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 DERIVE SYSTEMS, INC. (hereinafter "DERIVE"), a Delaware corporation with its principal place of business at 4150 Church Street, Suite 1024, Sanford, Florida 32771, collectively, "The Parties."

RECITALS

1. California 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."

2. California 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 ARB 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(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."

4. 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.' [The Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."

5. The Procedures provide, "Examples of emission related parts are shown in Appendix 1 of these procedures. Such parts require an exemption from the prohibitions of section 27156 and 38391 of the Vehicle Code...in order to be legally advertised, offered for sale, sold, or installed in California."

6. California Code of Regulations, title 13, section 2222(f) provides, "Each person engaged in the business of retail sale or installation of an add-on modified part which has not been exempted from Vehicle Code section 27156 shall maintain records of such activity which indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records shall be open for reasonable

inspection by the Executive Officer or his/her representative. All such records shall be maintained for four years from the date of sale or installation."

7. 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 California Vehicle Code Section 27156 or other laws or regulations, as applicable.

8. California 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."

9. DERIVE, through its subsidiary Derive Power, LLC, acquired certain assets of Bully Dog Technologies, LLC, n/k/a BD Wind Down, LLC, (hereinafter "BULLY DOG TECHNOLOGIES"), an aftermarket parts manufacturer, in February 2014, and has since been the owner and operator of a company utilizing the Bully Dog brand name (hereinafter "BULLY DOG"). It is DERIVE's position that the February 2014 asset acquisition expressly excluded any acquisition or transfer of certain liabilities from BULLY DOG TECHNOLOGIES to DERIVE, including but not limited to, the alleged liabilities being settled and resolved by this Agreement.

10. ARB alleges that during calendar years 2010 through 2012, BULLY DOG TECHNOLOGIES sold, offered for sale, and/or advertised certain add-on and modified aftermarket parts for use on highway motor vehicles, but these parts were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2220 et seq. (hereinafter "Subject Parts").

11. ARB 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.

12. ARB alleges that the advertisements, offers for sale, sales, and installation of the Subject Parts during calendar years 2010 through 2012 as discussed above were unlawful and in violation of California Vehicle Code section 27156(c), and California Code of Regulations, title 13, section 2220 et seq.

13. DERIVE is a Delaware corporation.

14. DERIVE promptly and fully cooperated with ARB throughout its investigation, and worked proactively with ARB to resolve all allegations even though they arose out of acts and omissions prior to DERIVE's acquisition of certain BULLY DOG TECHNOLOGIES' assets, and it is DERIVE's position that they were expressly excluded from that acquisition.

15. DERIVE has no prior enforcement record with ARB.

16. ARB alleges that if the facts described in recital paragraphs 1 through 12 were proven, civil penalties could be imposed pursuant to California Health and Safety Code section 43016.

17. DERIVE admits, or where DERIVE lacks sufficient information to admit or deny, does not deny, the facts in recital paragraphs 1 through 13, but denies any liability arising thereunder.

18. Although DERIVE did not own the assets acquired from BULLY DOG TECHNOLOGIES at the time of the alleged acts and omissions from which the alleged violations arose, and it is DERIVE's position that it did not agree to assume liability for those violations, DERIVE 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 consideration of ARB not filing a legal action against DERIVE for the violations alleged above, and in consideration of the other terms set out below, ARB and DERIVE agree as follows:

1. As a condition of this Agreement, DERIVE shall pay the total sum of two hundred eighty-one thousand eight hundred forty dollars ($281,840.00). This penalty amount shall be payable in full within thirty (30) days of the execution of this Agreement and as follows:

   DERIVE shall pay a sum of two hundred eleven thousand three hundred eighty dollars ($211,380.00) as a civil penalty payable to the **California Air Pollution Control Fund**.

   DERIVE shall pay a sum of seventy thousand four hundred sixty dollars ($70,460.00) to the School Bus and Diesel Emission Reduction Supplemental Environmental Project (SEP). Payment shall be 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 of the payment.

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

   Dean Hermano, Staff Air Pollution Specialist
   Air Resources Board, Enforcement Division
   9480 Telstar Avenue, Suite 4

El Monte, CA 91731

Please send a copy of the signed Agreement, and each 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

2. Effect of Untimely Payment. If the penalty described in Terms and Release paragraph 1 is more than fifteen (15) days late, the entire 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 on account of such untimely payment, DERIVE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

3. It is agreed that if DERIVE at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving DERIVE, 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 DERIVE 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 DERIVE's properties, or if any deposit account or other property of DERIVE be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or DERIVE takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

4. 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 ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on DERIVE by ARB arising from the facts described in recital paragraphs 1 through 13 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.

5. DERIVE has agreed to work with its distributors, dealers, and customers to implement a buyback program with respect to the Subject Parts listed in ATTACHMENT B that were purchased and installed on California motor vehicles. Details of the buyback program will be posted on the Bully Dog website (www.bullydog.com). DERIVE will further report to ARB quarterly for six calendar year quarters following execution of

this Agreement concerning the progress of the buyback program pursuant to California Code of Regulations, title 13, section 2119.

