

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into between the State of California Air Resources Board (hereinafter "ARB"), with its principal office at 1001 "I" Street, Sacramento, California, 95812, and Mike's Foreign Auto Parts with its principal place of business at 933 E. Anaheim Street, Wilmington, California 90744, each, individually a "Party," and collectively, the "Parties" hereinafter.

### RECITALS

1. California Vehicle Code (VC) section 27156 provides, in part: "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 Health and Safety Code section 43644(a) provides, in part: "No person shall install, sell, offer for sale or advertise, or, except in an application to the state board for certification of a device, represent, any device as a motor vehicle pollution control device for use on any used motor vehicle unless that device has been certified by the state board."
3. Title 13, California Code of Regulations (CCR) section 2222(h)(1) states:

Prior to January 2009, the Executive Officer shall exempt new aftermarket catalytic converters from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the "California Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters" as adopted by the state board on August 19, 1988.

Title 13, CCR section 2222(h)(2) states:

On or after January 1, 2009, the Executive Officer shall exempt new aftermarket catalytic converters from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the "California Evaluation Procedures for New Aftermarket Non-Original Equipment Catalytic Converters" as adopted by the state board on October 25, 2007.

Title 13, CCR section 2222(h)(3) states:

No person shall install, sell, offer for sale or advertise any new aftermarket catalytic converter in California unless it has been exempted pursuant to the procedures.

4. Title 13, CCR section 2225(a) provides, in part, that the Executive Officer may seek fines for violations of Vehicle Code Section 27156.
5. In September 2011, ARB visited Mike's Foreign Auto Parts, and requested a list of all converters that were not certified by ARB that they had acquired or sold in California from January 1, 2010 to the current date.
6. On September 30, 2011, Mike's Foreign Auto Parts provided the requested documents regarding Mike's Foreign Auto Parts sale of non-California certified catalytic converters.
7. ARB alleges that between January 1, 2010 and September 30, 2011, Mike's Foreign Auto Parts sold, offered for sale, and/or advertised the subject non-California certified catalytic converters that were not exempted pursuant to Title 13, CCR section 2222.
8. If the allegations described in recital paragraphs 1 through 7 hereinabove were proven in a court of law, penalties could be imposed against Mike's Foreign Auto Parts pursuant to HSC section 43016 for each and every violation alleged.
9. Mike's Foreign Auto Parts fully cooperated with ARB in its investigation of the sale of non-California certified catalytic converters.
10. Mike's Foreign Auto Parts admits the facts as alleged in recital paragraphs 1 through 7 above.
11. Mike's Foreign Auto Parts 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.

**RELEASE**

In consideration of ARB not filing a legal action against Mike's Foreign Auto Parts for the alleged violations referred to above ARB and Mike's Foreign Auto Parts agree as follows:

1. Mike's Foreign Auto Parts shall pay the sum of Fifty Thousand dollars (\$50,000) by check payable to the **California Air Pollution Control Fund** in accordance with the following schedule:
  - (a) Ten Thousand dollars (\$10,000.00) upon execution of this Agreement;
  - (b) Ten Thousand dollars (\$10,000.00) no later than January 27, 2012;
  - (c) Ten Thousand dollars (\$10,000.00) no later than February 27, 2012;
  - (d) Ten Thousand dollars (\$10,000.00) no later than March 27, 2012;
  - (e) A final payment of Ten Thousand dollars (\$10,000.00) no later than April 27, 2012.

Payments shall be made by check payable as described above and addressed to:

Mr. Kerry Albert  
Air Resources Board  
Enforcement Division  
1001 I Street, P.O. Box 2815  
Sacramento, California 95812

2. **Effect of Untimely Payment.** If a payment installment is not made within 5 days of the date specified above, 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, Mike's Foreign Auto Parts shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
3. Mike's Foreign Auto Parts shall not install, sell, offer for sale, or advertise any device in California 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 unless it has first received an exemption from ARB or the device is used exclusively for racing purposes.

4. This Agreement shall apply to and be binding upon Mike's Foreign Auto Parts and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, 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 Mike's Foreign Auto Parts in the amount of Fifty Thousand dollars (\$50,000) to the California Air Pollution Control Fund, ARB hereby releases Mike's Foreign Auto Parts and its principals, officers, agents, dealers, distributors, subsidiaries, predecessors, and successors from any and all claims ARB may have based upon the events described in recital paragraphs (1) through (7) above, including claims under Vehicle Code section 27156, and Title 13, CCR section 2222 et seq. The undersigned represent that they have the authority to enter this Agreement.
6. This Agreement constitutes the entire agreement and understanding between ARB and Mike's Foreign Auto Parts concerning the claims and settlement in this Agreements, 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 Mike's Foreign Auto Parts 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.
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.

11. 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.
12. 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.
13. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This letter or notice of violation includes this information, which is also 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. We consider all relevant circumstances in determining penalties, including the eight factors specified in Health and Safety Code section 43024. The maximum per unit penalty in this case is \$500 per unit.

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

The penalty provision being applied in this case is section 27156 of the *California Vehicle Code* and Title 13, *California Code of Regulations* section 2220 *et seq.*, because Mike's Foreign Auto Parts offered for sale and sold catalytic converters that had not been certified by ARB.

**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.**

Since the catalytic converters were not certified by the ARB, all of the emissions attributable to them are illegal. However, since data regarding their actual emissions rates and usage are unavailable, it is not practicable to quantify these emissions.

**California Air Resources Board**

By: Ellen Peter  
Name: Ellen Peter  
Title: Chief Counsel  
Date: 4/6/2012

**Mike's Foreign Auto Parts**

By: John Kzm  
Name: JOHN KZM  
Title: OWNER  
Date: 11/1/12

✓ # 13413 - \$10,000  
✓ # 13414 - \$10,000