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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,  
  
Plaintiff,  
  
v.  
  
Gear Box Z, Inc.  
  
Defendant.

No. CV-20-08003-PHX-JJT

CONSENT DECREE

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1 WHEREAS, Plaintiff United States of America, by authority of the  
2 Attorney General of the United States and on behalf of the United States  
3 Environmental Protection Agency (“EPA”), has filed a Complaint in this action  
4 against Gear Box Z, Inc. (“Defendant” or “GBZ”);

5 WHEREAS, Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B),  
6 prohibits any person from manufacturing, selling, offering for sale, or installing,  
7 any part or component intended for use with, or as part of, any motor vehicle or  
8 motor vehicle engine, where a principal effect of the part or component is to  
9 bypass, defeat, or render inoperative any device or element of design installed on  
10 or in a motor vehicle or motor vehicle engine in compliance with regulations  
11 under Title II of the CAA, and where the person knows or should know that such  
12 part or component is being offered for sale or installed for such use or put to such  
13 use;

14 WHEREAS, the Complaint alleges that Defendant violated Section  
15 203(a)(3)(B) of the Clean Air Act (the “CAA”), as amended, 42 U.S.C.  
16 § 7522(a)(3)(B), by manufacturing and selling prohibited motor vehicle parts or  
17 components;

18 WHEREAS, the Complaint alleges that Gear Box Z manufactured, offered  
19 for sale, and sold numerous products that bypass, defeat, or render inoperative  
20 emission control systems that were installed on motor vehicles or motor vehicle  
21 engines in compliance with the CAA, including hardware products and electronic  
22 software products known as “tunes.” These products are referred to herein as  
23 “Subject Products;”

24 WHEREAS, the United States’ Complaint seeks injunctive relief and the  
25 assessment of civil penalties for GBZ’s violations of the CAA;

26 WHEREAS, the Defendant denies any liability to the United States arising  
27 out of the conduct, transactions, or occurrences alleged in the Complaint and  
28 Consent Decree;

1 WHEREAS, on March 17, 2021, the Court issued a preliminary injunction  
2 enjoining Defendant and all persons acting for or on its behalf “from (1) selling,  
3 offering for sale, or transferring any products or components listed in Attachment  
4 A to [the] Order, or any materially similar products; and (2) selling, offering for  
5 sale, or transferring any intellectual property associated with the products listed in  
6 Attachment A to [the] Order, or any materially similar products.” Order, ECF  
7 No. 106, p. 9;

8 WHEREAS, Jerry Black, a signatory to the Consent Decree, is an owner  
9 and the president of the Defendant;

10 WHEREAS, Orlin James Black (“James Black”), a signatory to the  
11 Consent Decree, is an owner and officer of the Defendant. Jerry and James Black  
12 will be referred to collectively as the “GBZ Owners;”

13 WHEREAS, the Defendant and the GBZ Owners have represented to the  
14 United States that, as of April 1, 2021, the Defendant and the GBZ Owners have  
15 stopped all activities related to the manufacturing and selling of all Subject  
16 Products;

17 WHEREAS, the United States reviewed financial information submitted by  
18 Defendant and the GBZ Owners to determine the financial ability of Defendant  
19 and the GBZ Owners to pay a civil penalty in this action and, based on that  
20 information, the United States has determined that Defendant and the GBZ  
21 Owners have limited financial ability to pay a civil penalty in this action; and

22 WHEREAS, the United States, the Defendant, and the GBZ Owners  
23 (collectively, the “Parties”) recognize, and the Court by entering this Consent  
24 Decree finds, that this Consent Decree has been negotiated by the Parties in good  
25 faith and will avoid further litigation between the Parties, and that this Consent  
26 Decree is fair, reasonable, and in the public interest.

27 NOW, THEREFORE, with the consent of the parties, it is hereby  
28 ADJUDGED, ORDERED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 204 and 205 of the CAA, 42 U.S.C. §§ 7523 and 7524. Venue lies in this District pursuant to Sections 204 and 205 of the CAA, 42 U.S.C. §§ 7523 and 7524, and 28 U.S.C. §§ 1391(b) and 1395(a). For purposes of this Consent Decree, or any action to enforce this Decree, Defendant and the GBZ Owners consent to the Court's jurisdiction over this Decree or such action and over the Defendant and the GBZ Owners, and they consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant and the GBZ Owners agree that the Complaint states claims upon which relief may be granted pursuant to CAA Sections 203, 204, and 205, 42 U.S.C. §§ 7522, 7523, and 7524, and 28 U.S.C. §§ 3301 *et al.*

**II. APPLICABILITY**

3. The obligations of this Consent Decree are (i) binding upon the United States, and (ii) apply to and are binding upon the Defendant and the GBZ Owners, jointly and severally, and on any successors, assigns or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of Defendant shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and the United States Department of Justice, in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of Defendant without complying with this Paragraph constitutes a violation of this Decree.

1           5. Defendant and the GBZ Owners shall provide a copy of this Consent  
2 Decree to all officers, employees, and agents whose duties might reasonably  
3 include compliance with any provision of this Decree, as well as to any contractor  
4 retained to perform work required under this Consent Decree. Defendant and the  
5 GBZ Owners shall condition any such contract upon performance of the work in  
6 conformity with the terms of this Consent Decree.

7           6. In any action to enforce this Consent Decree, Defendant and the  
8 GBZ Owners shall not raise as a defense the failure by any of Defendant's  
9 officers, directors, employees, agents, or contractors to take any actions necessary  
10 to comply with the provisions of this Consent Decree.

### 11                                   **III. DEFINITIONS**

12           7. Terms used in this Consent Decree that are defined in the CAA or in  
13 regulations promulgated in accordance with the CAA shall have the meanings  
14 assigned to them in the CAA or such regulations, unless otherwise provided in this  
15 Decree. Whenever the terms set forth below are used in this Consent Decree, the  
16 following definitions shall apply:

17                   a. "CAA" means the Clean Air Act, as amended, 42 U.S.C.  
18 § 7401 *et seq.*

19                   b. "Complaint" means the complaint filed by the United States  
20 in this action.

