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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,)

16)

17 Plaintiff,)

18 and)

19)

20 STATE OF CALIFORNIA,)

21)

22 Intervenor-Plaintiff)

23 v.)

24)

25)

26 MOTORSCIENCE ENTERPRISES,)

27 INC., MOTORSCIENCE, INC., and)

28 CHI ZHENG,)

Defendants.)

)

Civil Action No. 11-cv-08023
GHK (VBKx)

CONSENT DECREE

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1 Plaintiff United States of America, on behalf of the United States
2 Environmental Protection Agency (“EPA”) filed a complaint in this action on
3 September 28, 2011, alleging that Defendants MotorScience Enterprises, Inc.,
4 MotorScience, Inc. and Chi Zheng violated Sections 203(a) and 213(d) of the
5 Clean Air Act (the “Act”), 40 C.F.R. §§ 7522(a) and 7524(d), and associated EPA
6 regulations found at 40 C.F.R. Parts 1051 and 1068.

7 The United States’ Complaint alleged that Defendants caused four of their
8 clients to violate EPA regulations by Defendants’ 1) failing to properly test
9 emission data vehicles (“EDVs”) for the clients in connection with Defendants’
10 submission of Certificates of Conformity (“COC”) applications to EPA, 2) failing
11 to provide the clients with copies of the COC applications, and other
12 documentation required to be kept, that Defendants submitted to EPA on behalf of
13 the clients; 3) failing to create and maintain records on how durability mileage was
14 accumulated on the EDVs in question in the COC applications; and 4) failing to
15 maintain records on all maintenance performed on the EDVs in question in the
16 COC applications.

17
18 Intervenor-Plaintiff the People of the State of California, ex rel. the
19 California Air Resources Board (“ARB”) filed a Complaint in Intervention which
20 was approved by the Court on November 16, 2011. The Complaint in Intervention
21 alleged that Defendants violated California Health and Safety Code section 43151,
22 *et seq.*, California Code of Regulations, title 13, sections 1958, 1976, and 2410, *et*
23 *seq.*, and California Air Resources Board regulations by, among other things,
24 failing to properly test EDV emissions for their clients in connection with their
25 submission of Executive Order (“EO”) applications to ARB, by submitting false
26 information in their EO applications, by failing to create, obtain or maintain
27 records on the EDVs that they should have had tested for their clients, and by
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1 failing to supply their clients with a copy of the EO application that they submitted
2 to ARB on behalf of their clients and other records their clients are required to
3 keep and maintain.

4 Defendants do not admit any liability arising from the transactions or
5 occurrences alleged in the United States' Complaint or California's Complaint in
6 Intervention.

7 The Parties recognize, and the Court by entering this Consent Decree finds,
8 that this Consent Decree has been negotiated by the Parties in good faith and will
9 avoid further litigation among the Parties, and that this Consent Decree is fair,
10 reasonable, and in the public interest.

11 NOW, THEREFORE, before the taking of testimony at trial, without the
12 adjudication or admission of any issue of fact or law except as set forth herein
13 below, and with the consent of the Parties, IT IS HEREBY ADJUDGED,
14 ORDERED, AND DECREED as follows:

15
16 I. JURISDICTION AND VENUE

17 1. This Court has jurisdiction over the subject matter of this action,
18 pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 203, 204, 205 and
19 213 of the Act, 40 U.S.C. §§ 7522, 7523, 7524, and 7547, and over the Parties.

20 2. Further, the Court has supplemental jurisdiction over the California
21 law claims alleged in the Complaint in Intervention pursuant to 28 U.S.C.

22 § 1367(a) because the California claims are related to the federal claims and form
23 part of the same case or controversy.

24 3. Venue is proper in this District pursuant to Sections 204, 205, and 213
25 of the Act, 40 U.S.C. §§ 7523, 7524, and 7547, because the Defendants' principal
26 place of business is in this District. For purposes of this Decree, or any action to
27 enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree
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1 and any such action and over Defendants, and consent to venue in this judicial
2 district.

3 4. For purposes of this Consent Decree, Defendants agree that the
4 Complaint and the Complaint in Intervention state claims upon which relief may
5 be granted pursuant to Sections 203, 204, 205 and 213 of the CAA, 42 U.S.C.
6 §§ 7522, 7523, 7524, and 7547, and California Health and Safety Code section
7 43151, *et seq.*, and California Code of Regulations, title 13, sections 1958, 1976,
8 and 2410, *et seq.*

9 II. APPLICABILITY

10 5. The obligations of this Consent Decree apply to and are binding upon
11 the United States, ARB, and, jointly and severally, upon each of the Defendants
12 and any of their successors, assigns, or other entities or persons otherwise bound
13 by law. All references to “Defendants” shall refer to Defendants collectively and
14 individually, unless otherwise specifically stated.

15 6. The obligations set forth in this Consent Decree apply to Defendants’
16 engagement in any Mobile Source Work, regardless whether Defendants form a
17 new business or whether Defendants’ business assets and/or operations relating to
18 Mobile Source Work are transferred to another business. Defendants shall provide
19 notice of any new business in accordance with Paragraphs 19 and/or 20 of this
20 Consent Decree. Should Defendants intend to transfer business assets and/or
21 operations relating to Mobile Source Work to another business, at least 30 days
22 prior to such transfer, Defendants shall provide a copy of this Consent Decree to
23 the proposed transferee, and shall simultaneously provide written notice of the
24 prospective transfer, together with a copy of the proposed transfer agreement, to
25 the United States and ARB in accordance with Section XIV of this Decree
26 (Notices).
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1 common ownership or control with MSE, MS, or Chi Zheng. For purposes of this
2 Consent Decree, and without limiting the foregoing definition, ABC Essentials,
3 Inc. is an “Affiliate” of MSE and/or MS.

4
5 b. “ARB” means the California Air Resources Board.

6 c. “CAA” means the Clean Air Act, 42 U.S.C. §§ 7401- 7671q.

7
8 d. “Carry Across COC Application” means a COC application
9 other than a Carry Over Application that includes emission test data used
10 previously in a COC application.

11 e. “Carry Over COC Application” means a COC application (as
12 described, for example, in 40 C.F.R. §1051.235(d)) that includes emission test data
13 used in a COC application by the same manufacturer for a prior model year.

14 f. “COC” means a certificate of conformity issued by EPA under
15 the CAA, based on an applicant’s submission and certification evidencing that an
16 engine family meets all requirements of the CAA and implementing regulations for
17 a specific model year. Any requirements set forth in this Consent Decree with
18 respect to COCs shall be deemed to also apply to Executive Orders.

19 g. “COC Application” means the information regarding an engine
20 family submitted to EPA to obtain a COC for that engine family, and includes
21 (without limitation) a Carry Over COC Application and a Carry Across COC
22 Application. Any requirements set forth in this Consent Decree with respect to
23 COC Applications shall be deemed to also apply to Executive Order applications.

24 h. “COC Holder” means the Person to whom a COC is issued.

25 i. “Certification” refers to EPA’s vehicle and engine certification
26 program and/or ARB’s vehicle and engine certification program.
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1 j. “Complaint” means the complaint filed by the United States in
2 this action;

3 k. “Complaint in Intervention” means the complaint in
4 intervention filed by ARB in this action;

5 l. “Consent Decree” or “Decree” means this Decree;

6 m. “Day” means a calendar day unless expressly stated to be a
7 business day. In computing any period of time under this Consent Decree, where
8 the last day would fall on a Saturday, Sunday, or federal holiday, the period shall
9 run until the close of business of the next business day;

10 n. “Date of Entry” means the date that the Court signs this
11 Consent Decree and enters it as a judgment, following Plaintiffs’ submission of a
12 motion to enter the Consent Decree.

13 o. “Date of Lodging” means the date that the Plaintiffs file the
14 proposed Consent Decree with the Court, prior to having the proposed decree
15 noticed in the Federal Register for public comments.

16 p. “Defendants” means MotorScience, Inc., MotorScience
17 Enterprises, Inc., and Chi Zheng. References to “Defendants” in this Decree also
18 includes a reference to each Defendant.

19 q. “Emission Data Vehicle” and “EDV” mean a vehicle or engine
20 that is tested for Certification, including, without limitation, vehicles or engines
21 tested to establish deterioration factors.

22 r. “Effective Date” shall have the definition provided in Section
23 XV.

24 s. “Engine Family” means a group of vehicles or engines expected
25 to have similar emission characteristics throughout their useful life. *See, e.g.*, 40
26 C.F.R. § 1051.230.
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1 t. "Executive Order" means an order issued by ARB's Executive
2 Officer certifying emission related components or assemblies, including but not
3 limited to vehicles, engines, aftermarket parts, and verified diesel emission control
4 strategies (VDECS) for sale in California. Any requirements set forth herein with
5 respect to COCs and COC Applications shall be deemed to also apply to Executive
6 Orders and Executive Order applications.

7 u. "Facility" means any location at which one or more of the
8 Defendants or their agents, contractors or Affiliates conducts Mobile Source Work.

