

## 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 DAYTONA TWIN TEC, LLC (hereinafter "DAYTONA") with its principal place of business at 933 Beville Rd., Suite 101-H, South Daytona, Florida 32119, collectively, "The Parties."

### RECITALS

1. Vehicle Code 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." Health and Safety Code section 43008.6 provides a penalty of \$1,500 per violation.
2. Vehicle Code 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. California Code of Regulations, title 13, section 2222(e) provides, "The executive officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the 'Procedures for Exemption of Add-on and Modified Parts,' adopted by the state board on November 4, 1977, as amended June 1, 1990."
4. In addition, California Code of Regulations, title 13, 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.
5. Health and Safety Code 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."
6. ARB alleges that, between January 2010 and December 2014, DAYTONA sold, offered for sale, and/or advertised aftermarket performance parts in California (hereinafter "Subject Parts").

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7. ARB alleges that the Subject Parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
8. ARB alleges that the Subject Parts were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2220 *et seq.*
9. ARB alleges that the offers for sale, sales, and installation 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.*
10. DAYTONA is a Florida-based limited liability company that conducts interstate business in California.
11. DAYTONA promptly and fully cooperated with ARB throughout its investigation.
12. Upon receiving a cease and desist letter from ARB, DAYTONA alleges that it immediately halted all performance parts sales and transactions in California and immediately notified all employees and vendors to that effect.
13. DAYTONA has taken steps toward future compliance by applying to ARB for exemptions of its coils, ignition kits, and one tuner. Although this action does not retroactively exempt the Subject Parts, it does demonstrate DAYTONA's commitment to environmental compliance.
14. ARB alleges that if the allegations described in recital paragraphs 1-9 were proven, civil penalties could be imposed against DAYTONA as provided in Health and Safety Code sections 43016.
15. DAYTONA admits the facts in recital paragraphs 1 through 9, but denies any liability arising thereunder.
16. DAYTONA 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 DAYTONA 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 DAYTONA agree as follows:

1. As a condition of this Settlement Agreement, DAYTONA shall pay the total sum of thirty-one thousand eight hundred and seventy five dollars (\$31,875.00) as a

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penalty. Payments shall be made by cashier's checks as follows:

- a. No later than June 15, 2015, seven thousand nine hundred sixty-eight dollars and seventy five cents (\$7968.75) payable to the "**San Joaquin Valley Air Pollution Control District**" and "For School Bus and Diesel Emission Reduction SEP" shall be annotated in the Note or Memo line on the check.
- b. No later than June 15, 2015, two thousand nine hundred six dollars and twenty five cents (\$2,906.25) payable to the **California Air Pollution Control Fund**.
- c. No later than July 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.
- d. No later than August 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.
- e. No later than September 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.
- f. No later than October 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.
- g. No later than November 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.
- h. No later than December 15, 2015, three thousand five hundred dollars (\$3,500) payable to the **California Air Pollution Control Fund**.

**Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Tony Zeng/Air Resources Engineer  
Air Resources Board, Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, CA 91731**

**Please send a copy of the signed Settlement Agreement and payment using the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:**

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

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2. DAYTONA agrees to develop and implement a compliance plan to ensure that its distributors, dealers, and customers understand which aftermarket parts are legal or illegal for specific applications, including both street use and for racing vehicles. As part of the compliance plan, DAYTONA has agreed to work with its distributors, dealers, and customers to implement a buyback program of the non-exempted subject parts that were purchased and installed on California vehicles in those cases where (1) the Subject Part was not damaged, (2) the part was not legally purchased for racing use only, (3) the part had not already been removed from the California vehicle (the buyback provision will apply if the part was removed because the vehicle failed smog check), or (4) the part was not installed on an out-of-state vehicle. As part of DAYTONA's buyback program, DAYTONA agrees to mail each end user in California, known or reasonably known to DAYTONA, a Notice (hereinafter "DAYTONA's NOTICE"), which contains the substantive provisions of the attached Notice, which is incorporated by reference herein. In addition, DAYTONA agrees to work with its dealers and distributors in California to contact each owner of a Subject Part by mailing a copy of DAYTONA's Notice.
3. DAYTONA shall not install, sell, offer for sale, or advertise in California any aftermarket part in violation of California Code of Regulations, title 13, section 2220 *et seq.* or Vehicle Code section 27156.
4. This Agreement shall apply to and be binding upon DAYTONA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
5. Now, therefore, in consideration of the payment by DAYTONA to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases DAYTONA and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that ARB may have relating to the Subject Parts or based on the allegations described in recital paragraphs 1-9 above. The undersigned represent that they have the authority to enter this Agreement.
6. This Agreement constitutes the entire agreement and understanding between ARB and DAYTONA 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 DAYTONA 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.

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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. The parties agree that this Settlement Agreement may be executed by facsimile and in 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.

### **14. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) 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 under Health and Safety Code section 43016. The penalty obtained in

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this case is \$375 per unit for 85 units.

**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 provisions being applied in this case, Health and Safety Code section 43016 is appropriate because DAYTONA sold, and/or offered for sale, and/or advertised the subject non-California certified aftermarket parts that were not exempted pursuant to California Code of Regulations, 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 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.

15. DAYTONA 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.
16. 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. Penalties in future cases might be smaller or larger on a per unit basis.
17. The penalty in this case was based in part on confidential business information provided by DAYTONA that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement

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communications between ARB and DAYTONA 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 DAYTONA, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that DAYTONA may have secured from its alleged actions.

**California Air Resources Board**

**Daytona Twin Tec, LLC**

By: Ellen M. Peter

By: Allen Alvarez

Name: Ellen M. Peter

Name: Allen Alvarez

Title: Chief Counsel

Title: Operating Manager

Date: 6/4/2015

Date: May 20, 2015