21                   c. "Consent Decree" or "Decree" means this Decree and all  
22 appendices attached hereto and identified in Section XXIV.

23                   d. "Date of Lodging" means the day that this Consent Decree  
24 was lodged with the Court for public comment pursuant to Section XVIII.

25                   e. "Day" means a calendar day unless expressly stated to be a  
26 business day. In computing any period of time under this Consent Decree, where  
27 the last day would fall on a Saturday, Sunday, or federal holiday, the period shall  
28 run until the close of business of the next business day.

1           f.       “Defendant” or “GBZ” means the Defendant, Gear Box Z,  
2 Inc. and any other business owned by, operated by, or affiliated, in whole or in  
3 part, with the GBZ Owners that is engaged in manufacturing or selling Subject  
4 Products.

5           g.       “Diesel Oxidation Catalyst System” or “DOC” means any  
6 oxidation catalyst used to reduce emissions from diesel-fueled vehicles and  
7 equipment, including all hardware, components, parts, sensors, subassemblies,  
8 software, auxiliary emission control devices (“AECs”), and calibrations that  
9 collectively constitute the system for implementing this strategy.

10           h.       “Diesel Particulate Filter System” or “DPF” means all  
11 hardware, components, parts, sensors, subassemblies, software, AECs,  
12 calibrations, and other Emissions-related Elements of Design that collectively  
13 constitute the system for controlling emissions of particulate matter by trapping  
14 such particulates in a filter and periodically oxidizing them through thermal  
15 regeneration of the filter.

16           i.       “Effective Date” shall have the definition provided in  
17 Section XIV.

18           j.       “Emissions-Related Calibrations” means software  
19 calibrations programed and installed by the OEM in motor vehicles and/or motor  
20 vehicle engines for parameters that can affect emissions including but not limited  
21 to the following calibrations:

- 22                   i.       calibrations for parameters that affect the operation of  
23                           the EGR System including EGR flowrate and EGR  
24                           cooler bypassing;
- 25                   ii.       calibrations for parameters that affect the operation of  
26                           the DPF, DOC, SCR, and/or or NAC;
- 27                   iii.       calibrations for parameters that affect engine  
28                           combustion, performance, and operation, including air-  
fuel ratio, fuel injection timing, fuel quantity, fuel  
injection pulse width, fuel injection pressure, fuel  
injection mass, multiple injection patterns, open

1 loop/closed loop functionality and control, ignition  
2 control – (spark timing), boost pressure, limiters (fuel,  
3 torque, smoke, etc.), manifold pressure, camshaft  
4 timing, electronic throttle control, engine air flow  
5 characteristics, mass air flow rate,  
6 turbocharger/supercharger air flow, and other  
7 parameters disclosed on the certificate of conformity  
8 (“COC”) which are elements of the OEM’s strategy to  
9 control the formation of pollutants in the engine; and

10 iv. calibrations for parameters that affect OBD detection,  
11 warning and recording of malfunctions.

12 k. “Emissions-Related Element of Design” means any part,  
13 device, computer software, electronic control system, computer logic, or  
14 calibration installed on or in a motor vehicle or motor vehicle engine by an OEM  
15 for the purpose of controlling emissions or which must function properly to assure  
16 continued vehicle emission compliance, including but not limited to:

- 17 i. On-Board Diagnostics System or OBD;
- 18 ii. Diagnostic Trouble Codes or DTCs;
- 19 iii. Oxygen sensors;
- 20 iv. NO<sub>x</sub> sensors;
- 21 v. Ammonia sensors;
- 22 vi. Particulate Matter sensors or PM sensors;
- 23 vii. Urea quality sensors;
- 24 viii. Exhaust gas temperature sensors;
- 25 ix. DPF differential pressure sensors;
- 26 x. Exhaust Gas Recirculation System or EGR;
- 27 xi. Diesel Oxidation Catalysts or DOCs;
- 28 xii. Selective Catalytic Reduction System or SCR;
- xiii. Diesel Particulate Filter or DPF;
- xiv. NO<sub>x</sub> Adsorber Catalyst System or NAC;
- xv. Emissions-Related Calibrations; and



xvi. Any other part, device, or element of design installed in compliance with Title II of the CAA and its regulations.

l. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

m. “Exhaust Gas Recirculation System” or “EGR” means all hardware, components, parts, sensors, subassemblies, software, AECDs, and calibrations that collectively constitute the system for controlling NO<sub>x</sub> emissions by recirculating a portion of engine exhaust gas into the cylinders of an engine.

n. “GBZ Owners” means Jerry Black and Orlin James Black, the owners of Defendant.

o. “Intellectual Property” means any programming, files, software, source code, design, instructions, or other information that could be used to manufacture tunes (e.g., .mtf files, .mvf files, and .hex files).

p. “Interest” means 3.25 percent per annum.

q. “NO<sub>x</sub> Adsorber Catalyst System” or “NAC” means the strategy for controlling NO<sub>x</sub> emissions from partial lean burn gasoline engines and from diesel engines by adsorbing the NO<sub>x</sub> emissions onto a catalyst substrate during lean combustion followed by periodic regeneration of the substrate during short, richer-than- stoichiometric combustion, together with all hardware, components, parts, sensors, subassemblies, software, AECDs, and calibrations that collectively constitute the system for implementing this control strategy.

r. “On-Board Diagnostics System” or “OBD” means the strategy for monitoring the functions and performance of the emission control system and all other systems and components that must be monitored under 42 U.S.C. § 7521(m) of the CAA and applicable regulations including 40 C.F.R. §§ 86.007-17, 86.010-18, 1806-05 and 17, for identifying and detecting malfunctions of such monitored systems and components, and for alerting the driver of such potential malfunctions by illuminating the malfunction indicator light (“MIL”),

1 together with all hardware, components, parts, sensors, subassemblies, software,  
2 AECDs, calibrations, and other Emissions-related Elements of Design that  
3 collectively constitute the system for implementing this strategy.