9 v. "Mobile Source Work" means any activity regulated under Title
10 II of the CAA or Cal. Health and Safety Code Division 26, including but not
11 limited to the manufacture, testing, importation, distribution, or sale of any
12 vehicles, engines, aftermarket parts, fuels and/or fuel additives. This term also
13 includes causing another Person to engage in any activity regulated under Title II
14 of the CAA or Cal. Health and Safety Code Division 26, including but not limited
15 to any one or more of the above-listed activities, and providing consulting services
16 to another Person in connection with such activities.

17 w. "Model Year" means model year as defined, for example, in 40
18 C.F.R. § 1051.801.

19 x. "Motor Vehicle" means any self-propelled vehicle designed for
20 transporting persons or property on a street or highway. 42 U.S.C. § 7550(2).

21 y. "Nonroad Vehicle" means a vehicle that is powered by a
22 nonroad engine and that is not a motor vehicle or a vehicle used solely for
23 competition. 42 U.S.C. § 7550(11); 40 C.F.R. § 1051.801.

24 z. "Nonroad Engine" includes all internal combustion engines
25 except motor-vehicle engines, stationary engines, engines used solely for
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1 competition, or engines used in aircraft. 42 U.S.C. § 7550(10); 40 C.F.R. §
2 1051.801.

3 aa. “Paragraph” means a portion of this Decree identified by an
4 arabic numeral.

5 bb. “Parties” means the United States, ARB, and the Defendants;

6 cc. “Person” means any human, corporation, partnership, limited
7 liability company, sole proprietorship, joint venture, or any formal or informal
8 entity, organization, or association.

9 dd. “Section” means a portion of this Decree identified by a roman
10 numeral; and

11 ee. “United States” means the United States of America, acting on
12 behalf of EPA.

13 V. COMPLIANCE REQUIREMENTS

14 A. No Mobile Source Work, Except in Compliance with Decree

15 11. Chi Zheng, MotorScience Enterprises, Inc., and MotorScience, Inc.
16 each certify that from the date of his/its signature until termination of this Decree
17 pursuant to Section XVIII, he/it will not conduct any Mobile Source Work except
18 in compliance with the terms of this Section of this Consent Decree.
19

20 B. Compliance Requirements for All Mobile Source Work Involving 21 Nonroad Vehicles or Nonroad Engines

22 12. From the date of Defendants’ signatures until the Consent Decree’s
23 termination, before any of the Defendants conducts (or continues to conduct)
24 Mobile Source Work involving Nonroad Vehicles or Nonroad Engines, such
25 Defendant shall comply with the requirements set forth below, in Paragraphs 13–
26 19, below.

27 13. Defendants shall hire a Compliance Contractor and an Audit
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1 Contractor in accordance with the hiring process set forth in Paragraph 14, below.
2 Defendants shall perform no Mobile Source Work involving Nonroad Vehicles or
3 Nonroad Engines except according to an EPA-approved Compliance Plan and
4 Audit Program described below. Defendants shall bear all costs associated with the
5 Compliance Contractor and the Audit Contractor, shall cooperate fully with the
6 two contractors, and shall provide both contractors with unfettered access to any
7 Facility, including all records, documents, vehicles, engines and equipment
8 associated with the business. The requirement to maintain a contract with the
9 Audit Contractor shall continue a minimum of four years from the date the first
10 quarterly report is submitted to EPA by the Audit Contractor, and shall continue
11 thereafter, for the length of time EPA determines is necessary, after consultation
12 with ARB, to ensure Defendants' compliance with applicable law, but in no event
13 to exceed ten years total. The requirement to maintain a contract with the
14 Compliance Contractor shall continue for three years from the date of EPA's
15 approval, in consultation with ARB, of the Compliance Plan.

17 14. Contractor Qualifications, Hiring, and Replacing

18 a. Prior to conducting or continuing to conduct any type of Mobile
19 Source Work involving Nonroad Vehicles or Nonroad Engines, Defendants shall
20 submit to EPA and ARB a list of six or more proposed consultants to serve as
21 either the Compliance Contractor or the Audit Contractor, along with their
22 qualifications and descriptions of any previous work or contracts entered into with
23 any of the Defendants. Each proposed consultant shall employ two or more
24 registered professional engineers with a specialization in engine and vehicle
25 compliance with all aspects of applicable EPA regulations (and, where applicable,
26 ARB regulations, if California sales are anticipated) covering the type(s) of Mobile
27 Source Work that the Defendants propose they will conduct. For example, if the
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1 type of Mobile Source Work involves emission testing, consulting on emissions, or
2 the preparation or submission of COC or EO applications, the candidates must
3 have experience in: emissions testing in accordance with EPA and ARB
4 regulations; maintenance and modifications of emission-related components of
5 vehicles to ensure compliance with EPA and ARB emission standards; mileage
6 accumulation on EDVs; and recordkeeping requirements contained in EPA and
7 ARB regulations.

8 b. The proposed consultants shall not be present or past Affiliates,
9 employees or contractors of any of the Defendants, or present or past employees of
10 any contractor of any of the Defendants. EPA, after consultation with ARB, shall
11 approve or disapprove each proposed consultant on the list, which approval shall
12 not be unreasonably withheld. Should EPA approve none of the proposed
13 consultants on the initial list, Defendants shall submit a new list of six or more
14 candidates. Should EPA, after consultation with ARB, not approve any of the
15 consultants on the revised list, Defendants shall continue to submit new lists until
16 EPA approves two or more candidates. Within 15 Days after receipt of EPA's
17 approval of candidates, the Defendants shall select one consultant to serve as the
18 Compliance Contractor and another consultant to serve as the Audit Contractor,
19 and shall enter into the contracts described in Paragraphs 15 and 18, below. The
20 Compliance Contractor and Audit Contractor must not be an Affiliate, as that term
21 is defined in Paragraph 10.a, nor should they have a business relationship with one
22 another. In the event that any of the consultants approved by EPA are no longer
23 available or willing to accept the work required by this Decree when notified of
24 their selection, the Defendants shall select another EPA-approved contractor, and
25 shall enter into the contract described in Paragraph 15 or 18, as appropriate, within
26 15 Days after receiving EPA's approval.
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1 15. Duties of the Compliance Contractor : The contract with the
2 Compliance Contractor shall provide that the Compliance Contractor shall
3 perform the following duties:

4 a. Develop a draft Compliance Plan as detailed in Paragraph 16,
5 below, with the Defendants' input, and timely submit it to EPA and ARB;

6 b. Respond to all EPA comments and ARB comments on the draft
7 Compliance Plan, modify the Plan accordingly, and resubmit the draft Plan, within
8 30 days of receiving comments;

9 c. Once the Compliance Plan is approved, monitor the Defendants'
10 compliance with the Compliance Plan, and annually train Defendants' employees
11 or contractors on the Compliance Plan requirements for a minimum of three years
12 from the approval date.

13
14 16. Compliance Plan

15 a. Any Compliance Plan required by this Decree shall require that
16 Defendants:

17 i. conduct, or cause to be conducted, all Mobile Source
18 Work according to a detailed regimen designed to ensure compliance with all
19 applicable law;

20 ii. include provisions in any contracts (or other commercial
21 correspondence) concerning their Mobile Source Work that Defendants must,
22 before conducting Mobile Source Work, provide to their customers or obtain from
23 their customers all information necessary for vehicle or engine compliance
24 determinations;

25 iii. provide to every Person involved in implementing the
26 Compliance Plan training and resources to assist their implementation;

27 iv. create and maintain records of all Mobile Source Work
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1 according to an explicit protocol; and

2 v. prepare and submit an annual report as described in
3 Section VII (Defendants' Reporting Requirements), below.

4 b. Any Compliance Plan required by this Decree for Mobile
5 Source Work involving emission testing, consulting on emission testing, or the
6 preparation or submission of COC applications or EO applications shall further
7 require that:

8 i. prior to the submission of any COC application to EPA
9 in which Defendants have had any involvement in preparing or reviewing, the
10 Compliance Contractor shall review each draft COC application for consistency
11 with the EPA-approved Compliance Plan, and shall make recommendations to
12 Defendants, if necessary, to ensure consistency with the Compliance Plan.

13 ii. Defendants follow a vehicle and engine testing protocol
14 (as set forth in the Compliance Plan) for all new vehicles and engines, all Carry
15 Over situations, and all Carry Across situations, developed in accordance with
16 applicable federal regulations (for example, 40 C.F.R. Parts 1051 and 1054), and,
17 where necessary (i.e., for vehicles to be sold in California) State regulations found
18 at California Code of Regulations, title 13, sections 1900 *et seq.*, 2400 *et seq.*,
19 2410, *et seq.*, 2430 *et seq.*, and all other applicable regulations, emission standards,
20 and test procedures.

