## 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 SAMSON, INC., previously DBA SAMSON MOTORCYCLE PRODUCTS, INC. (hereinafter "SAMSON") with its principal place of business at 1151 Industry Road, Sturgis, South Dakota 57785, 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. 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. Vehicle Code section 24005 provides, "It is unlawful for any person to sell, offer for sale, lease, install, or replace, either for himself or as the agent or employee of another, or through such agent or employee, any ... muffler, exhaust, or any kind of equipment whatsoever for use, or with knowledge that any such equipment is intended for eventual use, in any vehicle, that is not in conformity with this code or regulations made thereunder."

4. California Health & Safety Code section 39048 provides, "'Racing vehicle' means a competition vehicle not used on public highways."

5. Health and Safety Code section 43001 provides, "The provisions of this part shall not apply to...racing vehicles."

6. California Code of Regulations, title 13, 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."

7. 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."

8. 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.

9. 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."

10. ARB alleges that between January 22, 2009, and August 19, 2013, SAMSON sold, offered for sale, and/or advertised certain aftermarket critical emission control parts ("subject parts") for use on highway motorcycles that were not exempted by ARB pursuant to California Code of Regulations, title 13, section 2222 et seq.

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

12. ARB alleges that 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 2222 et seq.

13. SAMSON promptly and fully cooperated with ARB throughout its investigation.

14. SAMSON has no prior enforcement record with ARB.

15. SAMSON provided ARB with financial statements for the past couple of years, which demonstrate a financial hardship for the company.

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

17. SAMSON admits the facts in recital paragraphs 1 through 12, but denies any liability arising thereunder.

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

1. As a condition of this Agreement, SAMSON shall pay the total sum of thirty-three thousand five hundred dollars ($33,500.00) as a penalty to the California Air Pollution Control Fund. Half of this amount ($16,750.00) shall be payable within 180 calendar days of the full execution of this Agreement, with the remaining half required to be paid no later than 180 calendar days thereafter. Both payments shall be made 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. SAMSON 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, SAMSON has agreed to work with its dealers and customers to implement a buyback program of the non-exempted subject parts that were purchased and installed on California highway motorcycles in those cases where (1) the subject part was not damaged and (2) the part was not legally purchased for racing use only. As part of SAMSON's buyback program, SAMSON agrees to mail each end user in California a Notice (hereinafter "SAMSON's NOTICE"), which contains the substantive provisions of the attached Notice, which is incorporated by reference herein. In addition, SAMSON agrees to work with its dealers and distributors in California to contact each owner of a subject part by mailing a copy of SAMSON's NOTICE.

3. If the Attorney General files a civil action to enforce this settlement agreement, SAMSON shall pay all costs of enforcing the Agreement, including expert fees, reasonable attorney's fees, and costs.

4. 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 SAMSON by ARB arising from the facts described in recital paragraphs 1 through 12 are nondischargeable under United States Code, title 11, §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. SAMSON shall not install, sell, offer for sale, or advertise in California any aftermarket critical emission control part in violation of California Code of Regulations, title 13, section 2222 et seq. or Vehicle Code section 27156.

6. This Agreement shall apply to and be binding upon SAMSON 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.

7. Now therefore, contingent on the payment in full by SAMSON in the amount of thirty-three thousand five hundred dollars ($33,500.00) to the California Air Pollution Control Fund, and SAMSON's compliance with the other provisions of this agreement, including, but not limited to paragraphs 2 and 3 of the Terms and Release, ARB hereby releases SAMSON and its principals, officers, agents, employees, shareholders, subsidiaries, predecessors and successors from any and all claims for any and all violations of California Code of Regulations, title 13, section 2222 et seq., and Vehicle Code section 27156 that ARB may assert based on the facts and allegations described in paragraphs 1 through 12 of the Recitals. The undersigned represent that they have the authority to enter this Agreement.

8. This Agreement constitutes the entire agreement and understanding between ARB and SAMSON 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 SAMSON concerning these claims.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. **Senate Bill 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, 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 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 $250.00 per unit for 134 subject parts. This reflects the fact that this was an unintentional, first time violation by SAMSON, SAMSON's cooperation with the investigation, and the financial hardship SAMSON demonstrated.

**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, Health and Safety Code section 43016, is appropriate because SAMSON allegedly sold, and/or offered for sale, and/or advertised the 134 subject parts that were not exempted pursuant to California Code of Regulations, title 13, 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.

18. SAMSON 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 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. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because SAMSON 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.

20. The penalty in this case was based in part on confidential business information provided by SAMSON 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 SAMSON 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 SAMSON, the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law,

and remove any unfair advantage that SAMSON may have secured from its alleged actions.

| **California Air Resources Board** | **SAMSON, INC.** |
|---|---|
| By: _____ | By: _____ |
| Name: Ellen M. Peter | Name: RACHEL PRICE |
| Title: Chief Counsel | Title: VP |
| Date: 12/9/2013 | Date: 11-14-13 |

**NOTICE** [*Spanish translation*]
See reverse side for Spanish translation [*Spanish translation*]

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).

Our records indicate that you purchased and installed an aftermarket motorcycle exhaust system, manufactured by Samson Exhaust, 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 motorcycle will fail a vehicle inspection due to the lack of an EO number label and/or noise compliance 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 exhaust system at our expense. Please contact us directly by mail at 655 Tamarack Avenue, Brea, California 92821, or by phone at (714) 518-2480, to begin this process. Failure to do so could also affect your motorcycle's coverage under any applicable emission warranty. If you have sold or transferred the motorcycle that was equipped with the Samson exhaust, we ask that you fill-out the enclosed postage-paid card with the name and address of 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 Samson Exhaust products.