4 s. “Original Equipment Manufacturer” or “OEM” means the  
5 manufacturer responsible for the design and production of a motor vehicle or  
6 motor vehicle engine.

7 t. “Paragraph” means a portion of this Decree identified by an  
8 Arabic numeral.

9 u. “Parties” means the United States, the Defendant, and the  
10 GBZ Owners.

11 v. “Permanently Delete and/or Destroy” means (a) in the case of  
12 hardware, to crush the device and all of its parts or components to render them  
13 useless; and (b) in the case of software, tunes, calibrations, or other programming,  
14 to completely and permanently erase all programming and information.

15 w. “Section” means a portion of this Decree identified by a  
16 Roman numeral.

17 x. “Selective Catalytic Reduction System” or “SCR” means all  
18 hardware, components, parts, sensors, subassemblies, software, AECDs,  
19 calibrations, and other elements of design that collectively constitute the system  
20 for controlling NO<sub>x</sub> emissions through catalytic reduction using an ammonia-  
21 based diesel exhaust fluid (“DEF”) as the reducing agent, including without  
22 limitation all hardware, components, parts, sensors, subassemblies, software,  
23 AECDs, calibrations, and other Emissions-related Elements of Design relating to  
24 (1) the DEF storage tank; (2) the DEF injectors; (3) the dosing control unit; and (4)  
25 the SCR catalysts assembly.

26 y. “Subject Products” means any motor vehicle part, component  
27 or product including, but not limited to, hardware, software, tunes, calibrations or  
28

1 other programming (and devices on which such software, tunes, calibrations or  
2 other programming) that meets the following criteria:

- 3 i. is listed on Appendix B to this Consent Decree  
4 [Appendix A to the Court’s March 17, 2021 Order]
- 5 ii. is materially similar in terms of function to a product  
6 identified in Appendix B;
- 7 iii. enables or requires the removal of, overwrites,  
8 bypasses, defeats, renders inoperative or deletes the  
9 function of one or more Emissions-related Elements of  
10 Design on a motor vehicle or motor vehicle engine;
- 11 iv. any product intended for use with, or as part of, any  
12 motor vehicle, a principal effect of which is to bypass,  
13 defeat, or render inoperative any device or element of  
14 design installed on or in a motor vehicle or motor  
15 vehicle engine in compliance with regulations under  
16 the CAA.

13 z. “Technical Support” means a range of services offered by  
14 Defendant to individuals, including but not limited to former customers or dealers  
15 involving the provision of assistance or advice on the use, installation, or repair of  
16 Subject Products. Technical Support includes, but is not limited to, product  
17 owners’ and users’ manuals and answers to specific questions provided by phone,  
18 on-line, and in person.

19 aa. “United States” means the United States of America, acting  
20 on behalf of EPA.

#### 21 **IV. CIVIL PENALTY**

22 8. The United States’ agreement to the amount of the civil penalty that  
23 GBZ and the GBZ Owners are required to pay under this Section is based on  
24 financial information that Defendant and the GBZ Owners provided to the United  
25 States, which is generally described in Appendix A. GBZ and the GBZ Owners  
26 hereby certify under penalty of perjury that this financial information is true,  
27 accurate, and complete.  
28

1           9. Defendant and the GBZ Owners shall pay the total civil penalty  
2 amount of \$10,000 in four installments as follows.

3           a. Payment of First Installment.

4                   i. No later than 10 Days after the Date of Lodging,  
5 Defendant and the GBZ Owners, jointly and severally,  
6 shall pay \$2,500 into the interest bearing court registry  
7 account of the United States District Court for the  
8 District of Arizona.

9                   ii. As soon as practical after the Effective Date, the funds  
10 deposited into the interest bearing court registry  
11 account pursuant to Paragraph 9.a.i above, shall be  
12 disbursed pursuant to a separate Withdrawal Order of  
13 the Court, which shall provide for payment of the  
14 \$10,000 plus any accrued interest to the United States.  
15 In the event the United States withdraws or withholds  
16 consent, or the Court declines to enter the Decree, the  
17 funds deposited into the Court Registry account (and  
18 all accrued interest) shall be returned to the Defendant  
19 and/or the GBZ Owners, based upon the amount of  
20 contributions made by each, pursuant to a separate  
21 withdrawal order.

22           b. Second, Third, and Fourth Installments.

23                   i. Defendant and GBZ Owners, jointly and severally,  
24 shall pay additional installments of \$2,500 each, plus  
25 all accrued Interest, accruing beginning on the  
26 Effective Date, no later than the first, second, and third  
27 anniversaries of the Effective Date.

28                   ii. Defendant and the GBZ Owners shall pay the civil  
penalty installments described above in Paragraph  
9.b.i. by FedWire Electronic Funds Transfer (“EFT”)  
to the United States Department of Justice, in  
accordance with written instructions provided to the  
Defendants and the GBZ Owners by the Financial  
Litigation Unit (“FLU”) of the United State Attorney’s  
office for the District of Arizona no later than those  
dates set forth in Paragraph 9.b.i. The payment  
instructions provided by the FLU will include a  
Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all

1 payments required to be made in accordance with this  
2 Consent Decree. The FLU will provide the payment  
instructions to:

3 Gear Box Z, Inc.  
4 PO Box 2246  
5 Colorado City, Arizona 86021  
6 Tel: 877-217-1911  
Email: Gbz.admin@gmail.com

7 James Black  
8 PO Box 1701  
9 Colorado City, Arizona 86021  
10 Tel: 435-862-3197  
Email: orlinjames@gmail.com

11 Jerry Black  
12 PO Box 3406  
13 Hildale, Utah 84784  
14 Tel: 435-212-8226  
Email: gletchm@gmail.com

15 Defendant may change the individual(s) to receive  
16 payment instructions on its behalf by providing written  
notice of such change to DOJ and EPA in accordance  
with Section XIII (Notices).

