SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by the State of California Air Resources Board (CARB), principal office at 1001 "I" Street, Sacramento, California, and Rudy's Performance Parts, Inc. ("Rudy's), principal place of business at 1404 Christian Avenue, Durham, North Carolina 27705. As used in this Agreement, the term "the Parties" refers to CARB and Rudy's.

RECITALS

1. California Vehicle Code section 27156 (c) provides 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 that the prohibitions in subsection (c) do not apply to a device found by resolution of CARB not to reduce the effectiveness of any required motor vehicle pollution control device or result in vehicle emissions that violate applicable state or federal standards. Devices or systems described in section 27156 that have not been approved by CARB are referred to below as "non-CARB exempted aftermarket parts".

3. California Code of Regulations, 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. California Code of Regulations, title 13, section 2222 (b) prohibits advertisement in California of any non-CARB exempted aftermarket part, which alters or modifies the original design or performance of any required motor vehicle pollution control device or system unless each advertisement contains a required legally adequate disclaimer.

6. 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.

7. California Health and Safety Code section 43016 states "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 of not to exceed five hundred dollars ($500) per ... unit subject to regulation under this part...."

8. California Health and Safety Code section 43008.6 states "(b) 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."

9. CARB has alleged that in 2010-2012, Rudy's advertised, offered for sale, and sold aftermarket parts intended for use with, or as a part of, required motor vehicle pollution control devices or systems which alter or modify the original design or performance of such motor vehicle pollution control device or system to customers in California, and that none of the aftermarket parts advertised, offered for sale or sold by Rudy's in California had been exempted by CARB as required by California Vehicle Code section 27156(h) and Title 13, California Code of Regulations section 2222. These aftermarket parts are referred to herein as "non-CARB exempted aftermarket parts".

10. Penalties for the violations described above could be imposed against Rudy's pursuant to California Health and Safety Code section 43016.

11. Rudy's cooperated with CARB in its investigation and has no history of prior violations with CARB. Rudy's stopped all sales of emissions-related products to California and put notices and disclaimers on its website after receiving the CARB subpoena.

12. Rudy's is a small business that has no physical location in California. All the advertising and sales described herein were made over the internet.

13. Rudy's neither admits nor denies the facts in recital paragraphs 1 through 12 above.

14. Rudy's 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.

RELEASE

In consideration of CARB not filing a legal action against Rudy's for the violations referred to above, CARB and Rudy's agree as follows:

15. Rudy's shall pay the sum of thirty-nine thousand seven hundred fifty dollars ($39,750.00) to the California Air Pollution Control Fund concurrent with the execution of this Agreement. Payment shall be made by cashier's check payable to the California Air Pollution Control Fund and addressed and delivered to:

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

OR

California Air Resources Board
Accounting Office
1001 "I" Street
Floor 20, Room 20-25
Sacramento, California 95814

16. The penalty described in terms and release paragraph (1) is punitive in nature, rather than compensatory. The penalty is payable to and for the benefit of CARB, a governmental unit. The penalty imposed on Rudy's by CARB arising from the facts described herein are nondischargeable under title 11, United States Code section 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.

17. Rudy's 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 CARB or the device is to be used exclusively for racing purposes and Rudy's can affirmatively prove that the device is used exclusively for racing purposes.

18. This Agreement shall apply to and be binding upon Rudy's and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

19. In consideration of the payment by Rudy's in the amount of thirty-nine thousand seven hundred fifty dollars ($39,750.00), to the California Air Pollution Control Fund, CARB releases Rudy's and its principals, officers, agents, dealers, distributors, subsidiaries, predecessors, and successors from any and all claims CARB may have based on the violations described in recital paragraphs (1) through (11) including claims under California Vehicle Code section 27156, Title 13, California Code of Regulations section 2222 et seq., for the subject aftermarket parts.

20. The undersigned represent that they have the authority to enter this Agreement.

21. This Agreement constitutes the entire agreement and understanding between CARB and Rudy's 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 Rudy's concerning these claims.

22. 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.

23. 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.

24. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the grounds that said party drafted it.

25. 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.

26. 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.

27. 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.

SB 1402 Statement

28. Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010), California Health and Safety Code section 39619.7 (a)) requires the CARB to provide information on the basis for the penalties imposed. This required information, which is provided throughout this settlement agreement, is summarized here.

29. **"The manner in which the penalty amount was determined, including a per unit or per vehicle penalty."**

The penalty amount was determined was through negotiations between CARB and Rudy's. 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 factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of $500 per unit for any violation of the laws and regulations listed herein (California Health and Safety Code section 43016) and a maximum of $1,500 per violation of Vehicle Code section 27156 (California Health and Safety Code section 43008.6). The penalty

obtained in this case is $250 per unit for the sale of 159 non-CARB exempted aftermarket parts in California. The penalty was reduced because of Rudy's cooperation, no prior enforcement record with CARB, and financial circumstances.

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

The penalty provision applied in this case, California Health and Safety Code section 43016, is appropriate because this case involves the sale of non-CARB exempted aftermarket parts in California.

31. **"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. However, as the aftermarket parts involved in this case are illegal for use or sale in California, any emissions attributable to them are illegal and in excess.

32. Rudy acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB 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.

33. Penalties were determined based on the unique circumstances of this matter, the need to remove any economic benefit from noncompliance, the goal of deterring future violations, obtaining swift compliance, past penalties in similar cases, and the potential costs and risk associated with litigation. 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 different.

34. The penalty in this case was based in part on confidential business information provided by Rudy's 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 Rudy's that CARB does not retain in the ordinary course of business. The penalty reflects CARB's assessment of the relative strength of its case against Rudy's, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Rudy's may have secured from its actions.

California Air Resources Board

By: _____

Ellen M. Peter, Chief Counsel

Date: 12/5/2017

Rudy's Performance Parts, Inc.

By: _____

Aaron Rudolph, President

Date: 10/31/14