

## 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 SINISTER MANUFACTURING COMPANY, INC., formerly SINISTER MANUFACTURING COMPANY, LLC, DBA SINISTER DIESEL and MKM CUSTOMS (collectively hereinafter "Sinister") with its principal place of business at 2025 Opportunity Drive, Roseville, California 95678, collectively, "The Parties."

### RECITALS

1. 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. Vehicle Code section 27156(h) provides 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,' [The Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."
4. California Code of Regulations, title 13, section 2222(b) provides 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 advertisement contains a legally adequate disclaimer."
5. 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 or 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."
6. 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.

7. 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 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. California Health and Safety Code section 43008.6(b) states, in pertinent part, “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. Between April 21, 2010 and December 1, 2012, Sinister sold, offered for sale, and/or advertised aftermarket parts capable for use on highway motor vehicles in California (hereinafter “Subject Parts”).
10. The Subject Parts altered or modified the original design or performance of the motor vehicle pollution control device or system.
11. The Subject Parts were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2220 *et seq.*
12. The advertisements, 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.*
13. Sinister is a California corporation doing business in California.
14. Sinister complied with ARB’s investigation.
15. Sinister has no prior enforcement record with ARB.
16. Penalties for the violations described above could be imposed against Sinister as provided in Health and Safety Code section 43016 and 43008.6(b).
17. Sinister admits the facts in recital paragraphs 1 through 13, but denies any liability arising thereunder.
18. Sinister 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 Sinister 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 Sinister agree as follows:

1. As a condition of this Agreement, Sinister shall pay a civil penalty of six hundred fifty-one thousand four hundred fifty dollars (\$651,450) to the **California Air Pollution Control Fund** in accordance with the following schedule.
  - a. Two hundred fourteen thousand nine hundred eighty-six dollars (\$214,986) shall be paid on or before January 18, 2016. Payment shall be by certified or cashier's check or wire transfer.
  - b. Eighteen thousand one hundred eighty-six dollars (\$18,186) shall be paid no later than the fifteenth day of each consecutive month, for a period of 24 months, commencing February 15, 2016 and terminating January 15, 2018. Each payment shall be by certified or cashier's check or wire transfer.

**The signed Agreement and any future mailings or documents required per the terms of this Agreement shall be mailed to:**

**Jeremiah Bearden, Air Resources Engineer  
Air Resources Board, Enforcement Division  
8340 Ferguson Avenue  
Sacramento, CA 95828**

**Each payment shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:**

**Certified or Cashier's Checks:**

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

**Wire Transfers:**

**State of California Air Resources Board  
c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Asha Sharma Fax: (916) 322-9612  
Reference: ARB Case # MSES-12-070**

*Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.*

**Notification of each wire transfer shall be provided to:**

**Jeremiah Bearden  
California Air Resources Board  
Enforcement Division  
jbearden@arb.ca.gov  
(916) 229-0549**

2. Sinister 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, Sinister 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 Sinister' buyback program, Sinister agrees to conspicuously post a Notice (hereinafter "Sinister' NOTICE"), which contains the substantive provisions of the attached Notice (which is incorporated by reference herein), on all maintained websites for a period of one (1) year following the effective date of this Agreement.
3. Effect of Untimely Payment. If a payment or payment installment is not made within ten (10) business days of the date specified above without first obtaining written permission from ARB Enforcement, the entire remaining balance, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
4. If the Attorney General files a civil action to enforce this settlement agreement, Sinister shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
5. It is agreed that the penalty described in terms and release paragraph 1 is punitive in nature, rather than compensatory. Furthermore, this penalty is payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that this penalty imposed on Sinister by ARB arising from the facts described in recital paragraphs 1 through 13 are nondischargeable under United States Code, title 11, 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 the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

6. Sinister 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.
7. This Agreement shall apply to and be binding upon Sinister 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. Nothing in this Agreement is intended to create personal liability that does not otherwise apply.
8. Now, therefore, in consideration of the payment by Sinister to the California Air Pollution Control Fund and the School Bus and Diesel Emission Reduction Supplemental Environmental Project in the amounts specified above, ARB hereby releases Sinister 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 all Subject Parts or that may be based on the allegations described in this Agreement. The undersigned represent that they have the authority to enter this Agreement.
9. This Agreement constitutes the entire agreement and understanding between ARB and Sinister 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 Sinister 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. 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.

15. 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.
16. The parties agree that this 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.

**17. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) 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 and an additional maximum of \$1,500 per unit per strict liability violation under Health and Safety Code section 43008.6. The penalty obtained in this case is approximately \$410.75 per unit for 1,586 units from among the Subject Parts.

**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, Health and Safety Code section 43016 and 43008.6, are appropriate because Sinister sold, and/or offered for sale, and/or advertised the subject non-California emission-related 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

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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 certified for sale in California, any emissions attributable to them are illegal and excess. In the interests of settlement and because of the time and expense involved, the parties elected not to do such testing.

18. Sinister 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.
19. 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.
20. The penalty in this case was based in part on confidential business information provided by Sinister 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 Sinister 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 Sinister, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Sinister may have secured from its alleged actions.

**California Air Resources Board**

By: \_\_\_\_\_

Name: Richard W. Corey

Title: Executive Officer

Date: 12/28/2015

**Sinister Manufacturing Company, Inc.**

By: \_\_\_\_\_

Name: Brian P. George

Title: President

Date: 12-21-15

## **Sinister' NOTICE**

Please read this NOTICE carefully. It could affect your rights.

Dear Valued Customer,

The State of California prohibits the offer for sale, sale, or installation of an aftermarket part, which alters or modifies the original design or performance of a motor vehicle's pollution control devices or systems, unless the aftermarket part has first been exempted from the state's anti-tampering laws and been issued an Executive Order (EO) number by the California Air Resources Board (ARB).

You may have purchased and installed an aftermarket part, manufactured or sold by Sinister Diesel, that has not yet been exempted by ARB. Therefore, it is not legal for use in California and may be releasing air pollutants that exceed California emission standards. If pulled over by local law enforcement, your vehicle will fail a vehicle inspection due to the lack of an EO number label and you may consequently be cited.

In addition, California law prohibits the operation of any vehicle that is not properly equipped and requires the Department of Motor Vehicles (DMV) to refuse registration, or renewal or transfer of registration of all vehicles that fail to comply with ARB regulations. Whenever DMV revokes the registration of your vehicle, you must immediately return all documents and other evidence of registration to DMV.

To prevent this from happening, we have instituted a buy-back program to fully reimburse you for your aftermarket part at our expense. Please contact us directly by phone, email, or mail at **916-772-9254**, [info@sinisterdiesel.com](mailto:info@sinisterdiesel.com), or Returns, 2025 Opportunity Drive, Roseville, California 95678 to begin this process. Failure to do so could also affect your vehicle's coverage under any applicable emission warranty. If you have sold or transferred your vehicle that was equipped with the Sinister Diesel aftermarket part, we ask that you provide contact information for the new owner.

We thank you for your loyalty as a customer of ours and we trust that our efforts will provide you with the continued satisfaction and performance that you have come to expect from all Sinister Diesel products.