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Attorneys for Complainant

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	)	Docket No. CAA-09-2019- <u>0013</u>
	)	
Car Sound Exhaust System, Inc.,	)	
dba MagnaFlow	)	CONSENT AGREEMENT AND
	)	FINAL ORDER PURSUANT TO
Respondent	)	40 C.F.R. §§ 22.13 and 22.18
	)	

**I. CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative penalty assessment proceeding brought under section 205(c)(1) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7524(c)(1), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22. In

accordance with 40 C.F.R. §§ 22.13 and 22.18, entry of this Consent Agreement and Final Order (“CAFO”) simultaneously initiates and concludes this matter.

2. Complainant is the Assistant Director of the Air, Waste & Toxics Branch of the Enforcement Division, United States Environmental Protection Agency, Region IX (the “EPA”), who has been duly delegated the authority to initiate and settle civil administrative penalty proceedings under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-19 (January 18, 2017); EPA, Region IX Redefinition R9-7-19 (October 5, 2017).
3. Respondent is Car Sound Exhaust System, Inc. dba MagnaFlow, a vehicle parts manufacturer and distributor headquartered in Oceanside, California.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CAFO without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

#### **B. JURISDICTION**

5. Rather than referring a matter to the United States Department of Justice to commence a civil action, the EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$369,532 for violations that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2018, or if the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1) and 40 C.F.R. § 19.4. Such determination is not subject to judicial review. CAA § 205(c), 42 U.S.C. § 7524(c)(1). On July 17, 2018, the United States Department of Justice concurred with EPA’s request for a waiver in this matter.

### **C. GOVERNING LAW**

6. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202-219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including particulate matter (“PM”).
7. Section 203(a)(3)(B) of CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing parts or components whose principal effect is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, where the person knows or should know that the part is being offered for sale or installed for such use.
8. Violations of CAA section 203(a)(3)(B) are subject to civil penalties of up to \$3,750 per defeat device for violations that occurred after December 6, 2013, through November 2, 2015, and up to \$4,619 for violations that occur after November 2, 2015, where penalties are assessed on or after January 15, 2018. CAA § 205, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
9. Definitions:
  - (a) Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.”
  - (b) Section 216(2) of the CAA, 42 U.S.C. § 7550(2), defines “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.”
10. The CAA requires EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or new motor vehicle engines which cause or contribute to air pollution, which may reasonably be anticipated to

endanger public health or welfare. CAA §§ 202(a)(1) and (3)(B), 42 U.S.C. §§ 7521(a)(1) and (3)(B).

11. Section 203(a)(1) of the CAA prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity. 42 U.S.C. §7522(a)(1).
12. EPA issues certificates of conformity to vehicle manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
13. Motor vehicle manufacturers employ many devices and elements of design to meet these emission standards. Certain hardware devices serve as emission control systems to manage and treat exhaust from motor vehicles, in order to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel oxidation catalysts.

#### **D. ALLEGED VIOLATIONS OF LAW**

14. Respondent manufactures and sells aftermarket exhaust parts to various distributors and retailers located throughout the United States.
15. On April 24, 2017, EPA sent an information request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding products Respondent manufactured and sold.
16. Based on Respondent's responses to EPA's information request and additional information gathered during EPA's investigation, EPA alleges that Respondent manufactured and/or sold various exhaust kits identified in Attachment 1 of this CAFO.

17. The exhaust kits identified in Attachment 1 of this CAFO enable the removal of OEM exhaust systems containing emissions controls. These products enable the removal of diesel oxidation catalysts from the motor vehicles for which they were designed.
18. The exhaust kits identified in Attachment 1 of this CAFO were designed and marketed for use on various model year (MY) 2001 – 2007 diesel trucks, and capable of bypassing, defeating, or rendering inoperative emission related devices or elements of design that are installed on those motor vehicles to meet the CAA emission standards.
19. Between January 1, 2015, and April 24, 2017, Respondent manufactured and/or sold 5,674 exhaust kits identified in Attachment 1 to distributors and retailers located throughout the United States.
20. The manufacture, sale, offering for sale, or installation of a device that bypasses, defeats, or renders inoperative a vehicle's emission control systems is prohibited under section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). EPA alleges that Respondent has committed approximately 5,674 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling, or offering for sale the exhaust kits.

**E. TERMS OF CONSENT AGREEMENT**

21. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - a. admits that EPA has jurisdiction over the subject matter alleged in this CAFO and over Respondent;
  - b. neither admits nor denies the specific factual allegations contained in Section I.D of this CAFO;
  - c. consents to the assessment of a civil penalty under this Section, as stated below;
  - d. consents to the conditions specified in this CAFO;

- e. waives any right to contest the allegations set forth in Section I.D of this CAFO;  
and
- f. waives its rights to appeal the proposed Order contained in this CAFO.