17 10. At the time of each payment in Paragraph 9 Defendant shall send  
18 notice that payment has been made: (i) to EPA via email at  
19 cinwd\_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance  
20 Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to DOJ  
21 via email and regular mail in accordance with Section XIII (Notices); and (iii) to  
22 EPA in accordance with Section XIII (Notices). Such notice shall state that the  
23 payment is for the civil penalties pursuant to the Consent Decree in *United States*  
24 *v. Gear Box Z, Inc.*, and shall reference the civil action number, CDCS Number  
25 and DOJ case number 90-5-2-1-12138.  
26  
27  
28

11. Acceleration of Payments

a. Defendant and the GBZ Owners shall have the option (at their sole discretion) to pay any of the amounts required by Paragraph 9 above before they are due. Any such pre-payment shall include the accrued but unpaid Interest calculated in accordance with Paragraph 9.b above.

b. If the Defendant fails to pay any payment required by Paragraph 9 above by the required due date, all remaining payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. Interest required by this Paragraph shall be in addition to any stipulated penalties owed pursuant to Paragraph 32.

c. If the Defendant becomes a debtor in a case filed under Title 11 of the United States Code, 11 U.S.C. § 101 et seq., the schedule for all or any of the payments required by Paragraphs 9 and 10 shall be automatically accelerated and become due and owing subject to the provisions of Title 11 unless the Parties agree otherwise.

12. The United States shall be deemed a judgment creditor for purposes of collection of the civil penalty required under this Decree.

13. Defendant and the GBZ Owners shall not deduct any penalties or Interest paid under this Decree in accordance with this Section or Section VII (Stipulated Penalties) in calculating federal income tax.

**V. COMPLIANCE REQUIREMENTS**

14. Prohibition on Manufacture, Sale, Offer for Sale, and Installation of Subject Products. Beginning on April 1, 2021, Defendant and the GBZ Owners shall not manufacture, sell, offer to sell, or install any Subject Product.

15. Prohibition on Tampering. Beginning on the Date of Lodging, Defendant and the GBZ Owners shall not remove or render inoperative any device

1 or Emissions-Related Element of Design installed on or in a motor vehicle or  
2 motor vehicle engine in compliance with the CAA.

3 16. Prohibition on Technical Support for all Subject Products. Beginning  
4 on the Date of Lodging, Defendant and the GBZ Owners shall not offer or make  
5 available any Technical Support pertaining to the installation, manufacture, sale,  
6 use, or repair of any Subject Product. Defendant and the GBZ Owners shall deny  
7 all warranty claims pertaining to any Subject Product.

8 17. Prohibition on Transfer of Intellectual Property. Except as set forth  
9 in Paragraph 18 below, beginning on April 1, 2021, Defendant and the GBZ  
10 Owners shall not offer for sale, sell, convey, or otherwise transfer any Intellectual  
11 Property.

12 18. Surrender of all Intellectual Property. Notwithstanding the  
13 requirements in Paragraph 17, Defendant and the GBZ Owners shall surrender all  
14 Intellectual Property to EPA by first emailing or uploading copies of all  
15 Intellectual Property to an email address or secure file transfer site to be provided  
16 by EPA after entry of this Consent Decree; then Permanently Delete and/or  
17 Destroy all Intellectual Property in Defendant's and/or the GBZ Owners'  
18 possession, custody, and/or control; and finally directing all other persons or  
19 entities in possession, custody, and/or control of Defendant's and/or the GBZ  
20 Owners' Intellectual Property to Permanently Delete and/or Destroy the  
21 Intellectual Property, and informing EPA of the persons and/or entities in  
22 possession thereof. Defendant and the GBZ Owners shall surrender the Intellectual  
23 Property within 10 Days of receiving the address from EPA.

24 19. Prohibition on Profiting from Sale of Subject Products. Beginning  
25 on the Effective Date, Defendant and the GBZ Owners shall not;

26 a. possess any ownership or interest in any person or entity that  
27 Defendant knows, or with reasonable diligence should know, manufactures, sells,  
28

1 offers to sell, distributes or installs in a motor vehicle or motor vehicle engine any  
2 Subject Product in the United States;

3 b. assist any person or entity with the manufacture, sale, offer to  
4 sell, distribution, or installation of any Subject Product in a motor vehicle or motor  
5 vehicle engine in the United States; or

6 c. earn any income from the distribution or installation of any  
7 Subject Product in a motor vehicle or motor vehicle engine in the United States.

8 20. Deletion and Destruction of Subject Products. Defendant and the  
9 GBZ Owners shall Permanently Delete and/or Destroy all Subject Products in its  
10 possession and control.

11 a. Defendant and the GBZ Owners shall provide to EPA a  
12 certified statement (in accordance with Section XIII (Notices) below) that all  
13 Subject Products have been destroyed that provides: (1) as to hardware, a record of  
14 the serial number of each hardware device, if applicable, that was destroyed and  
15 the date of such destruction; and (2) as to software, tunes, calibrations or other  
16 programming: a description of the software, tunes, calibrations or other  
17 programming that was permanently erased or deleted and the date of such erasure  
18 or deletion (“Destruction Report”).

19 b. If Subject Products are returned to Defendant or either of the  
20 GBZ Owners after submission of the destruction reports required by Paragraph  
21 20.a. above, Defendant and the GBZ Owners will include a Destruction Report for  
22 those Subject Projects in its semi-annual reports required by Paragraph 23.

23 21. Certification. By signing this Decree, Defendant and each of the  
24 GBZ Owners certify under penalty of law that since April 1, 2021, they have not  
25 manufactured or sold any Subject Products or transferred any Intellectual Property  
26 for Subject Products to any individual or entity.