21 iii. an employee or contractor of Defendants physically shall
22 inspect the largest-displacement vehicle or engine from the Engine Family for
23 which Certification is sought to ensure that all emission-related parts conform to
24 the COC application (and, in Carry Over or Carry Across situations, compare all
25 emission-related parts of that vehicle with the corresponding emission-related parts
26 of the EDV tested for the other COC application being used for the Carry Over or
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1 Carry Across to ensure that the application is accurate);

2 iv. in Carry-Over or Carry-Across situations, if the vehicle
3 or engine to be certified includes a catalyst, Defendants shall obtain an actual
4 production vehicle from the engine family (or families) that the COC applicant
5 desires to have covered by the application, and Defendants shall disassemble the
6 exhaust system attached to the production vehicle and verify that the exhaust
7 system catalyst part number, dimensions, cell density, and metals loading are
8 identical to the design specifications of the EDV described in the corresponding
9 COC (where such information is provided). If the inspected catalyst(s) is not
10 identical in each of these aspects, Defendants shall not submit the application in
11 question. Further, Defendants shall ensure that all emission related parts of the
12 vehicle are identical to those parts on the EDV;

13 v. Defendants provide the results of each review to EPA
14 (and where appropriate, ARB) in accordance with Section XIV. (Notices) of this
15 Decree, prior to submission of the corresponding COC application;

16 vi. for Carry-Over COC Applications, the protocol shall
17 contain a demonstration that the Person who manufactured the prior Model Year
18 Vehicle (or Engine) that is being used as the EDV is the same Person who
19 manufactured the current vehicle (or engine) for which Certification is being
20 sought;

21 vii. Defendants follow a method of storing in a secure
22 location and keeping track of all EDVs upon which Defendants have based an
23 application for a COC, for any client, for a minimum of three years from the date
24 of submission of the application to EPA;

25 viii. Defendants follow a checklist to ensure that all records
26 that are required to be generated and/or kept by the importer or certificate holder
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1 under EPA and ARB regulations (for example, 40 C.F.R. §§ 1051.205 and
2 1051.250) are maintained by Defendants, at their Facility(ies), for the minimum
3 period of time required by the applicable regulations;

4 ix. Defendants follow a method for ensuring that when an
5 EDV is modified or adjusted before completing Certification testing (e.g. whether
6 by installing a different part, or making adjustments on existing parts), that
7 Defendants notify any foreign manufacturers that before shipping vehicles to the
8 United States, all vehicles covered by that COC must have the same modification
9 (or change) as occurred to the EDV which passed the emission test (hereinafter
10 “Modification Notice”). This requirement applies regardless whether the EDV in
11 question is for a “new” engine family, a “Carry-Across” engine family or a “Carry-
12 Over” engine family. If the Modification Notice is in a language other than
13 English, Defendants shall prepare a version of the Modification Notice in English
14 at the same time they prepare the foreign language version, and shall retain a copy
15 on file of both versions of the Modification Notice until this Consent Decree is
16 terminated;

17
18 x. Defendants follow a method for ensuring that when any
19 maintenance is performed on an EDV prior to emissions testing, that Defendants,
20 prior to submitting the COC application for that EDV, notify the manufacturer in
21 writing (“Maintenance Notice”) that instruction manuals for the vehicles or
22 engines in question must be modified to advise owners to perform such
23 maintenance;

24 xi. Defendants follow a plan and schedule for the
25 Compliance Contractor to annually train (for at least three years from the Effective
26 Date) Defendants’ employees and contractors on how to comply with the
27 Compliance Plan and applicable EPA and ARB regulations, applicable testing and
28

1 recordkeeping protocols.

2 xii. Defendants shall keep a list of the EPA pre-approved
3 independent laboratories or facilities used by Defendants for emissions testing.

4 xiii. At the same time the Defendants submit a COC
5 application to EPA, the Defendants shall provide to their client on whose behalf
6 the application is submitted a complete, unredacted copy of the entire COC
7 application package and all Certification and testing records and data associated
8 with that COC application, along with a cover letter reminding the client to
9 maintain the records for the period of time required by the applicable EPA
10 regulations.

11 xiv. Defendants shall contract with an independent laboratory
12 pre-approved by EPA to conduct confirmatory emission testing on up to seven
13 EDVs of EPA's choice in a calendar year. EPA may, at its discretion, order such
14 confirmatory emission tests. Defendants shall provide any such emission test
15 results to EPA no later than ten days after testing and in no event later than 60
16 Days after the date of the request. A copy of any results exceeding applicable
17 emission standards must be sent to EPA and, if applicable, ARB in accordance
18 with Section XIV ("Notices") of this Decree. The tests must be performed in
19 accordance with all applicable EPA and ARB regulations.

20 xv. Any contract between Defendants and an emissions
21 testing laboratory shall require the laboratory to adhere to the written testing and
22 recordkeeping protocols in the Compliance Plan and in strict accordance with
23 applicable federal regulations, and a copy of the approved Compliance Plan shall
24 be provided to the laboratory in advance of entering into the contract. Any
25 laboratory or Facility used by Defendants for emission testing must regularly
26 participate in correlation studies with other laboratories.
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1 xvi. Defendants shall perform, and/or cause to be performed,
2 all emissions testing in accordance with applicable federal and state regulations,
3 and shall conduct their business in strict accordance with the Compliance Plan.

4 xvii. Each client contract for any Certification or testing work
5 shall include the following elements, and must be made available to the Audit
6 Contractor, and provided to EPA and/or ARB upon request:

7 A. a complete and accurate translation, if not in
8 English;

9 B. notification to the client of the client's
10 recordkeeping responsibilities under applicable EPA and ARB regulations
11 accompanied by a detailed list of recordkeeping requirements applicable to a COC
12 holder. This notification must state that this information "is being provided in
13 accordance with a consent decree with the United States Environmental Protection
14 Agency and the California Air Resources Board."

15 C. a covenant that Defendants shall notify the client
16 immediately if any modifications or adjustments are made to an EDV that could
17 affect emissions;

18 D. a covenant that Defendants shall notify the client
19 immediately of all maintenance performed on any EDV at any time;

20 E. a covenant that Defendants shall provide the client
21 with all records, data, and application(s) when the client's COC application(s) is
22 (are) submitted to EPA; and
23

24 F. a covenant that Defendants shall provide the client
25 with any available records or data requested by the client no more than 15 Days
26 after the client's request; and
27

28 xviii. Until this Consent Decree is terminated pursuant to

1 Section XVIII, Defendants shall state prominently on any website that they
2 maintain for any Mobile Source Work involving emissions testing, consulting, or
3 preparing or submitting applications to EPA for COCs or to ARB for EOs that they
4 will provide their clients with all records, data, and applications when the client's
5 COC and/or EO application(s) is/are submitted to EPA and/or ARB.

6 17. Defendants' Duty to Fully Comply with Compliance Plan

7 Defendants shall fully comply with any Compliance Plan developed and approved
8 under this Decree.

9 18. Duties of the Audit Contractor : The contract with the Audit

10 Contractor shall provide that the Audit Contractor shall perform the following
11 duties:

12 a. Develop a draft Audit Program as detailed in Paragraph 19 to
13 determine whether Defendants are in compliance, and remain in compliance, with
14 each requirement set forth in Defendants' Compliance Plan;

15 b. Submit the draft Audit Program to EPA and ARB for review
16 within 60 Days from the day when the Audit Contractor is retained, and respond to
17 all EPA comments and ARB comments on the draft Audit Program, modify the
18 Program accordingly, and resubmit the draft Program, within 30 Days of receiving
19 comments;

20 c. Audit Defendants' Facilities (including computer systems, hard
21 copy records, equipment, instrumentation, emission data vehicles or engines) in
22 accordance with the Audit Program, at least once per calendar quarter, on a
23 random, unannounced basis. After four years' worth of quarterly Audit Finding
24 Reports have been submitted to EPA under the approved Audit Program, if EPA in
25 its unreviewable discretion after consultation with ARB determines that the audit
26 findings demonstrate compliance with the approved Compliance Plan, the
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1 frequency of the audits may change to every six months, or once per year, as EPA
2 determines. Such less frequent audits, however, shall still be conducted on a
3 random, unannounced basis;

4 d. Prepare an “Audit Findings Report” for each reporting period,
5 and submit to EPA and ARB within 45 Days of completing the on-site inspection,
6 along with documents, photographs, videos, or other information to support the
7 audit findings; and

8 e. Be available to consult with EPA and/or ARB upon request
9 within twenty (20) Days.

10 19. Audit Program

11 a. Any Audit Program required by this Decree, regardless of the
12 kind of Mobile Source Work for which it is required, shall require that the Audit
13 Contractor:

14 i. audit the Defendants’ business as described in Paragraph
15 19.c, above;

16 ii. review a representative portion of the Defendants’
17 Mobile Source Work Involving Nonroad Vehicles or Nonroad Engines for
18 compliance with the Compliance Plan and all applicable law;

19 iii. review Defendants’ contracts, commercial
20 correspondence, and all other records for compliance with the Compliance Plan
21 and all applicable law; and

22 iv. prepare and submit an Audit Findings Report as
23 described in Paragraph 19.d, above.