**Civil Penalty**

22. Respondent agrees to:

- a. pay the civil penalty of SIX HUNDRED AND TWELVE THOUSAND, EIGHT HUNDRED AND FORTY-NINE DOLLARS (\$612,849), plus interest, according to the terms of this CAFO and Attachment 2, attached hereto, which specifies an installment payment plan and interest schedule; and
- b. pay the civil penalty using one of the methods listed below:
  - i. Respondent may pay online through the Department of the Treasury website at [www.pay.gov](http://www.pay.gov). In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1.
  - ii. Respondent may also pay the civil penalty using any method, or combination of methods, provided on the following website:

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

- c. identify each and every payment with the name and docket number of this case;  
and
- d. within 24 hours of payment, and as required by 40 C.F.R. § 22.31(c), provide EPA with proof of payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the

amount due, and identified with the name and docket number of this case) to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Ryan Bickmore  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[or via email to: [bickmore.ryan@epa.gov](mailto:bickmore.ryan@epa.gov)]

Janice Chan  
Mail Code (ENF-2-1)  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
[or via email to: [chan.janice@epa.gov](mailto:chan.janice@epa.gov)]

23. If Respondent does not pay timely the civil penalty set forth in Paragraph 22, EPA may request the Attorney General of the United States to bring a civil action in an appropriate district court to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under section 205(c)(6) of the CAA, 42 U.S.C. § 7524(c)(6). The validity, amount and appropriateness of the penalty are not reviewable in a collection action.
24. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States' enforcement expenses, including but not limited to attorney's fees

and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7524(c)(6).

25. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
26. Respondent acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701).

#### **Respondent's Certification of Compliance**

26. Respondent certifies that it is currently in compliance with CAA § 203(a)(3).
  - a. Respondent has represented to the EPA that it is no longer manufacturing, selling, or offering for sale the parts listed in Attachment 1 or motor vehicle parts or components which do not comply with the CAA.
  - b. By signature to this Consent Agreement, Respondent agrees to comply with the Compliance Plan set forth in Attachment 3 as a guide to maintaining compliance. In case of any conflict between the terms of the Compliance Plan and the CAFO, the terms of the CAFO shall govern.
  - c. Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete and acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).



### General Provisions

27. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
28. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
29. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
30. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
31. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
32. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state, and local laws. Except as provided in Paragraph 30 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

33. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except as specified in Paragraphs 23 and 24, above.
34. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
35. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Mobile Source Civil Penalty Policy to determine Respondent's "full compliance history" under section 205(b) of the CAA, 42 U.S.C. § 7524(b).
36. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

**Effective Date**

37. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

FOR RESPONDENT:

 \_\_\_\_\_ Date 12/14/18

Printed Name: Stephen M. Kasceisen

Title: Chief Financial Officer

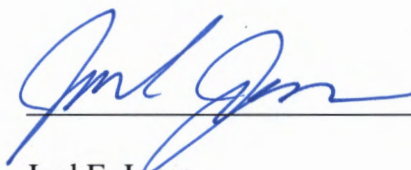
Address: 1201 Corporate Centre

Oceanside, CA 92056

FOR COMPLAINANT:

20 Dec 2018

DATE

A handwritten signature in blue ink, appearing to read "Joel Jones", written over a horizontal line.

Joel E. Jones  
Assistant Director  
Air, Waste & Toxics Branch  
Enforcement Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

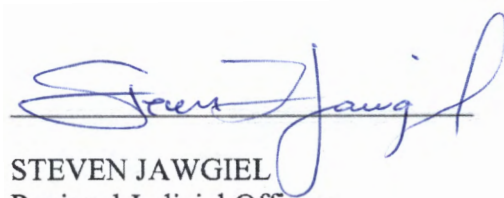
II. FINAL ORDER

EPA Region IX and Car Sound Exhaust System, Inc. dba MagnaFlow, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2019-0013) be entered, and Respondent shall pay a civil administrative penalty in the amount of SIX HUNDRED AND TWELVE THOUSAND, EIGHT HUNDRED AND FORTY-NINE DOLLARS (\$612,849), plus interest, and otherwise comply with the terms set forth in the CAFO.