27 22. Decree Not a Compliance Determination. Defendant and the GBZ  
28 Owners shall not state or imply in any way that, as a result of this Consent Decree,



any product is covered by a compliance determination (or similar designation) from EPA.

## **VI. REPORTING REQUIREMENTS**

23. By the last calendar day of the last month in every six month period after the Effective Date of this Decree for three years, for a total of six reports, Defendant and the GBZ Owners shall submit a semi-annual report for the preceding six months that shall include:

a. A list of all Intellectual Property surrendered in accordance with Paragraph 18, the date the products were surrendered, and the name(s), title(s), and address(es) of all other persons or entities in possession, custody, and/or control of Defendant's and/or the GBZ Owners' Intellectual Property;

b. A statement regarding the involvement of the Defendant and the GBZ Owners in the pre- or after- market automotive industry, including any employment of any defendant by an OEM or aftermarket auto parts manufacturer or dealer; and

c. A description of any noncompliance with the requirements of this Consent Decree (including all Appendices), including an explanation of the violation's likely cause and of the specific remedial steps taken, or to be taken, to resolve and/or minimize such violation, and the specific steps to be taken to prevent such further violations.

24. If Defendant or either of the GBZ Owners violate, or has reason to believe that the Defendant or either of the GBZ Owners may violate, any requirement of this Consent Decree, Defendant and the GBZ Owners shall notify the United States of such violation and its likely duration, in writing, within 10 business Days of the Day Defendant or either of the GBZ Owners first became aware of the violation, with an explanation of the violation's likely cause and of the specific remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report

1 is due, Defendant and the GBZ Owners shall so state in the report along with the  
2 reason(s) why the violation cannot be fully explained. Defendant and the GBZ  
3 Owners shall investigate the cause of the violation and shall then submit an  
4 amendment to the report, including a full explanation of the cause of the violation,  
5 within 30 Days of the Day Defendant or either of the GBZ Owners first became  
6 aware of the cause of the violation. Nothing in this Paragraph or the following  
7 Paragraph relieves Defendant or the GBZ Owners of the obligation to provide the  
8 notice required by Section VIII (Force Majeure).

9       25. Whenever any violation of this Consent Decree or any other event  
10 affecting Defendant's or the GBZ Owners' performance under this Decree may  
11 pose an immediate threat to public health or welfare or to the environment,  
12 Defendant and the GBZ Owners shall notify EPA orally or by electronic means as  
13 soon as possible, but no later than 24 hours after Defendant or the GBZ Owners  
14 first knew of the violation or event. This procedure is in addition to the  
15 requirements set forth in the preceding Paragraph.

16       26. All reports shall be submitted to the persons designated in  
17 Section XIII (Notices) by regular mail and email and shall include the civil action  
18 number of this case, 3:20-cv-08003-JJT, and the DOJ case number, 90-5-2-1-  
19 12138.

20       27. Each report submitted by Defendant and the GBZ Owners under this  
21 Section shall be signed by each of the GBZ Owners on behalf of Defendant and  
22 in their personal capacity, and include the following certification:

23       I certify under penalty of law that this document and all attachments  
24 were prepared under my direction or supervision in accordance with  
25 a system designed to assure that qualified personnel properly gather  
26 and evaluate the information submitted. Based on my inquiry of the  
27 person or persons who manage the system, or those persons directly  
28 responsible for gathering the information, the information submitted  
is, to the best of my knowledge and belief, true, accurate, and  
complete. I have no personal knowledge that the information  
submitted is other than true, accurate, and complete. I am aware that

there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

28. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

29. The reporting requirements of this Consent Decree do not relieve Defendant or the GBZ Owners of any reporting obligations required by the CAA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided in accordance with this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **VII. STIPULATED PENALTIES**

31. Defendant and the GBZ Owners shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in the table below, unless excused under Section VIII (Force Majeure), or reduced or waived by the United States pursuant to Paragraph 38. A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

Consent Decree Violation	Stipulated Penalty
Manufacture, sale, offer for sale, or installation of any Subject Product, in violation of the requirements of Paragraph 14 (Prohibition on Manufacture, Sale, Offer for Sale, and Installation of Subject Products)	\$4,876 per Subject Product manufactured, sold, or installed.
Tampering in violation of the requirements of Paragraph 15 (Prohibition on Tampering)	\$25,000 per tampered vehicle.

Consent Decree Violation	Stipulated Penalty
Providing technical support in violation of Paragraph 16 (Prohibition on Technical Support for All Subject Products)	\$2,500 per violation.
Transfer of Intellectual Property in violation of Paragraph 17 (Prohibition on Transfer of Intellectual Property)	\$500,000 or two times the gross amount received from the transfer, whichever is greater.
Failure to comply with the requirements of Paragraph 18 (Surrender of Intellectual Property)	\$1,000 per Day for the first 15 Days of noncompliance; \$2,500 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$5,000 per Day thereafter.
Possession of any ownership or interest in any person or entity that manufactures, sells, offers to sell, distributes, or installs in a motor vehicle or motor vehicle engine any Subject Product in the United States in violation of Paragraph 19.a.	\$10,000 per month beginning the first day of each month of such ownership or interest.
Earning any income from the distribution or installation of any Subject Product in a motor vehicle or motor vehicle engine in the United States, in violation of Paragraph 19.c.	\$2,500 per unit of Subject Product manufactured, sold, or installed, or two times the gross amount received for each unit, whichever is greater.
Failure to comply with the requirements of Section VI (Reporting Requirements)	\$1,000 per Day for the first 15 Days of noncompliance; \$2,500 per Day for the 16 <sup>th</sup> through 30 <sup>th</sup> Days of noncompliance; and \$5,000 per Day thereafter.
Violation of any other requirement of this Consent Decree	\$350 per Day for the first 30 Days of noncompliance and \$2,500 per Day thereafter.

32. Late Payment of Civil Penalty. If Defendant and the GBZ Owners fail to pay a civil penalty payment required under Section IV (Civil Penalty) when

1 due, Defendant and the GBZ Owners shall pay a stipulated penalty of \$1,000 per  
2 Day for each Day that the payment is late.