24 b. Any Audit Program required by this Decree for Mobile Source
25 Work involving emission testing, consulting on emissions, or the preparation or
26 submission of COC applications or EO applications shall further require that:
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1 i. the Audit Contractor audit the Defendants’ business(es)
2 as described in Paragraph 18.c, above.

3 ii. at each audit, the Audit Contractor randomly selects for
4 review a representative sample and number of COC applications submitted to EPA
5 within the last four months for “new,” “Carry-Over,” and “Carry-Across” vehicles,
6 to determine whether the Defendants complied with their approved Compliance
7 Plan, and with all applicable EPA and/or ARB regulations. This review shall
8 include, but not be limited to:

9 A. Inspection of the EDV associated with each
10 application and comparison of that vehicle with the EDV description in the COC
11 application;

12 B. Review of all records related to the EDV history,
13 the mileage accumulation, the emissions testing, and the test equipment, and
14 notation of any discrepancies with the regulatory requirements;

15 C. Corroboration of the raw emission test results and
16 any calculation of useful life emission values shown in the COC application to
17 EPA, and identification of any errors; and

18 D. An inspection of the records that the Defendants
19 maintain on the maintenance and modifications performed on the EDVs to ensure
20 that the recordkeeping requirements in the Compliance Plan and in all applicable
21 EPA regulations are being met, that such records were transmitted to the vehicle
22 manufacturers, and that the vehicle manufacturers received the Modification
23 Notices and the Maintenance Notices required by this Section of the Consent
24 Decree;
25

26 iii. If the Defendants own or operate any emissions testing
27 equipment, such equipment be inspected to ensure that it is being maintained and
28

1 used in accordance with the testing protocol established in the approved
2 Compliance Plan, and all applicable EPA and ARB testing regulations are being
3 followed. (For example, for recreational vehicles and Highway Motorcycles, this
4 would include, but not be limited to: 40 C.F.R. §§86.426-78, 86.427-78 , 86.528-
5 78, 86.535-90, 86.536-78, 86.537-90, 86.540-90, 86.508-78, 86.509-90, 86.511-
6 90, 86.513-94, 86.513-2004, 86.514-78, 86.516-78, 86.518-78, 86.519-90, 86.521-
7 90, 86.522-78, 86.523-78, 86.524-78, 86.526-90, 86.530-78, 86.531-78, 86.532-78,
8 1051.243, 1051.501, 1065.405, and 1065.410).

9
10 vi. The Audit Contractor shall inspect copies of recent
11 contracts (and modifications thereto) entered into between each Defendant and
12 each of his/its clients, to ensure that the “required elements” for such contracts (set
13 forth in Paragraph 16. b.xviii), appear in each contract; and

14 v. The Audit Contractor prepare an “Audit Findings
15 Report” for each reporting period, and submit it to EPA and ARB as part of the
16 annual report, along with all supporting documents, photographs, videos, or other
17 information, supporting audit findings.

18 C. Notice of All Mobile Source Work Not Involving Nonroad Vehicles
19 and Nonroad Engines

20 20. If at any time following the Date of Lodging any of the Defendants
21 engages in any Mobile Source Work other than the types of Mobile Source Work
22 described in Paragraph 12, that Defendant shall notify EPA and ARB in
23 accordance with Section XIV (Notices) of this Decree, at least thirty (30) Days
24 prior to commencing the business, and shall supply the following information.
25 (Additionally, if on the Date of Lodging any of the Defendants has already
26 commenced engaging in any Mobile Source Work, within seven (7) Days of the
27 Date of Lodging, that Defendant (those Defendants) shall also notify EPA and
28

1 ARB in accordance with Section XIV (Notice), and shall supply the following
2 information).

3 a. All names used by the business, the form of the business (i.e.
4 corporation, partnership, sole proprietorship, joint venture, etc.), and if the business
5 is incorporated, the State of Incorporation and Date of Incorporation;

6 b. All addresses (physical addresses, website addresses and/or
7 email addresses) at which that business conducts business, and all telephone
8 numbers and all emails at which that business may be reached;

9 c. A full description of the purpose of the business;

10 d. A list of customers (or clients) of the business, and a
11 description of their connection to the business;

12 e. A list of the employees or contractors working for the business;
13 and
14

15 f. If the business is a corporation, the names of all officers and
16 shareholders

17 D. Notice of Formation of Business Entities

18 21. In accordance with Section XIV (“Notices”) of this Decree,
19 Defendants shall provide EPA and ARB at least ten (10) Days notice before
20 forming any business in the United States related to Mobile Source Work. This
21 notice must be in writing and must include the name and contact information of the
22 proposed business, its legal form (e.g. corporation, limited liability company,
23 partnership, etc.), all Persons affiliated with the proposed business and a
24 reasonably detailed description of the purpose of the proposed business. If the
25 new business will be a corporation, the names and contact information of the
26 proposed officers and shareholders of the business shall be supplied.
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1 E. Review of Deliverables

2 22. After review of any draft plan or other item that is required to be
3 submitted and approved pursuant to Section V of this Consent Decree, EPA, after
4 consultation with ARB, shall in writing:

- 5 a. approve the submission;
6 b. approve the submission upon specified conditions;
7 c. approve part of the submission and disapprove the remainder;
8 or
9 d. disapprove the submission.
10

11 23. If the submission is approved pursuant to Paragraph 22.a, Defendants
12 shall take all actions required by the plan, report, or other document, in accordance
13 with the schedules and requirements of the plan, report, or other document, as
14 approved. If the submission is conditionally approved or approved only in part,
15 pursuant to Paragraph 22.b or 22.c, Defendants shall, upon written direction from
16 EPA, after consultation with ARB, take all actions required by the approved plan,
17 report, or other item that EPA, after consultation with ARB, determines are
18 technically severable from any disapproved portions, subject to Defendants' right
19 to dispute only the specified conditions or the disapproved portions, under Section
20 X of this Decree ("Dispute Resolution").

21 24. If the submission is disapproved in whole or in part pursuant to
22 Paragraph 22. c or 22.d, the Defendants shall, within thirty (30) Days or such other
23 time as the Parties agree to in writing, correct all deficiencies and resubmit the
24 plan, report, or other item, or disapproved portion thereof, for approval, in
25 accordance with the preceding Paragraphs. If the resubmission is approved in
26 whole or in part, the Defendants shall proceed in accordance with Paragraph 23.
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1 payments to the United States are in addition to the civil penalty judgment amount
2 set forth in Paragraph 26, and are not in satisfaction of any portion of the judgment
3 in Paragraph 26. Should Defendants not make a timely payment, interest shall
4 accrue on any unpaid amount at the rate specified in 28 U.S.C. § 1961,
5 commencing on 181st day following the Date of Entry, and the per day stipulated
6 penalties for late payment (or nonpayment) set forth in Section VIII shall apply.

7
8 29. Each Defendant further agrees that within five (5) Days from the Date
9 of Entry they, collectively, shall pay \$6,000, and within six months (*i.e.* 180 Days)
10 of the Date of Entry they, collectively, shall pay another \$6,000 to ARB in
11 accordance with the payment instructions set forth in Paragraph 31, below. These
12 two payments to ARB are in addition to the civil penalty judgment amount set
13 forth in Paragraph 27, and are not in satisfaction of any portion of the judgment in
14 Paragraph 27. Should Defendants not make a timely payment, interest shall accrue
15 on any unpaid amount at the rate specified in Cal. Code Civ. Proc. Section 685.010
16 commencing on the sixth Day from the Date of Entry, and the stipulated penalties
17 for late payment (or nonpayment) set forth in section VIII shall apply.

18 30. Defendants shall pay the amounts provided in Paragraph 28 above to
19 the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S.
20 Department of Justice in accordance with written instructions to be provided to
21 Defendants, following entry of the Consent Decree, by the Financial Litigation
22 Unit of the U.S. Attorney’s Office for the Central District of California, 312 North
23 Spring St., Suite 1200, Los Angeles, CA 90012, (213) 894-2400. At the time of
24 payment, Defendants shall send a copy of the EFT authorization form and the EFT
25 transaction record, together with a transmittal letter, which shall state that the
26 payment is for the civil penalty owed pursuant to the Consent Decree in *United*
27 *States and State of California v. MotorScience Enterprises, Inc., et al*, and shall
28

1 reference the civil action number and the DOJ case number 90-5-2-1-10209, to the
2 United States in accordance with Section XIV (“Notices”) of this Decree; by email
3 to acctsreceivable.CINWD@epa.gov; and by mail to:

4 EPA Cincinnati Finance Office
5 26 Martin Luther King Drive
6 Cincinnati, Ohio 45268

7 31. Payment to ARB shall be by check payable to the California Air
8 Pollution Control Fund, and mailed to:

9 Diane Kiyota
10 Air Resources Board
11 1001 I Street
12 Sacramento, CA 95814

13 32. Defendants shall not deduct any penalties paid under this Decree
14 pursuant to this Section or Section VIII (Stipulated Penalties) in calculating their
15 federal or State income tax. Further, the Civil Penalty to be paid under this
16 Section is punitive in nature, and not compensation for pecuniary loss by Plaintiffs.