12/21/18

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

**ATTACHMENT 1**

<b>Car Sound Exhaust System, Inc. dba MagnaFlow Sales of Exhaust Kits for Model Year 2001-2007 GM 6.6L Diesel Trucks Equipped with Diesel Oxidation Catalysts from January 1, 2015 to April 24, 2017</b>		
<b>MagnaFlow's Product Number</b>	<b>Description</b>	<b>Approximate Quantity of Defeat Device Products Sold</b>
18982	SYS TB 01-07 GM 6.6L Diesel	4,124
18994	SYS TB 01-07 GM Diesel 6.6L Pro	390
18999	SYS TB 01-07 GM Diesel 6.6L Pro	256
17994	SYS TB 01-07 GM Diesel 6.6L Pro	237
18980	SYS TB 01-07 GM 6.6L Diesel	207
17982	SYS TB 01-07 GM Diesel 6.6L	129
17980	SYS TB 01-07 GM Diesel 6.6L	93
17999	SYS TB 01-07 GM Diesel 6.6L Pro	81
18981	SYS TB 01-07 GM 6.6L Diesel	50
16908	Sys TB 01- GM Duramax 5" CC/SB	34
18996	SYS TB 01-07 GM Diesel 6.6L Pro	22
17036	Sys C/B 01-07 GM Silverado 6.6L Black	20
17127	SYS TB 01-07 GM Diesel CC SB 6.6L	15
17981	SYS TB 01-07 GM Diesel 6.6L	6
17129	SYS TB 01-07 GM Diesel CC LB 6.6L	5
17996	SYS TB 01-07 GM Diesel 6.6L Pro	4
17030	SYS TB 01-07 GM Silverado 6.6L BS	1
<b>Total</b>		<b>5,674</b>

**ATTACHMENT 2**

**INSTALLMENT PAYMENT AND INTEREST SCHEDULE**

**DOCKET NO. CA-09-2019-000\_**

<b>Principal</b>	<b>Days</b>	<b>Interest Payment</b>	<b>Principal</b>	<b>Installment Payment</b>
\$612,849	30	\$0	\$204,283	\$204,283
\$408,566	30	\$340.47	\$204,283	\$204,623.47
\$204,283	30	\$170.24	\$204,283	\$204,453.24
<b>Totals</b>	<b>90</b>	<b>\$510.71</b>	<b>\$612,849</b>	<b>\$613,359.71</b>

**1<sup>st</sup> Installment: \$204,283 (Due within 30 days of the effective date of the CAFO)**

**2<sup>nd</sup> Installment: \$204,623.47 (Due within 60 days of the effective date of the CAFO)**

**3<sup>rd</sup> Installment: \$204,453.24 (Due within 90 days of the effective date of the CAFO)**

**Total Payment: \$613,359.71**

## ATTACHMENT 3

### Appendix A

#### Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

#### The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

"The following acts and the causing thereof are prohibited—"

**Tampering:** CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R.

§ 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser;"

**Defeat Devices:** CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R.

§ 1068.101(b)(2): "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any [vehicle, engine, or piece of equipment], where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls and sensors that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that



are in the exhaust (e.g., filters, catalysts, oxygen sensors). Section 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices.

#### **Principle 1: Respondent Will Not Modify any OBD System**

**Respondent will neither remove nor render inoperative any element of design of an OBD system.<sup>i</sup> Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.**

#### **Principle 2: Respondent Will Ensure There is a *Reasonable Basis* for Conduct Subject to the Prohibitions**

**For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conduct<sup>ii</sup> does not adversely affect emissions.**

**Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions.**

**Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.**

#### **Reasonable Bases**

This section specifies several ways that Respondent may document that it has a "reasonable basis" as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.<sup>iii</sup>

- A. Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.<sup>iv</sup>
- B. Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
- (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment beyond its emissions warranty; and
  - (2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.
- C. Emissions Testing:**<sup>v</sup> Respondent generally has a reasonable basis if the conduct:
- (1) alters a vehicle, engine, or piece of equipment; and
  - (2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and
  - (3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.
- D. EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).<sup>vi</sup>
- E. CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board (“CARB”).<sup>vii</sup>

#### Endnotes

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<sup>i.</sup> *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system must record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term “OBD system” as used in this Appendix includes any element of design that monitors, senses, measures, receives, reads, stores, reports, processes or transmits any information about the condition of or the performance of an emission control system or any component thereof.

<sup>ii.</sup> Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the

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scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

iii. General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency," may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy (2016) in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

iv. Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then "certifies" each acceptable design for use, in the upcoming model year. The "original configuration" means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product's OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis D. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is

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generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

v. Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the “worst case” product from among all the products for which the part or component is intended. EPA generally considers “worst case” to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

vi. Notes on Reasonable Basis D: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale for, and installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

vii. Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Car Sound Exhaust System, Inc. dba MagnaFlow (**Docket No. CAA-09-2019-0013**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Stephen M. Kasprisin  
Chief Financial Officer  
Car Sound Exhaust System, Inc. dba MagnaFlow  
1901 Corporate Centre Drive  
Oceanside, CA 92056

By U.S. Postal Service to:

Joseph J. Gigliotti  
Gigliotti & Gigliotti LLP  
26501 Rancho Parkway South, Ste. 101  
Lake Forest, CA 92630

John D. Dunlap, III  
Dunlap Group  
690 Market Street, Unit 202  
San Francisco, CA 94104

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Ryan Bickmore  
Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, California 94105



FOR: Steven Armsey  
Regional Hearing Clerk Signature

12/26/18

Date