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**** FILED ****
18SEP2018 - 04:00PM
U.S.EPA - Region 09

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

In the Matter of:)	Docket No. CAA-09-2018- <u>0009</u>
)	
Vivid Distributing, LLC)	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 9 Redefinition R9-7-19 (October 5, 2017).
3. Respondent is Vivid Distributing, LLC, a motor vehicle parts manufacturer and distributor based in Gilbert, Arizona.
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. Pursuant to section 205(c)(1) of the Act, 42 U.S.C. § 7424(c)(1), the EPA and the U.S. Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment.

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 hydrocarbons and oxides of nitrogen (“NO_x”).

7. Section 203(a)(3)(A) of CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits any person from knowingly removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with the CAA emission requirements after sale and delivery to the ultimate purchaser.
8. Violations of CAA section 203(a)(3)(A) by any person other than a manufacturer or dealer are subject to civil penalties of up to \$3,750 per defeat device pursuant to section 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
9. 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.
10. Violations of CAA section 203(a)(3)(B) are subject to civil penalties of up to \$3,750 per defeat device pursuant to section 205 of the CAA, 42 U.S.C. § 7524 and 40 C.F.R. Part 19.
11. 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.”
12. 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).

13. Highway motor vehicles are one category of motor vehicles for which the EPA has promulgated emission standards. See 42 U.S.C. § 7521; see generally 40 C.F.R. Part 86.
14. 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.”
15. As required by the CAA, the highway motor vehicle standards “reflect the greatest degree of emission reduction achievable through the application of [available] technology.” Section 202(a)(3)(A)(i) of CAA, 42 U.S.C. § 7521(a)(3)(A)(i). Accordingly, EPA has established increasingly stringent highway motor vehicle emission standards at 40 C.F.R. Part 86.
16. Highway 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 highway motor vehicles, in order to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include catalytic converters.

D. ALLEGED VIOLATIONS OF LAW

17. Respondent manufactures and sells motor vehicle parts to various distributors and individual customers located throughout the United States.
18. On January 18, 2017, EPA sent an information request pursuant to section 208(a) of the CAA, 42 U.S.C. § 7542(a), to Respondent regarding software and hardware Respondent manufactured and sold since 2014.
19. Based on Respondent’s June 30, 2017 and July 31, 2017 responses to EPA’s information request and additional information gathered during EPA’s investigation, EPA alleges that

- Respondent manufactured and sold various exhaust systems for highway motor vehicles (the "Devices") identified in Attachment 1 of this CAFO.
20. The Devices required removal of one or more catalytic converters from the highway motor vehicles for which they were designed.
 21. The Devices were designed and marketed for use on various highway motor vehicles, and intended to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on those motor vehicles to meet the CAA emission standards.
 22. Between January 2014 and December 2016, Respondent manufactured and/or sold 443 Devices to distributors and individual customers located throughout the United States.
 23. 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 443 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling or offering for sale the Devices.
 24. On or about February 17, 2016, EPA conducted an inspection of Respondent's facility (the "Facility") located at 1429 W. Scott Avenue, Gilbert, Arizona.
 25. During EPA's February 17, 2016 inspection of the Facility, EPA inspectors observed Respondent's removal of a catalytic converter from a highway motor vehicle owned by one of its customers and subsequent installation of a turbo supercharger without any catalytic converter in the same vehicle.
 26. Respondent's removal of a catalytic converter from a highway motor vehicle and installation of a turbo supercharger in the same vehicle without any catalytic converter constitutes a single violation of section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A).

27. In 2018, Respondent submitted financial information to EPA which supports Respondent's claim that it could not afford to pay a full penalty for the alleged violations.

E. TERMS OF CONSENT AGREEMENT

28. 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

29. Respondent agrees to:
- a. pay the civil penalty of TWO HUNDRED THOUSAND DOLLARS (\$200,000), plus interest, ("EPA Penalty") 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 EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with "Docket No. CAA-

09-2018-~~0006~~” Within 24 hours of payment of the EPA Penalty, send proof of payment to Janice Chan at:

Mail Code (ENF-2-1)
Enforcement Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and at Chan.janice@epa.gov (“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 the EPA requirements, in the amount due, and identified with “Docket No. CAA-09-2018-~~0006~~”).

30. If Respondent fails to pay the civil administrative penalty specified in Paragraph 29 of this CAFO by the deadlines specified in Attachment 2 of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues plus the remaining balance of the penalty sum specified in Paragraph 29 upon written demand by EPA.
31. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
 - a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - d. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
32. 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. Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless EPA has provided written approval of the release of said obligations or liabilities.
33. 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.
34. 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.

35. 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.
 36. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
- F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER
37. 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.
 38. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
 39. 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.
 40. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it

be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

G. EFFECTIVE DATE

41. 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.

The foregoing Consent Agreement In the Matter of Vivid Distributing, LLC, Docket No. CAA-09-2018-____, is hereby stipulated, agreed, and approved for Entry.