17 **VII. DEFENDANTS’ REPORTING REQUIREMENTS**

18 33. Defendants shall prepare and submit to EPA and ARB an annual
19 report regarding their compliance with all Consent Decree requirements, by
20 January 31st of the first year following the Effective Date of this Consent Decree,
21 and each subsequent annual report by January 31st of the year following the year in
22 question. The annual report shall include all of the following information:

23 a. If Defendants opt to not engage in any Mobile Source Work,
24 Defendants shall include the following statement: “Defendants are not engaged in
25 Mobile Source Work as defined in Paragraph 10.v. of the Consent Decree.”

26 b. If during the year in question, any of the Defendants has
27 engaged in Mobile Source Work involving Nonroad Vehicles or Nonroad Engines,
28

1 the annual report shall describe the nature and scope of such activity, and shall
2 name all businesses, real or fictitious, for whom such work was performed.

3 Defendants shall state and document all income from such Mobile Source Work.
4 Additionally, Defendants must include any information that must be provided
5 under Section V (“Compliance Requirements”) and the following information:

6 i. a list of every engine family for which Defendants
7 submitted a COC application in the year in question that identifies each
8 application that is a Carry Over COC Application or a Carry Across COC
9 Application and identifies, as applicable, the COC Application from which
10 emission data was carried over or carried across; and

11 ii. a list of every EDV tested by Defendants in the year in
12 question, identified by vehicle identification number (or product identification
13 number, as applicable), and the EDV’s current location (which should be in a
14 secure location readily accessible to Defendants, to the Compliance or Audit
15 Contractors, and to EPA and ARB, upon request);

16 iii. a list of any noncompliance with this Consent Decree that
17 occurred during the year in question;

18 iv. records of the training and resources provided to any
19 Person regarding testing and recordkeeping protocols, including the date, duration,
20 attendance, and copies of the training materials used;

21 v. a list of clients and Affiliated entities with a
22 corresponding list of any business formed by Defendants’ client or Defendants for
23 the purpose of COC applications;

24 vi. copies of all contracts between Defendants and their
25 clients, between Defendants and any third-party laboratory; and between
26 Defendants and any contractor (other than the Compliance Contractor and Audit
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1 Contractor) who is performing any work for Defendants related to their compliance
2 with EPA or ARB regulations;

3 vii. copies of all business formation documents by any of the
4 Defendants to any Secretaries of State in any of the United States; and

5 viii. Audit Findings Reports for any audit conducted during the annual reporting
6 period.

7 c. If during the year in question, any of the Defendants has
8 engaged in Mobile Source Work involving onroad vehicles or onroad engines, the
9 annual report shall describe the nature and scope of such activity, and shall name
10 all businesses, real or fictitious, for whom such work was performed. Defendants
11 shall state and document all income from such work. Additionally, Defendants
12 must supply the following information:

13 i. a list of every engine family for which any of the
14 Defendants submitted a COC application in the year in question that identifies each
15 application that is a Carry Over COC Application or a Carry Across COC
16 Application and identifies, as applicable, the COC Application from which
17 emission data was carried over or carried across; and

18 ii. a list of every EDV tested in the year in question,
19 identified by vehicle identification number, and description of the secure location
20 where the EDV is being stored; and

21 iii. a list of clients and Affiliated entities.

22 34. If the cause of any noncompliance with this Consent Decree cannot be
23 fully explained at the time the report is due, Defendants shall so state in the report.
24 Defendants shall investigate the cause of the noncompliance, and shall then submit
25 an amendment to the report, including a full explanation of the cause of the
26 violation, within 30 Days of the Day the Defendants becomes aware of the cause of
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1 the violation. Nothing in this Paragraph or the following Paragraph relieve
2 Defendants of their obligation to provide the notice required by Section IX (“Force
3 Majeure”) of this Consent Decree.

4 35. All reports shall be submitted to the persons designated in Section
5 XIV (“Notices”) of this Consent Decree.

6 36. Each report submitted by Defendants under this Section shall be
7 signed by an official of the submitting party and include the following
8 Certification: “I certify under penalty of law that this document and all attachments
9 were prepared under my direction or supervision in accordance with a system
10 designed to assure that qualified personnel properly gather and evaluate the
11 information submitted. Based on my inquiry of the person or persons who manage
12 the system, or those persons directly responsible for gathering the information, the
13 information submitted is, to the best of my knowledge and belief, true, accurate,
14 and complete. I am aware that there are significant penalties for submitting false
15 information, including the possibility of fine and imprisonment for knowing
16 violations.”
17

18 37. The reporting requirements contained in this Section do not relieve
19 Defendants of any reporting obligations required by the CAA or implementing its
20 regulations, or by any other federal, state, or local law, regulation, permit, or other
21 requirement.

22 38. Any information provided pursuant to this Consent Decree may be
23 used by the United States and/or ARB in any proceeding to enforce the provisions
24 of this Consent Decree and as otherwise permitted by law.

25 VIII. STIPULATED PENALTIES

26 39. Defendants shall be liable for stipulated penalties to the United States
27 and ARB for violations of this Consent Decree as specified below, unless excused
28

1 under Section IX (“Force Majeure”). A violation includes failing to perform any
2 obligation required by the terms of this Consent Decree, including any work plan
3 or schedule approved under this Consent Decree, according to all applicable
4 requirements of this Consent Decree and within the specified time schedules
5 established by or approved under this Consent Decree.

6 40. Late Payment of Civil Penalty: If Defendants fail timely to make the
7 payments to the United States and/or ARB as set forth in Paragraphs 28 and 29
8 respectively, Defendants shall pay a stipulated penalty of \$4,000 per Day, per
9 government, for each Day that such payments to the United States and/or ARB is
10 late.

11 41. Failure Timely to Propose List of Potential Contractors, or a Revised
12 List: Defendants shall pay the following stipulated penalty for failing timely to
13 submit the initial list of proposed consultants, or a revised list, as requested by
14 EPA, as described in Paragraph 14 of this Decree:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 5 th Day.
\$10,000	6 th through 10 th Day.
\$15,000	11 th Day and beyond.

20 80% of any stipulated penalty due under this paragraph shall be paid to the
21 United States, and 20% to ARB.

22 42. Failure Timely to Hire a Compliance Contractor or an Audit
23 Contractor: Defendants shall pay the following stipulated penalty for failing
24 timely to hire a Compliance Contractor or an Audit Contractor in accordance with
25 the timeframe set forth in Paragraph 14 of this Decree:

<u>Penalty Per Day, Per Contractor</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 5 th Day.

1 \$10,000 6th through 10th Day.
2 \$15,000 11th Day and beyond.

3 80% of any stipulated penalty due under this paragraph shall be paid to the
4 United States, and 20% to ARB.

5 43. Failure of Defendants’ Contract with Compliance Contractor to
6 Contain Provisions for Required Duties: Defendants shall pay the following
7 stipulated penalty for failing to include in their contract with the Compliance
8 Contractor each duty set forth in Paragraph 15 of the Decree:

9 Penalty Per Day, Per Duty Lacking in Contract
10 \$5,000

11 80% of any stipulated penalty due under this paragraph shall be paid to the
12 United States, and 20% to ARB.

13 44. Failure of Defendants’ Contract with Audit Contractor to Contain
14 Provisions for Required Duties: Defendants shall pay the following stipulated
15 penalty for failing to include in their contract with the Audit Contractor each duty
16 set forth in Paragraph 18 of the Decree:

17 Penalty Per Day, Per Duty Lacking in Contract
18 \$5,000

19 80% of any stipulated penalty due under this paragraph shall be paid to the
20 United States, and 20% to the ARB.

21 45. Failure Timely to Submit a Draft Compliance Plan with Required
22 Elements: Defendants shall pay the following stipulated penalty for failing timely
23 to submit the draft Compliance Plan in the timeframe set forth in Paragraph 15, or
24 for submitting a draft Compliance Plan lacking one or more of the required
25 elements set forth in Paragraph 16:
26
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<u>Penalty Per Day Late</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 5 th Day.
\$10,000	6 th through 10 th Day.
\$15,000	11 th Day and beyond.

Penalty Per Element Lacking in Submitted Draft
\$10,000

80% of any stipulated penalty due under this paragraph shall be paid to the United States, and 20% to the ARB.

46. Failure Timely to Submit a Draft Audit Program Plan with Required Elements: Defendants shall pay the following stipulated penalty for failing timely to submit the draft Audit Program Plan in the timeframe set forth in Paragraph 17, or for submitting a draft Compliance Plan lacking one or more of the required elements set forth in Paragraph 19:

<u>Penalty Per Day Late</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 5 th Day.
\$10,000	6 th through 10 th Day.
\$15,000	11 th Day and beyond.