6. DERIVE 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.

7. This Agreement shall apply to and be binding upon DERIVE 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.

8. Now therefore, contingent on the payment in full by DERIVE to the California Air Pollution Control Fund and the San Joaquin Valley Air Pollution Control District in the amounts specified above, ARB hereby releases DERIVE and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors, including but not limited to, Derive Power, LLC and Derive Efficiency, LLC, from all Covered Matters. "Covered Matters" include 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 which were or could have been asserted against DERIVE based on, relating to, or arising from any and all acts or omissions by DERIVE or BULLY DOG TECHNOLOGIES described in Recital paragraphs 1-12. The undersigned represent that they have the authority to enter this Agreement.

9. This Agreement constitutes the entire agreement and understanding between ARB and DERIVE 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 DERIVE concerning these claims.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. **Senate Bill 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, California Health and Safety Code section 39619.7) requires ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this 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 California Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of $500.00 per unit per strict liability violation. The penalty obtained in this case is approximately $260.00 per unit for 1,084 units, or Subject Parts. This reflects the fact that the alleged violations resulted from actions by BULLY DOG TECHNOLOGIES and arose out of acts and omissions prior to DERIVE's acquisition of certain of the BULLY DOG TECHNOLOGIES' assets, and DERIVE's full cooperation with the investigation.

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, California Health

and Safety Code section 43016, is appropriate because of the alleged sale, and/or offer for sale, and/or advertisement the Subject Parts that were not exempted pursuant to California Code of Regulations, title 13, section 2220 et seq.

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 Subject Parts. However, since the Subject Parts were not exempted by ARB, emissions attributable to them are illegal and in excess as well. To the extent the Parties had adequate opportunity to conduct such testing, they elected not to do so in the interests of settlement and because of the time and expense involved.

19. DERIVE acknowledges that ARB has complied with Senate Bill 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at California 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.

20. 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 DERIVE has no prior violations of the relevant regulations, DERIVE has made diligent efforts to comply, DERIVE has fully cooperated with ARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.

21. The penalty in this case was based in part on confidential business information provided by DERIVE and BULLY DOG TECHNOLOGIES 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, DERIVE, and BULLY DOG TECHNOLOGIES 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 DERIVE, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage

that DERIVE may have secured from its alleged actions.

California Air Resources Board	**DERIVE SYSTEMS, INC.**
By: _____	By: _____
Name: Richard Corey	Name: DAVID THAWLEY
Title: Executive Officer	Title: CEO
Date: 9/30/2016	Date: 9-1-2016

ATTACHMENT B

THESE PRODUCTS ARE SUBJECT TO THE RECALL IN CALIFORNIA:

ITEM	SKU #	DESCRIPTION
Exhaust Kit	81223	Exhaust Kit - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Exhaust Kit	81510	Exhaust Kit - Ford 1999-2003 F-Series / Excursion 7.3L Power Stroke
Exhaust Kit	83010	Exhaust Kit - GM 2001-2007 C3500 6.6L Duramax
Exhaust Kit	83410	Exhaust Kit - GM 2001-2007 C3500 6.6L Duramax
Intake	221103	Intake - Ford 1999-2003 F-Series / Excursion 7.3L Power Stroke
Intake	221105	Intake - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Intake	51100	Intake - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Intake	51101	Intake - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Intake	51104	Intake - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Intake	51105	Intake - Ford 2003-2007 F-Series / Excursion 6.0L Power Stroke
Intake	51103	Intake - Ford 2008-2010 F-Series 6.4L Power Stroke
Intake	51104	Intake - Ford 2011-2012 F-Series 6.7L Power Stroke
Intake	51201	Intake - Ford 2011 F-150 5.0L
Intake	51202	Intake - Ford 2011 F-150 3.5L
Intake	222102	Intake - Dodge 2003-2007 RAM Pickup 5.9L Cummins
Intake	52100	Intake - Dodge 2003-2007 RAM Pickup 5.9L Cummins
Intake	52101	Intake - Dodge 2003-2007 RAM Pickup 5.9L Cummins
Intake	52102	Intake - Dodge 2003-2007 RAM Pickup 5.9L Cummins
Intake	53100	Intake - GM 2006-2008 C3500 6.6L Duramax
Intake	53101	Intake - GM 2006-2008 C3500 6.6L Duramax
Intake	53102	Intake - GM 2006-2008 C3500 6.6L Duramax

Intake	53200	Intake - GM 2001-2007 Pickup and SUV Gas
Intake	53203	Intake - GM 2009-2011 Pickup and SUV Gas
Intake	53252	Intake - GM 2007-2008 Pickup and SUV 4.8L, 5.3L, 6.0L, 6.2L
Intake	53253	Intake - GM 2009-2011 SUV 4.8L, 5.3L, 6.0L, 6.2L
Intake	54100	Intake - Nissan 2004-2011 Titan-Armada 5.6L
Tuner	44590	Power Pup Tuner - Nissan 2004-2009
Tuner	44632	Rapid Power Tuner - Mercedes 2007-2011 Sprinter
Tuner	44633	Rapid Power Tuner - Volkswagen 2009-2011 2.0L
Tuner	40425	GT Platinum 50-State Legal Diesel Downloader
Tuner	40420	Bully Dog 50 State Legal Triple Dog Diesel GT
Tuner	40300	Bully Dog PMT Performance Management Tool