3 33. Stipulated penalties under this Section shall begin to accrue on the  
4 Day after performance is due or on the Day a violation occurs, whichever is  
5 applicable, and shall continue to accrue until performance is satisfactorily  
6 completed or until the violation ceases. Stipulated penalties shall accrue  
7 simultaneously for separate violations of this Consent Decree.

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

14 35. Defendant and the GBZ Owners shall pay stipulated penalties to the  
15 United States within 30 Days of a written demand by the United States, unless  
16 Defendant or the GBZ Owners invoke the dispute resolution procedures under  
17 Section IX (Dispute Resolution) within the 30-Day period.

18 36. Stipulated penalties shall continue to accrue as provided in  
19 Paragraph 33 during any Dispute Resolution, but need not be paid until the  
20 following:

21 a. If the dispute is resolved by agreement of the Parties or by a  
22 decision of EPA that is not appealed to the Court, Defendant and the GBZ Owners  
23 shall pay accrued penalties determined to be owing, together with Interest, to the  
24 United States within 30 Days of the effective date of the agreement or the receipt  
25 of EPA's decision or order.

26 b. If the dispute is appealed to the Court and the United States  
27 prevails in whole or in part, Defendant and the GBZ Owners shall pay all accrued  
28 penalties determined by the Court to be owing, together with Interest, within 30

1 Days of receiving the Court's decision or order, except as provided in  
2 subparagraph c, below.

3 c. If any Party appeals the District Court's decision, Defendant  
4 and the GBZ Owners shall pay all accrued penalties determined to be owing,  
5 together with Interest, within 15 Days of receiving the final appellate court  
6 decision.

7 37. If Defendant and the GBZ Owners fail to pay stipulated penalties  
8 according to the terms of this Consent Decree, Defendant and the GBZ Owners  
9 shall be jointly and severally liable for Interest on such penalties, as provided for  
10 in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this  
11 Paragraph shall be construed to limit the United States from seeking any remedy  
12 otherwise provided by law for Defendant's and the GBZ Owners failure to pay  
13 any stipulated penalties or Interest.

14 38. The United States may, in the unreviewable exercise of its  
15 discretion, reduce or waive stipulated penalties otherwise due it under this Consent  
16 Decree.

17 39. The Defendant and the GBZ Owners shall pay stipulated penalties  
18 owing to the United States in the manner set forth and with the confirmation  
19 notices required by Paragraph 10, except that the transmittal letter shall state that  
20 the payment is for stipulated penalties and shall state for which violation(s) the  
21 penalties are being paid.

22 40. The payment of stipulated penalties and/or Interest pursuant to this  
23 Section shall not alter in any way Defendant's or the GBZ Owners' obligation to  
24 complete the performance of the requirements of this Consent Decree.

25 41. Stipulated penalties are not the United States' exclusive remedy  
26 for violations of this Consent Decree. Subject to the provisions of Section XI  
27 (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for  
28 in this Consent Decree shall be in addition to any other rights, remedies, or

1 sanctions available to the United States for Defendant's or either of the GBZ  
 2 Owners' violation of this Decree or applicable law. Where a violation of this  
 3 Decree is also a violation of relevant statutory or regulatory requirements,  
 4 Defendant and the GBZ Owners shall be allowed a credit, for any stipulated  
 5 penalties paid, against any statutory penalties imposed for such violation under the  
 6 applicable federal requirement.

### 7 **VIII. FORCE MAJEURE**

8 42. "Force majeure," for purposes of this Consent Decree, is defined as  
 9 any event arising from causes beyond the control of Defendant and the GBZ  
 10 Owners, of any entity controlled by Defendant or the GBZ Owners, or of  
 11 Defendant's or the GBZ Owners' contractors, or employees, which delays or  
 12 prevents the performance of any obligation under this Consent Decree despite  
 13 Defendant's and the GBZ Owners' best efforts to fulfill the obligation. The  
 14 requirement that Defendant and the GBZ Owners exercise "best efforts to fulfill  
 15 the obligation" includes using best efforts to anticipate any potential force majeure  
 16 event and best efforts to address the effects of any potential force majeure event  
 17 (a) as it is occurring and (b) following the potential force majeure, such that the  
 18 delay and any adverse effects of the delay are minimized. "Force Majeure" does  
 19 not include Defendant or the GBZ Owners' financial inability to perform any  
 20 obligation under this Consent Decree.

21 43. If any event occurs or has occurred that may delay the performance  
 22 of any obligation under this Consent Decree, whether or not caused by a force  
 23 majeure event, Defendant and the GBZ Owners shall provide notice by electronic  
 24 transmission to EPA, within 72 hours of when Defendant or the GBZ Owners first  
 25 knew that the event might cause a delay to the addresses provided in Section XIII  
 26 (Notices). Within seven Days thereafter, Defendant and the GBZ Owners shall  
 27 provide in writing to EPA an explanation and description of the reasons for the  
 28 delay; the anticipated duration of the delay; all actions taken or to be taken to

1 prevent or minimize the delay; a schedule for implementation of any measures to  
2 be taken to prevent or mitigate the delay or the effect of the delay; Defendant's  
3 and the GBZ Owners' rationale for attributing such delay to a force majeure event  
4 if they intend to assert such a claim; and a statement as to whether, in the opinion  
5 of Defendant and the GBZ Owners, such event may cause or contribute to an  
6 endangerment to public health, welfare, or the environment. Defendant and the  
7 GBZ Owners shall include with any notice all available documentation supporting  
8 the claim that the delay was attributable to a force majeure. Failure to comply with  
9 the above requirements shall preclude Defendant and the GBZ Owners from  
10 asserting any claim of force majeure for that event for the period of time of such  
11 failure to comply, and for any additional delay caused by such failure. Defendant  
12 and the GBZ Owners shall be deemed to know of any circumstance of which  
13 Defendant, the GBZ Owners, any entity controlled by Defendant or the GBZ  
14 Owners, or Defendant's or the GBZ Owners' contractors knew or should have  
15 known.