Penalty Per Element Lacking in Submitted Draft
\$10,000

80% of any stipulated penalty due under this paragraph shall be paid to the United States, and 20% to ARB.

47. Failure to Comply with a Requirement in the Compliance Plan: Defendants shall pay the following stipulated penalty for failing to comply with each requirement set forth in the approved Compliance Plan. For purposes of these stipulated penalties, noncompliance may be determined by EPA or ARB

1 independently, or after review of an Audit Report, or after consultation with the
2 Audit Contractor:

3 Penalty Per Requirement Violated

4 1st through 5th violation of specific requirements \$4,000
5 6th through 10th violation of the specific requirement \$8,000
6 11th and beyond, violation of the specific requirement \$12,000.

7 80% of any stipulated penalty due under this paragraph shall be paid to the
8 United States, and 20% to ARB.

9 48. Failure to Perform Confirmatory Testing Requested by EPA:

10 Defendants shall pay the following stipulated penalty for failing to perform a
11 confirmatory emission test on any vehicle, as referenced in Paragraph 16.b. xv of
12 this Decree:
13

14 Penalty per EDV Not Confirmatory Tested

15 1st through 7th vehicle- \$5,000
16 7th through 14th vehicle- \$10,000
17 15th through 21st vehicle- \$15,000
18 22nd vehicle and beyond- \$20,000

19 80% of any stipulated penalty due under this paragraph shall be paid to the
20 United States, and 20% to ARB.

21 49. Failing to Supply COC Applicants with Required Records:

22 Defendants shall pay the following stipulated penalty for failing timely to supply a
23 client on whose behalf they submit a COC application any required record:
24

25 Penalty per Failure Timely to Supply to Client

26 1st through 5th failure- \$2,000
27 6th through 10th failure- \$4,000
28 11th and beyond- \$8,000.

1 80% of any stipulated penalty due under this paragraph shall be paid to the
2 United States, and 20% to ARB.

3 50. Failure of Contracts with Clients to Contain Required Elements:
4 Defendants shall pay the following stipulated penalties for failing to require that
5 each contract with one of its clients contain each of the elements required in
6 Paragraph 16 of this Decree:

7 Penalty per Element Lacking from Contract

8 \$4,000

9 80% of any stipulated penalty due under this paragraph shall be paid to the
10 United States, and 20% to ARB.

11 51. Failure of Contracts with Other Emissions Testing Laboratories to
12 Contain Required Elements: Defendants shall pay the following stipulated penalty
13 for failing to require that each contract with an emissions testing laboratory
14 incorporates the requirements of Paragraph 16 of this Decree:

15 Penalty per Contract, per day

16 \$ 5,000

17 80% of any stipulated penalty due under this paragraph shall be paid to the
18 United States, and 20% to ARB.

19 52. Failure Timely to Submit a Complete Annual Report: Defendants
20 shall pay the following stipulated penalties for failing timely to submit the annual
21 report described in Section VII of this Decree:

22 Penalty per Day Deadline Missed

23 \$1,000

24 Further, should an annual report omit one or more of the required elements
25 described in Section VII of this Decree, Defendants shall be liable for the
26 following stipulated penalty:
27
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1 Penalty per Element Omitted

2 \$2,000

3 80% of any stipulated penalty due under this paragraph shall be paid to the
4 United States, and 20% to ARB.

5 53. Failure of Audit Contractor to Timely Submit Audit Findings Report:
6 Defendants shall pay the following stipulated penalty for the untimely submission
7 of an Audit Report:

8 Penalty per Day Deadline Missed

9 \$1,000

10 80% of any stipulated penalty due under this paragraph shall be paid to the
11 United States, and 20% to ARB.

12 54. Other Consent Decree Violations: For any other violations of this
13 Consent Decree not specifically mentioned in the preceding paragraph, the
14 stipulated penalty shall be \$1,000 per Day, per violation.

15 80% of any stipulated penalty due under this paragraph shall be paid to the
16 United States, and 20% to ARB.

17 55. Defendants shall pay any stipulated penalty within 30 Days of
18 receiving a written demand from the United States or ARB. The United States or
19 ARB may in their unreviewable exercise of discretion, reduce or waive their
20 respective stipulated penalties otherwise due to them under this Consent Decree.
21 Stipulated penalties shall continue to accrue, once the demand is received, and
22 during any Dispute Resolution, but need not be paid until the following:

23 a. If the dispute is resolved by agreement of the Parties, or by a
24 decision of EPA, after consultation with ARB, Defendants shall pay accrued
25 penalties, together with interest, within 30 Days of the effective date of the
26 agreement or the receipt of EPA's decision or order.
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1 b. If the dispute is appealed to the Court and the United States
2 and/or ARB prevails in whole or in part, Defendants shall pay all accrued penalties
3 determined by the Court to be due, together with interest, within 60 Days of
4 receiving the Court's decision or order.

5 c. If any Party appeals the District Court's decision, and the
6 United States and/or ARB prevail in whole or in part, Defendants shall pay all
7 accrued penalties determined to be due, together with interest, within 15 Days of
8 receiving the final appellate court decision.

9 56. Obligations Prior to the Effective Date. Upon the Effective Date of
10 this Consent Decree, the stipulated penalty provisions of this Decree shall be
11 retroactively enforceable with regard to any and all violations of Section V
12 (“Compliance Requirements”) that have occurred prior to the Effective Date of the
13 Consent Decree but after Defendants’ signature, provided that stipulated penalties
14 that may have accrued prior to the Effective Date may not be collected unless and
15 until this Consent Decree is entered by the Court.

16 57. Defendants shall pay stipulated penalties owing to the United States
17 and ARB in the manner set forth and with the confirmation notices required by
18 Section VI (“Civil Penalty”), except that the transmittal letter shall state that the
19 payment is for stipulated penalties and shall state for which violation(s) the
20 penalties are being paid.

21 58. If Defendants fail to pay stipulated penalties according to the terms of
22 this Consent Decree, Defendants shall be liable for interest on such penalties, as
23 provided for in 28 U.S.C. § 1961 (for the United States) and the rate specified in
24 Cal. Code Civ. Proc. § 685.010 (for ARB), accruing as of the date payment became
25 due. Nothing in this Paragraph shall be construed to limit the United States or
26 ARB from seeking any remedy otherwise provided by law for Defendants’ failure
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1 ARB an explanation and description of the reasons for the delay; the anticipated
2 duration of the delay; all actions taken or to be taken to prevent or minimize the
3 delay; a schedule for implementation of any measures to be taken to prevent or
4 mitigate the delay or the effect of the delay; Defendants' rationale for attributing
5 such delay to a force majeure event if it intends to assert such a claim; and a
6 statement as to whether, in the opinion of Defendants, such event may cause or
7 contribute to an endangerment to public health, welfare or the environment.
8 Defendants shall include with any notice all available documentation supporting
9 the claim that the delay was attributable to a force majeure. Failure to comply
10 with the above requirements shall preclude Defendants from asserting any claim
11 of force majeure for that event for the period of time of such failure to comply,
12 and for any additional delay caused by such failure. Defendants shall be deemed
13 to know of any circumstance of which Defendants, any entity controlled by
14 Defendants, or Defendants' contractors knew or should have known.

15
16 62. If EPA, after a reasonable opportunity for review and comment by
17 ARB, agrees that the delay or anticipated delay is attributable to a force majeure
18 event, the time for performance of the obligations under this Consent Decree that
19 are affected by the force majeure event will be extended by EPA, after a reasonable
20 opportunity for review and comment by ARB, for such time as is necessary to
21 complete those obligations. An extension of the time for performance of the
22 obligations affected by the force majeure event shall not, of itself, extend the time
23 for performance of any other obligation. EPA will notify Defendants in writing of
24 the length of the extension, if any, for performance of the obligations affected by
25 the force majeure event.

26
27 63. If EPA, after a reasonable opportunity for review and comment by
28 ARB, does not agree that the delay or anticipated delay has been or will be caused

1 by a force majeure event, EPA will notify Defendants in writing of its decision. If
2 Defendants elects to invoke the dispute resolution procedures set forth in Section X
3 (“Dispute Resolution”), it shall do so no later than fifteen (15) Days after receipt of
4 EPA's notice. In any such proceeding, Defendants shall have the burden of
5 demonstrating by a preponderance of the evidence that the delay or anticipated
6 delay has been or will be caused by a force majeure event, that the duration of the
7 delay or the extension sought was or will be warranted under the circumstances,
8 that best efforts were exercised to avoid and mitigate the effects of the delay, and
9 that Defendants complied with the requirements of Paragraphs 60 and 61, above.
10 If Defendants carry this burden, the delay at issue shall be deemed not to be a
11 violation by Defendants of the affected obligation of this Consent Decree identified
12 to EPA and the Court.

