Dallas, Texas.
16. J&P fully cooperated with CARB in its investigation of the Subject Parts.

17. J&P has no prior enforcement record with CARB.
18. CARB alleges that if the facts and allegations described in recital paragraphs 1-14 were proven, civil penalties could be imposed against J&P as provided in Health and Safety Code section 43016.
19. J&P admits the facts described in recital paragraphs 1-14 and admits CARB makes the allegations described in recital paragraphs 1-14, but denies any liability arising thereunder.
20. J&P is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CARB. CARB 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 CARB not filing a legal action against J&P for the violations alleged above, and in consideration of the other terms set out below, CARB and J&P agree as follows:

1. As a condition of this Agreement, J&P shall pay the total sum of one hundred fourteen thousand seven hundred and fifty dollars (\$114,750) as a civil penalty to the **California Air Pollution Control Fund**. This penalty amount shall be made in (4) payments as described below.

| Payment Due Date:                                 | In the Amount of and Payable to: |                                       |
|---|----------------------------------|---------------------------------------|
| (1) Within thirty (30) days of the Effective Date | \$57,375.00                      | California Air Pollution Control Fund |
| (2) June 30, 2020                                 | \$19,125.00                      | California Air Pollution Control Fund |
| (3) September 30, 2020                            | \$19,125.00                      | California Air Pollution Control Fund |
| (4) December 30, 2020                             | \$19,125.00                      | California Air Pollution Control Fund |

**J&P shall send the signed Agreement and any future mailings or documents per the terms of this Agreement to:**

**Mr. Marco Banaga  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731**

**J&P shall send each payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

**California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436**

As a further condition of this Agreement, J&P has agreed to undertake a Supplemental Environmental Project (SEP) as described in Attachment B – SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT – Installation of Residential Air Filtration Systems SEP, (SEP Agreement) in the amount of one hundred fourteen thousand seven hundred and fifty dollars (\$114,750), which CARB has approved as mitigation for alleged past violations and to offset a portion of the penalty, consistent with CARB's SEP Policy. Pursuant to this Agreement, J&P shall pay the entire amount of the SEP to the South Coast Air Quality Management District within 30 days of the Effective Date.

**For the payment made to the South Coast Air Quality Management District, J&P shall send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A - 2) to:**

**South Coast Air Quality Management District  
For: Installation of Residential Air Filtration Systems  
21865 Copley Drive  
Diamond Bar, California 91765**

**In addition, a copy of the check made to South Coast Air Quality Management District shall be mailed to:**

**Mr. Marco Banaga  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731**

2. J&P has agreed that by funding the Installation of Residential Air Filtration Systems SEP, they will not receive any direct financial benefit from the implementation of the SEP, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a CARB enforcement action.
3. Upon agreeing to the terms set forth in the SEP Agreement, and funding the Installation of Residential Air Filtration Systems SEP, J&P is released of all liabilities as they relate to the Installation of Residential Air Filtration Systems SEP as reflected in this underlying Settlement Agreement.
4. In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based 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, J&P assigns any and all rights against the SEP implementer to CARB.
5. Effect of Untimely Payment. If the penalty or SEP payments described in Terms and Release paragraphs 1-2 is more than fifteen (15) days late, the entire remaining balance shall become immediately due and payable without notice or demand. In addition, if the Attorney General files a civil action to enforce this settlement agreement, J&P shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
6. It is agreed that if J&P at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving J&P, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against J&P as a result of such adverse event, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of J&P's properties, or if any deposit account or other property of J&P be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or J&P takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
7. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on J&P by CARB arising from the facts and allegations described in recital paragraphs 1-14 are nondischargeable under 11 U.S.C § 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.

8. J&P shall not install, sell, offer for sale, or advertise in California any add-on or modified aftermarket part in violation of California Code of Regulations, title 13, section 2220 et seq. or California Vehicle Code section 27156.
9. J&P shall advertise each and every non-exempted aftermarket emissions-related part offered for sale in California with one of the following disclaimers in a minimum font size 8, appearing on each page on which any non-exempted aftermarket emissions-related part appears:
  - a. "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))."
  - b. "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))."
  - c. "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))."
  - d. "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))."

Use of one of the above disclaimers, as prescribed above, shall be deemed a "legally adequate disclaimer" pursuant to California Code of Regulations, title 13, section 2222(b)(2).

11. This Agreement shall apply to and be binding upon J&P and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon CARB and any successor agency that may have responsibility for and jurisdiction

over the subject matter of this Agreement.

12. Now, therefore, contingent on the payment in full by J&P to the California Air Pollution Control Fund and to the South Coast Air Quality Management District for the Installation of Residential Air Filtration Systems SEP in the amounts specified above, CARB hereby releases J&P and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims for any and all violations of California Code of Regulations, title 13, section 2220 et seq., and California Vehicle Code section 27156 that CARB may have based on the facts and allegations described in recital paragraphs 1-14, above.
13. This Agreement constitutes the entire agreement and understanding between CARB and J&P 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 CARB and J&P concerning these claims.
14. 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.
15. 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.
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. 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.
18. 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.
19. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon

their interpretation.

20. The Parties agree that this Agreement may be executed by facsimile and in multiple counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page.
21. 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.

## **22. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB 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 for alleged violations that occurred prior to January 1, 2017, is a maximum of five hundred dollars (\$500) per unit per strict liability violation. The per unit penalty in this case for alleged violations that occurred on or after January 1, 2017, is a maximum of thirty-seven thousand five hundred dollars (\$37,500) per unit per strict liability violation. The penalty obtained in this case is approximately two hundred and fifty dollars (\$250) per unit for 918 Subject Parts. This reflects the fact that this was a first time violation alleged for J&P; J&P's good faith and expeditious efforts to correct the alleged violations, including actions prior to the issuance of an NOV; the size of J&P; and J&P's cooperation with the investigation.

### **The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provisions being applied in this case are Health and Safety Code sections 43008.6 and 43016, because J&P allegedly sold, offered for sale, and/or advertised the Subject Parts that were not exempted pursuant to Vehicle Code sections 27156 and California Code of Regulations, title 13, sections 2220 et seq.

The penalty provisions of Health and Safety Code sections 43008.6 and 43016 apply to violations of the Aftermarket Parts Regulations because the Regulations were adopted under authority of Health and Safety Code section 43013, which is in Part 5 of Division 26 of the Health and Safety Code.



**Whether the penalty is 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 may have increased as a result of the use of the Subject Parts. However, since the Subject Parts were not certified for sale in California, emissions attributable to them, if any, are illegal and excess as well. In the interest of settlement and because of the time and expense involved, The Parties elected not to do such testing.

23. J&P acknowledges that to the best of J&P's knowledge CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB 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.
24. 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 negotiations, and the potential costs and risk associated with litigating these particular violations. The penalty reflects alleged 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 alleged and because J&P made diligent efforts to comply and to cooperate with CARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.
25. The penalty in this case was based in part on confidential business information provided by J&P that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and J&P that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against J&P, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that J&P may have secured from its alleged actions.
26. The undersigned represent that they have the authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

**J&P Cycles, LLC.**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Richard W. Corey  
Title: Executive Officer  
Date: 4/7/2020

Name: Zach Parham  
Title: President  
Date: 2/28/2020