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

25 45. If EPA does not agree that the delay or anticipated delay has been or  
26 will be caused by a force majeure event, EPA will notify Defendant and the GBZ  
27 Owners in writing of its decision.  
28



46. If Defendant and the GBZ Owners elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Defendant and the GBZ Owners shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant and the GBZ Owners complied with the requirements of Paragraphs 42 and 43. If Defendant and the GBZ Owners carry this burden, the delay at issue shall be deemed not to be a violation by Defendant and the GBZ Owners of the affected obligation of this Consent Decree identified to EPA and the Court.

#### **IX. DISPUTE RESOLUTION**

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's and the GBZ Owners' failure to seek resolution of a dispute under this Section shall preclude Defendant and the GBZ Owners from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant and the GBZ Owners arising under this Decree.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant and the GBZ Owners send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be

1 considered binding unless, within 10 Days after the conclusion of the informal  
2 negotiation period, Defendant and the GBZ Owners invoke formal dispute  
3 resolution procedures as set forth below.

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

11 50. The United States shall serve its Statement of Position within 45  
12 Days of receipt of Defendant's and the GBZ Owners' Statement of Position. The  
13 United States' Statement of Position shall include, but need not be limited to, any  
14 factual data, analysis, or opinion supporting that position and any supporting  
15 documentation relied upon by the United States. The United States' Statement of  
16 Position shall be binding on Defendant and the GBZ Owners, unless Defendant  
17 and the GBZ Owners file a motion for judicial review of the dispute in accordance  
18 with the following Paragraph.

19 51. Defendant and the GBZ Owners may seek judicial review of the  
20 dispute by filing with the Court and serving on the United States, in accordance  
21 with Section XIII (Notices), a motion requesting judicial resolution of the dispute.  
22 The motion must be filed within 10 Days of receipt of the United States'  
23 Statement of Position under the preceding Paragraph. The motion shall contain a  
24 written statement of Defendant's and the GBZ Owners' position on the matter in  
25 dispute, including any supporting factual data, analysis, opinion, or  
26 documentation, and shall set forth the relief requested and any schedule within  
27 which the dispute must be resolved for orderly implementation of the Consent  
28 Decree. The motion may not raise any issue not raised in informal dispute

1 resolution pursuant to Paragraph 48, unless the Plaintiff raises a new issue of law  
2 or fact in its Statement of Position. If Defendant and the GBZ Owners wish to  
3 raise in their motion seeking judicial resolution of the dispute new facts that  
4 became available after the completion of the informal dispute resolution process,  
5 Defendant and the GBZ Owners shall re-initiate the dispute resolution process in  
6 accordance with Paragraph 48 and include the new facts in the Notice of Dispute.

7 52. The United States shall respond to Defendant and the GBZ Owners’  
8 motion within the time period allowed by the Local Rules of this Court. Defendant  
9 and the GBZ Owners may file a reply memorandum, to the extent permitted by the  
10 Local Rules.

11 53. Standard of Review. Except as otherwise provided in this Consent  
12 Decree, in any dispute brought under Paragraph 49, Defendant and the GBZ  
13 Owners shall bear the burden of demonstrating, based on the record of the dispute,  
14 that the United States’ position is arbitrary or capricious or not in compliance with  
15 law.

16 54. The invocation of dispute resolution procedures under this Section  
17 shall not, by itself, extend, postpone, or affect in any way any obligation of  
18 Defendant and the GBZ Owners under this Consent Decree, unless and until final  
19 resolution of the dispute so provides. Stipulated penalties with respect to the  
20 disputed matter shall continue to accrue from the first Day of noncompliance, but  
21 payment shall be stayed pending resolution of the dispute as provided in  
22 Paragraph 36. If Defendant and the GBZ Owners do not prevail on the disputed  
23 issue, stipulated penalties shall be assessed and paid as provided in Section VII  
24 (Stipulated Penalties).

25 **X. INFORMATION COLLECTION AND RETENTION**

26 55. The United States and its representatives, including attorneys,  
27 contractors, and consultants, shall have the right of entry into any of Defendant’s  
28

1 or the GBZ Owners' business facilities, at all reasonable times, upon presentation  
2 of credentials, to:

3 a. Monitor the progress of activities required under this Consent  
4 Decree;

5 b. Verify any data or information submitted to the United States  
6 in accordance with the terms of this Consent Decree;

7 c. Inspect records and any product(s) regulated under Title II of  
8 the CAA or the regulations promulgated thereunder;

9 d. Obtain documentary evidence, including photographs,  
10 software, or other data or information; and

11 e. Assess Defendant's and the GBZ Owners' compliance with  
12 this Consent Decree.

13 56. Until two years after the termination of this Consent Decree, unless  
14 otherwise specified herein, Defendant and the GBZ Owners shall retain, and shall  
15 instruct their contractors and agents to preserve, all non-identical copies of all  
16 documents, records, or other information (including documents, records, or other  
17 information in electronic form) in their or their contractors' or agents' possession  
18 or control, or that come into its or its contractors' or agents' possession or control,  
19 and that relate in any manner to Defendant and the GBZ Owners performance of  
20 its obligations under this Consent Decree. This information-retention requirement  
21 shall apply regardless of any contrary corporate or institutional policies or  
22 procedures. At any time during this information-retention period, upon request by  
23 the United States, Defendant and the GBZ Owners shall provide copies of any  
24 documents, records, or other information required to be maintained under this  
25 Paragraph.

26 57. At the conclusion of the information-retention period provided in the  
27 preceding Paragraph, Defendant and the GBZ Owners shall notify the United  
28 States at least 90 Days prior to the destruction of any documents, records, or other

1 information subject to the requirements of the preceding Paragraph and, upon  
2 request by the United States, Defendant and the GBZ Owners shall deliver any  
3 such documents, records, or other information to EPA.