14 X. DISPUTE RESOLUTION

15 64. Unless otherwise expressly provided for in this Consent Decree, the
16 dispute resolution procedures of this Section shall be the exclusive mechanism to
17 resolve disputes arising under or with respect to this Consent Decree. Defendants’
18 failure to seek resolution of a dispute under this Section shall preclude Defendants
19 from raising any such issue as a defense to an action by the United States or ARB
20 to enforce any obligation of Defendants arising under this Consent Decree.

21 65. Informal Dispute Resolution. Any dispute subject to Dispute
22 Resolution under this Consent Decree shall first be the subject of informal
23 negotiations. The dispute shall be considered to have arisen when Defendants
24 sends the United States and ARB a written Notice of Dispute. Such Notice of
25 Dispute shall state clearly the matter in dispute. The period of informal
26 negotiations shall not exceed 30 Days from the date the dispute arises, unless that
27 period is modified by written agreement. If the Parties cannot resolve a dispute by
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1 informal negotiations, then the position advanced by the United States, after
2 consultation with the ARB, shall be considered binding unless, within 30 Days
3 after the conclusion of the informal negotiation period, Defendants invoke formal
4 dispute resolution procedures as set forth below.

5 66. Formal Dispute Resolution. Defendants shall invoke formal dispute
6 resolution procedures, within the time period provided in the preceding Paragraph,
7 by serving on the United States and ARB a written Statement of Position regarding
8 the matter in dispute. The Statement of Position shall include, but need not be
9 limited to, any factual data, analysis, or opinion supporting Defendants' position
10 and any supporting documentation relied upon by Defendants.

11 67. The United States, after consultation with ARB, shall serve its
12 Statement of Position within 45 Days of receipt of Defendants' Statement of
13 Position. The United States' Statement of Position shall include, but need not be
14 limited to, any factual data, analysis, or opinion supporting that position, and any
15 supporting documentation relied upon by the United States. The United States'
16 Statement of Position shall be binding on Defendants, unless Defendants files a
17 motion for judicial review of the dispute in accordance with the following
18 Paragraph. Defendants may seek judicial review of the dispute by filing with the
19 Court and serving on the United States and ARB, in accordance with Section XIV
20 (Notices) of this Decree, a motion requesting judicial resolution of the dispute.
21 The motion must be filed within 15 Days of receipt of the United States' Statement
22 of Position pursuant to the preceding Paragraph. The motion shall contain a
23 written statement of Defendants' position on the matter in dispute, including any
24 supporting factual data, analysis, opinion, or documentation, and shall set forth the
25 relief requested and any schedule within which the dispute must be resolved for
26 orderly implementation of the Consent Decree.
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1 68. The United States, after consultation with ARB, shall respond to
2 Defendants’ motion within the time period allowed by the Local Rules of this
3 Court. Defendants may file a reply memorandum, to the extent permitted by the
4 Local Rules.

5 69. Standard of Review

6 a. Disputes Concerning Matters Accorded Record Review.

7 Except as otherwise provided in this Consent Decree, in any dispute brought under
8 this Section X pertaining to the adequacy or appropriateness of plans, procedures
9 to implement plans, schedules or any other items requiring approval by EPA under
10 this Consent Decree; the adequacy of work undertaken pursuant to this Consent
11 Decree; and all other disputes that are accorded review on the administrative
12 record under applicable principles of administrative law, Defendants shall have the
13 burden of demonstrating, based on the administrative record, that the position of
14 the United States (and/or ARB) is arbitrary and capricious or otherwise not in
15 accordance with law.
16

17 70. Other Disputes. Except as otherwise provided in this Consent Decree,
18 in any other dispute brought under this Section X, Defendants shall bear the burden
19 of demonstrating that its position complies with this Consent Decree and better
20 further the objectives of the Consent Decree. The invocation of dispute resolution
21 procedures under this Section shall not, by itself, extend, postpone, or affect in any
22 way any obligation of Defendants under this Consent Decree, unless and until final
23 resolution of the dispute so provides. Stipulated penalties with respect to the
24 disputed matter shall continue to accrue from the first Day of noncompliance, but
25 payment shall be stayed pending resolution of the dispute as provided in Section
26 VIII (“Stipulated Penalties”). If Defendants does (do) not prevail on the disputed
27 issue, stipulated penalties shall be assessed and paid as provided in Section VIII.
28

1 institutional policies or procedures. At any time during this information-retention
2 period, upon request by the United States or the State, Defendants shall provide
3 copies of any documents, records, or other information required to be maintained
4 under this Paragraph.

5 74. At the conclusion of the information-retention period provided in the
6 preceding Paragraph, Defendants shall notify the United States and ARB at least
7 ninety (90) Days prior to the destruction of any documents, records, or other
8 information subject to the requirements of the preceding Paragraph and, upon
9 request by the United States or ARB, Defendants shall deliver any such
10 documents, records, or other information to EPA or ARB. Defendants may assert
11 that certain documents, records, or other information is privileged under the
12 attorney-client privilege or any other privilege recognized by federal law. If
13 Defendant(s) assert such a privilege, it shall provide the following: (1) the title of
14 the document, record, or information; (2) the date of the document, record, or
15 information; (3) the name and title of each author of the document, record, or
16 information; (4) the name and title of each addressee and recipient; (5) a
17 description of the subject of the document, record, or information; and (6) the
18 privilege asserted by Defendant(s). However, no documents, records, or other
19 information created or generated pursuant to the requirements of this Consent
20 Decree shall be withheld on grounds of privilege.

21 75. Defendants may also assert that information required to be provided
22 under this Section is protected as Confidential Business Information (“CBI”)
23 under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as
24 CBI, Defendant(s) shall follow the procedures set forth in 40 C.F.R. Part 2.
25

26 76. This Consent Decree in no way limits or affects any right of entry and
27 inspection, or any right to obtain information, held by the United States or ARB
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1 pursuant to applicable federal or state laws, regulations, or permits, nor does it
2 limit or affect any duty or obligation of Defendant(s) to maintain documents,
3 records, or other information imposed by applicable federal or state laws,
4 regulations, or permits.

5 **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

6 77. This Consent Decree resolves the civil claims of the United States and
7 ARB for the violations specifically alleged in the United States' Complaint and
8 the two tables attached thereto, and ARB's Complaint in Intervention. The
9 United States and ARB reserve all legal and equitable remedies available to
10 enforce the provisions of this Consent Decree. This Consent Decree shall not be
11 construed to limit the rights of the United States or ARB to obtain penalties or
12 injunctive relief under the CAA or implementing regulations, or under other
13 federal or state laws, regulations, or permit conditions, except as expressly
14 specified in this paragraph. The United States and ARB further reserve all legal
15 and equitable remedies to address any imminent and substantial endangerment to
16 the public health or welfare or the environment arising at, or posed by, a Facility
17 of any one or more of the Defendants, whether related to the violations addressed
18 in this Consent Decree or otherwise.

19
20 78. In any subsequent administrative or judicial proceeding initiated by
21 the United States or ARB for injunctive relief, civil penalties, other appropriate
22 relief relating to Defendants' violations, Defendants shall not assert, and may not
23 maintain, any defense or claim based upon the principles of waiver, res judicata,
24 collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other
25 defenses based upon any contention that the claims raised by the United States or
26 ARB in the subsequent proceeding were or should have been brought in the
27 instant case, except with respect to claims that have been specifically resolved
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1 pursuant to Paragraph 77.

2 79. This Consent Decree is not a permit, or a modification of any permit,
3 under any federal, State, or local laws or regulations. Defendants are responsible
4 for achieving and maintaining complete compliance with all applicable federal,
5 State, and local laws, regulations, and permits; and Defendants' compliance with
6 this Consent Decree shall be no defense to any action commenced pursuant to
7 any such laws, regulations, or permits, except as set forth herein. The United
8 States and ARB do not, by their consent to the entry of this Consent Decree,
9 warrant or aver in any manner that Defendants' compliance with any aspect of
10 this Consent Decree will result in compliance with provisions of the CAA, 42
11 U.S.C. § 7401, et seq., or Sections 43151 – 43153 of the California Health and
12 Safety Code, or with any other provisions of federal, State, or local laws,
13 regulations, or permits.
14

15 80. This Consent Decree does not limit or affect the rights of Defendants,
16 the United States or ARB against any third parties, not party to this Consent
17 Decree, nor does it limit the rights of third parties, not party to this Consent
18 Decree, against Defendants, except as otherwise provided by law.

19 81. This Consent Decree shall not be construed to create rights in, or grant
20 any cause of action to, any third party not party to this Consent Decree.