FOR RESPONDENT:


Signature

9/6/18
Date

Printed Name: Rob Rohu

Title: owner

Address: 1429 W Scott Ave
Gilbert AZ 85233

FOR COMPLAINANT:

9/13/18

DATE



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

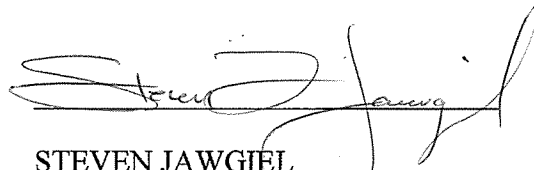
II. FINAL ORDER

EPA Region IX and Vivid Distributing, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-09-2018-⁰⁰⁰⁶____) be entered, and Respondent shall pay a civil administrative penalty in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000), plus interest, and otherwise comply with the terms set forth in the CAFO.

09/18/18

DATE



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

ATTACHMENT 1

Part Name	Description	Quantity
AP-335I-171	Agency Power Downpipes BMW N54 07-10	44
AP-435I-171	Agency Power Catless Race Downpipe BMW F30 335/435	8
AP-991TT-174	Agency Power Race Cat/Muffler Delete Pipes Porsche 991TT 2014+	2
AP-997TT-176	Agency Power Race Cat/Muffler Delete Pipes w/ Quad Tips Porsche 997TT 07-09	13
AP-CLA45-171	Agency Power Catless downpipe Mercedes Benz CLA 45 AMG 14+	5
AP-CLA45-172	Agency Power High Flow 200 Cell Catted Two Piece Downpipe Mercedes Benz A45 AMG CLA45 AMG GLA45 AMG	4
AP-CT9A-171	Agency Power Down Pipe Mitsubishi EVO 8/9	16
AP-E60M5-176	Agency Power High Flow Catless Headers BMW E60 M5 E63 M6 05-10	20
AP-F10M5-171	Agency Power Downpipes Catless Black Coating BMW F10 M5 12+	10
AP-F80M-171	Agency Power Stainless Steel Race Downpipes BMW F80 M3/M4 2015+	6
AP-F86X6M-171	Agency Power Catless Downpipes BMW X5M F85 X6M F86 2015-	1
AP-FST-171	Agency Power Catless 3" Race Downpipe, Ford Focus ST 2013+.	19
AP-GDA-171	Agency Power Racing Downpipe Subaru WRX STI 02-07	44
AP-GH-171	Agency Power Subaru Downpipes 08 WRX Racing Downpipe	128
AP-GTR-171	Agency Power Catless Downpipes Nissan R35 GT-R 09-12	78
AP-N55-171	Agency Power Downpipes BMW 135i 335i N55 10-12	20
AP-X6M-171	Agency Power Downpipes BMW X5M X6M xDrive50i 09-12	17
AP-Z33-171	Agency Power Stainless Steel Resonated Test Pipes Nissan 350Z 03-06	8
TOTAL		443 delete pipes

ATTACHMENT 2

INSTALLMENT PAYMENT AND INTEREST SCHEDULE

DOCKET NO. CAA-09-2018-0006

Principal	Days	Interest Payment	Principal	Installment Payment
\$200,000	30	\$0	\$25,000	\$25,000
\$175,000	150	\$742.53	\$25,000	\$25,742.53
\$150,000	90	\$371.25	\$25,000	\$25,371.25
\$125,000	90	\$320.10	\$25,000	\$25,320.10
\$100,000	90	\$256.29	\$25,000	\$25,256.29
\$75,000	90	\$192.33	\$25,000	\$25,192.33
\$50,000	90	\$125.41	\$25,000	\$25,125.41
\$25,000	90	\$63.90	\$25,000	\$25,063.90
Totals	720	\$2,071.81	\$200,000	\$202,071.81

- 1st Installment: \$25,000 (Due within 30 days of the effective date of the CAFO)**
- 2nd Installment: \$25,742.53 (Due within 150 days after the deadline for the first installment payment)**
- 3rd Installment: \$25,371.25 (Due within 90 days after the deadline for the second installment payment)**
- 4th Installment: \$25,320.10 (Due within 90 days after the deadline for the third installment payment)**
- 5th Installment: \$25,256.29 (Due within 90 days after the deadline for the fourth installment payment)**
- 6th Installment: \$25,192.33 (Due within 90 days after the deadline for the fifth installment payment)**
- 7th Installment: \$25,125.41 (Due within 90 days after the deadline for the sixth installment payment)**
- 8th Installment: \$25,063.90 (Due within 90 days after the deadline for the seventh installment payment)**
- Total Payment: \$202,071.81**

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of Vivid Distributing, LLC. (Docket No. CAA-09-2018-0006) 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:

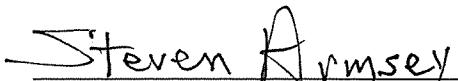
Rob Rohn
Owner
Vivid Distributing, LLC.
1429 W. Scott Avenue
Gilbert, AZ 85233

CERTIFIED MAIL NUMBER:

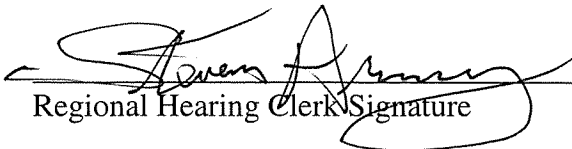
With a copy emailed to Phillip F. Fargotstein, Esq., Director at pfargotstein@fclaw.com.

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

David Kim
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Regional Hearing Clerk (Printed)
U.S. EPA, Region IX



Regional Hearing Clerk Signature

2018-09-18
Date