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 RC COMPONENTS, INC. (hereinafter "RC COMPONENTS") with its principal place of business at 373 Mitch McConnell Way, Bowling Green, Kentucky 42101, collectively, "The Parties."

RECITALS

1. California Vehicle Code (VC) 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. VC 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 (CCR), title 13, section 2222(e) states, "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. Title 13, CCR, section 2222(j) states, "The Executive Officer shall exempt aftermarket critical emission control parts on highway motorcycles from the prohibitions of California Vehicle Code sections 27156 and 38391 based on an evaluation conducted in accordance with the 'California Evaluation Procedures for Aftermarket Critical Emission Control Parts on Highway Motorcycles' [The Procedures], as adopted on January 22, 2009, which is incorporated by reference herein."

5. The Procedures provide, "If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an aftermarket critical emission control part for use on highway motorcycles in California in violation of these evaluation procedures, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section 43017 of the Health and Safety Code. The Executive Officer may also assess civil penalties to the extent permissible under Part 5, Division 26 of the Health and Safety Code."

6. In addition, title 13, CCR, 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.

7. Health and Safety Code (HSC) 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."

8. ARB alleges that prior to April 5, 2013, RC COMPONENTS sold, offered for sale, and/or advertised certain add-on parts, modified parts, and aftermarket critical emission control parts ("subject parts") for use on highway motorcycles that were not exempted by ARB pursuant to title 13, CCR, section 2222 et seq.

9. ARB alleges that the subject parts altered or modified the original design or performance of the motor vehicle pollution control device or system.

10. The subject parts were not exempted by ARB pursuant to title 13, CCR, section 2222 et seq.

11. ARB alleges that the advertisements, offers for sale, sales, and installation of the subject parts were unlawful and in violation of VC section 27156(c), VC section 38391, and title 13, CCR, section 2222 et seq.

12. RC COMPONENTS promptly and fully cooperated with ARB throughout its investigation.

13. RC COMPONENTS has no prior enforcement record with ARB.

14. ARB alleges that if the facts described in recital paragraphs 1 through 11 were proven, civil penalties could be imposed against RC COMPONENTS pursuant to HSC section 43016.

15. RC COMPONENTS admits the facts in recital paragraphs 1 through 11, but denies any liability arising thereunder.

16. RC COMPONENTS 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 RC COMPONENTS for the violations alleged above, and in consideration of the other terms set out below, ARB and RC COMPONENTS agree as follows:

1. As a condition of this Agreement, RC COMPONENTS shall pay the total sum of eleven thousand six hundred twenty-five dollars ($11,625.00) as a penalty to the California Air Pollution Control Fund. This amount shall be payable within 10 calendar days of the full execution of this Agreement and by check payable to the **Air Pollution Control Fund**, and addressed to:

   Mr. Dean Hermano
   Air Resources Board
   9480 Telstar Avenue, Suite 4
   El Monte, California 91731

2. RC COMPONENTS shall not install, sell, offer for sale, or advertise in California any aftermarket critical emission control part in violation of title 13, CCR, section 2222 et seq., or Vehicle Code section 27156 or 38391.

3. This Agreement shall apply to and be binding upon RC COMPONENTS 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. Now therefore, in consideration of the payment on behalf of RC COMPONENTS in the amount of eleven thousand six hundred twenty-five dollars ($11,625.00) to the Air Pollution Control Fund, ARB hereby releases RC COMPONENTS and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for any and all violations of title 13, CCR, section 2222 et seq., and Vehicle Code section 27156 or 38391 that ARB asserted or may or could have asserted based on the events described in paragraphs 1 through 11 of the Recitals. The undersigned represent that they have the authority to enter this Agreement.

4. This Agreement constitutes the entire agreement and understanding between ARB and RC COMPONENTS 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 RC COMPONENTS concerning these claims.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

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, HSC 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.

    <u>The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.</u>

    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 HSC 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 $375.00 per unit for 31 subject parts. This reflects the facts that this was an unintentional, first time violation, and that RC COMPONENTS was diligent in its efforts to comply and to cooperate 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, HSC section 43016, is appropriate because RC COMPONENTS allegedly sold, and/or offered for sale, and/or advertised the 31 subject parts that were not exempted pursuant to title 13, CCR, section 2222 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. The Parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

14. RC COMPONENTS 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 HSC 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.

15. 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 this was an innocent, first time violation and because RC COMPONENTS made diligent efforts to comply and to cooperate with ARB's investigation. Penalties in future cases might be smaller or

larger on a per unit basis.

16. The penalty in this case was based in part on confidential business information provided by RC COMPONENTS 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 and RC COMPONENTS 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 RC COMPONENTS, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that RC COMPONENTS may have secured from its alleged actions.

California Air Resources Board

By: _____

Name: James R. Ryden
Title: Enforcement Division Chief
Date: 9/30/13

RC COMPONENTS, INC.

By: _____

Name: ERIC J. MORTON
Title: VICE PRESIDENT
Date: 9/18/13