21 XIII. COSTS

22 82. The Parties shall bear their own attorneys fees and costs of this action,
23 except that the United States and ARB shall be entitled to collect the costs
24 (including attorneys' fees) incurred in any action necessary to collect the civil
25 penalties set forth in Paragraph 28 and 29, or any stipulated penalties due but not
26 paid by Defendants.
27
28

1
2 Office of the California Attorney General

3 Allan Ono
4 Deputy Attorney General
5 300 S. Spring St. Ste. 1702
6 Los Angeles, CA 90013
7 Allan.ono@doj.ca.gov

8 – and –

9 Noah GoldenKrasner
10 Deputy Attorney General
11 300 S. Spring St. Ste 1702
12 Los Angeles, CA 90013

13 To ARB:

14 Diane H. Kiyota
15 Senior Staff Counsel
16 1001 I Street
17 Sacramento, CA 95814

18 To Defendants:

19 Chi Zheng
20 16814 Royal View Rd.
21 Hacienda Heights, CA 91745-4353
22 odes@yahoo.com

23 Jingsong Chen
24 Law Offices of Jingsong Chen
25 17588 Rowland St., #228
26 City of Industry, CA 91748
27 jschenlaw@yahoo.com
28 (626) 319-7566 (w)
(626) 363-7353 (w)

1 Any Party may, by written notice to the other Parties, change its designated notice
2 recipient or notice address provided above.

3 84. Notices submitted pursuant to this Section shall be deemed submitted
4 upon mailing, unless otherwise provided in this Consent Decree or by mutual
5 agreement of the Parties in writing.
6

7 XV. EFFECTIVE DATE

8 85. The Effective Date of this Consent Decree shall be the date upon
9 which this Consent Decree is entered by the Court or a motion to enter the
10 Consent Decree is granted, whichever occurs first, as recorded on the Court's
11 docket; provided, however, that Defendants hereby agree that he/they shall be
12 bound to perform duties scheduled to occur prior to the Effective Date. In the
13 event the United States withdraws or withholds consent to this Consent Decree
14 before entry, or the Court declines to enter the Consent Decree, then the
15 preceding requirement to perform duties scheduled to occur before the Effective
16 Date shall terminate.
17

18 XVI. RETENTION OF JURISDICTION

19 86. The Court shall retain jurisdiction over this case until termination of
20 this Consent Decree, for the purpose of resolving disputes arising under this
21 Decree and entering orders modifying this Decree, pursuant to Sections XVII and
22 XVIII, or effectuating or enforcing compliance with the terms of this Decree.
23

24 XVII. MODIFICATION

25 87. The terms of this Consent Decree, including any attachments thereto,
26 may be modified only by a subsequent written agreement signed by all the
27 Parties. Where the modification constitutes a material change to this Decree, it
28 shall be effective only upon approval by the Court.

1 shall confer informally concerning the Request and any disagreement that the
2 Parties may have as to whether Defendants have satisfactorily complied with the
3 requirements for termination of this Consent Decree. If the United States, after
4 consultation with ARB, agrees that the Decree may be terminated, the Parties
5 shall submit, for the Court's approval, a joint stipulation terminating the Decree.

6 91. If the United States, after consultation with ARB, does not agree that
7 the Decree may be terminated, Defendants may invoke Dispute Resolution under
8 Section X of this Decree. However, Defendants shall not seek Dispute
9 Resolution of any dispute regarding termination until 90 Days after service of its
10 Request for Termination.
11

12 XIX. PUBLIC PARTICIPATION

13 92. This Consent Decree shall be lodged with the Court for a period of not
14 less than 30 Days for public notice and comment in accordance with 28 C.F.R.
15 § 50.7. The United States reserves the right to withdraw or withhold its consent
16 if the comments regarding the Consent Decree disclose facts or considerations
17 indicating that the Consent Decree is inappropriate, improper, or inadequate.
18 Defendants consent to entry of this Consent Decree without further notice and
19 agree not to withdraw from or oppose entry of this Consent Decree by the Court
20 or to challenge any provision of the Decree, unless the United States has notified
21 Defendants in writing that it no longer supports entry of the Decree.
22

23 XX. SIGNATORIES/SERVICE

24 93. Each undersigned representative of Defendants, ARB, and the
25 Assistant Attorney General for the Environment and Natural Resources Division
26 of the Department of Justice certifies that he or she is fully authorized to enter
27 into the terms and conditions of this Consent Decree and to execute and legally
28

1 bind the Party he or she represents to this document.

2 94. This Consent Decree may be signed in counterparts, and its validity
3 shall not be challenged on that basis. True and correct copies of signed
4 counterparts shall be deemed effective as originals for all purposes. Defendants
5 agree to accept service of process by mail with respect to all matters arising under
6 or relating to this Consent Decree and to waive the formal service requirements
7 set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any
8 applicable Local Rules of this Court including, but not limited to, service of a
9 summons.

10 XXI. INTEGRATION

11 95. This Consent Decree constitutes the final, complete, and exclusive
12 agreement and understanding among the Parties with respect to the settlement
13 embodied in the Decree and supersedes all prior agreements and understandings,
14 whether oral or written, concerning the settlement embodied herein. Other than
15 deliverables that are subsequently submitted and approved pursuant to this
16 Decree, no other document, nor any representation, inducement, agreement,
17 understanding, or promise, constitutes any part of this Decree or the settlement it
18 represents, nor shall it be used in construing the terms of this Decree.

19 96. It is hereby expressly acknowledged and agreed that this Consent
20 Decree was jointly drafted in good faith by Plaintiffs and Defendants.
21 Accordingly, the Parties hereby agree that any and all rules of construction to the
22 effect that ambiguity is construed against the drafting party shall be inapplicable
23 in any dispute concerning the terms, meaning or interpretation of this Consent
24 Decree.
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26 XXII. FINAL JUDGMENT

27 97. In approval and entry of this Consent Decree by the Court, this
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Consent Decree shall constitute a final judgment of the Court as to the United States, ARB, and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this ___ day of _____, 2013.

GEORGE H. KING
CHIEF JUDGE,
United States District Court
For the Central District of California

1 Through their undersigned representatives, the Parties agree and consent to the
2 entry of this Consent Decree subject to the public notice and comment provisions
3 of 28 C.F.R. § 50.7:
4

5 FOR PLAINTIFF UNITED STATES OF AMERICA:
6

7
8 _____ Date:
9 ROBERT G. DREHER
10 Acting Assistant Attorney General
11 Environment and Natural Resources Division
12 United States Department of Justice

13 _____ Date:
14 LISA A. CHERUP
15 Trial Attorney
16 Environmental Enforcement Section
17 Environment and Natural Resources Division
18 United States Department of Justice
19 Post Office Box 7611
20 Washington, D.C. 20044
21 (202) 514-2802 (LC)
22 (202) 616-6584 (fax)
23 Lisa.Cherup@usdoj.gov
24
25
26
27
28

1 Through their undersigned representatives, the Parties agree and consent to the
2 entry of this Consent Decree subject to the public notice and comment provisions
3 of 28 C.F.R. § 50.7:

4 _____ Date:

5 CYNTHIA GILES
6 Assistant Administrator
7 Office of Enforcement and Compliance Assurance
8 U.S. Environmental Protection Agency
9 1200 Pennsylvania Avenue, N.W.
10 Washington, D.C. 20460

11 _____ Date:

12 SUSAN SHINKMAN
13 Director
14 Office of Civil Enforcement
15 Office of Enforcement and Compliance Assurance
16 U.S. Environmental Protection Agency
17 1200 Pennsylvania Avenue, N.W.
18 Washington, D.C. 20460

19 _____ Date:

20 PHILLIP A. BROOKS
21 Director, Air Enforcement Division
22 Office of Civil Enforcement
23 Office of Enforcement and Compliance Assurance
24 U.S. Environmental Protection Agency
25 1200 Pennsylvania Avenue, N.W.
26 Washington, D.C. 20460

27 _____ Date:

28 EVAN M. BELSER
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

1 Through their undersigned representatives, the Parties agree and consent to the
2 entry of this Consent Decree subject to the public notice and comment provisions
3 of 28 C.F.R. § 50.7:
4

5 FOR PLAINTIFF-INTERVENOR, PEOPLE OF THE STATE OF CALIFORNIA,
6 EX REL. CALIFORNIA AIR RESOURCES BOARD
7

8 _____
9 RICHARD W. COREY
10 Executive Officer
11 Air Resources Board
12

Date:

13 _____
14 ALLAN S. ONO
15 NOAH M. GOLDEN-KRASNER
16 California Attorney General's Office- Los Angeles
17 300 S. Spring Street, Ste. 1700
18 Los Angeles, CA 90013-1230
19 Telephone: (213) 897-2604 (AO)
20 Telephone: (213) 897- 2614 (NGK)
21
22
23
24
25
26
27
28

Date:

1 Through their undersigned representatives, the Parties agree and consent to the
2 entry of this Consent Decree subject to the public notice and comment provisions
3 of 28 C.F.R. § 50.7:
4

5
6 FOR DEFENDANTS MOTORSCIENCE, INC., MOTORSCIENCE
7 ENTERPRISES, INC. AND CHI ZHENG

8 _____ Date:
9 CHI ZHENG
10 President and Chief Executive Officer
11 MotorScience, Inc.
12 MotorScience Enterprises, Inc.

13 _____ Date:
14 CHI ZHENG
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