4       58. Defendant and the GBZ Owners may assert that certain documents,  
5 records, or other information is privileged under the attorney-client privilege or  
6 any other privilege recognized by federal law. If Defendant and the GBZ Owners  
7 assert such a privilege, they shall provide the following: (a) the title of the  
8 document, record, or information; (b) the date of the document, record, or  
9 information; (c) the name and title of each author of the document, record, or  
10 information; (d) the name and title of each addressee and recipient; (e) a  
11 description of the subject of the document, record, or information; and (f) the  
12 privilege asserted by Defendant and the GBZ Owners. However, no documents,  
13 records, or other information created or generated in accordance with the  
14 requirements of this Consent Decree shall be withheld on grounds of privilege.

15       59. Defendant and the GBZ Owners may also assert that information  
16 required to be provided under this Section is protected as Confidential Business  
17 Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant  
18 and the GBZ Owners seek to protect as CBI, Defendant and the GBZ Owners shall  
19 follow the procedures set forth in 40 C.F.R. Part 2.

20       60. This Consent Decree in no way limits or affects any right of entry  
21 and inspection, or any right to obtain information, held by the United States  
22 pursuant to applicable federal or state laws, regulations, or permits, nor does it  
23 limit or affect any duty or obligation of Defendant and the GBZ Owners to  
24 maintain documents, records, or other information imposed by applicable federal  
25 or state laws, regulations, or permits.

**XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

61. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action that occurred through April 1, 2021.

62. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree does not limit the rights of the United States to obtain penalties or injunctive relief under the CAA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 61. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising as a result of Defendant's or the GBZ Owners' business or any of Defendant's or the GBZ Owners' products, whether related to the violations addressed in this Consent Decree or otherwise.

63. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendant's or the GBZ Owners' operations, Defendant and the GBZ Owners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved under Paragraph 61.

64. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant and the GBZ Owners are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any

1 action commenced under any such laws, regulations, or permits, except as set forth  
2 herein. The United States does not, by its consent to the entry of this Consent  
3 Decree, warrant or aver in any manner that Defendant's or the GBZ Owners'  
4 compliance with any aspect of this Consent Decree will result in compliance with  
5 provisions of the CAA, or with any other provisions of federal, State, or local  
6 laws, regulations, or permits.

7 65. This Consent Decree does not limit or affect the rights of Defendant  
8 or the GBZ Owners or of the United States against any third parties, not party to  
9 this Consent Decree, nor does it limit the rights of third parties, not party to this  
10 Consent Decree, against Defendant and the GBZ Owners, except as otherwise  
11 provided by law.

12 66. This Consent Decree shall not be construed to create rights in, or  
13 grant any cause of action to, any third party not party to this Consent Decree.

14 67. The United States' agreement to the amount of the civil penalty  
15 required by Paragraph 9 of this Consent Decree is based on the Financial  
16 Information identified in Appendix A of this Consent Decree. Defendant certifies  
17 that the Financial Information submitted to the United States and generally  
18 described in Appendix A is true, accurate, and complete. Defendant seeks to  
19 protect this information as Confidential Business Information and shall follow the  
20 procedures set forth in 40 C.F.R. Part 2.

## 21 **XII. COSTS**

22 68. The Parties shall bear their own costs of this action, including  
23 attorneys' fees, except that the United States shall be entitled to collect the costs  
24 (including attorneys' fees) incurred in any action to enforce this Consent Decree or  
25 to collect any portion of the civil penalties or any stipulated penalties due but not  
26 paid by Defendant and the GBZ Owners.

**XIII. NOTICES**

69. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, statements of position, or communications are required by this Consent Decree (referred to as “notices” in this Section), they shall be made electronically or as described below, unless such notices are unable to be uploaded to the CDX electronic system (in the case of EPA) or transmitted by email in the case of any other recipient. For all notices to EPA, Defendant and the GBZ Owners shall register for the CDX electronic system and upload such notices at <https://cdx.epa.gov>.

Any notice that cannot be uploaded or electronically transmitted via email shall be provided in writing to the addresses below:

As to the United States by email (Preferred):

[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ # 90-5-2-1-12138

As to the United States by mail: EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-2-1-12138

As to EPA by email (preferred): [bickmore.ryan@epa.gov](mailto:bickmore.ryan@epa.gov)  
[galer.rose@epa.gov](mailto:galer.rose@epa.gov)

As to EPA by mail: Director  
Enforcement and Compliance  
Assurance Division  
U.S. EPA, Region 9  
75 Hawthorne St.  
San Francisco, CA 94105



As to Defendant and the GBZ Owners:

Gear Box Z, Inc.  
PO Box 2246  
Colorado City, Arizona 86021  
Tel: 877-217-1911  
Email: Gbz.admin@gmail.com

James Black  
PO Box 1701  
Colorado City, Arizona 86021  
Tel: 435-862-3197  
Email: orlinjames@gmail.com

Jerry Black  
PO Box 3406  
Hildale, Utah 84784  
Tel: 435-212-8226  
Email: gletchm@gmail.com

*With a copy to:*  
Matthew I. Barlow  
Barlow Law Firm  
HC 65 Box 537  
3285 S. Hwy 389, #101  
Fredonia, Arizona 86022  
Email: [Matt@barlowlawgroup.com](mailto:Matt@barlowlawgroup.com)

70. Any Party may, by written notice to the other Parties, change its designated notice recipients or notice addresses provided above.

71. Notices submitted under this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XIV. EFFECTIVE DATE**

72. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**XV. RETENTION OF JURISDICTION**

73. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, under Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

**XVI. MODIFICATION**

74. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

75. Any disputes concerning modification of this Decree shall be resolved under Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 53, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

**XVII. TERMINATION**

76. After Defendant and the GBZ Owners have: (a) completed the requirements of Paragraphs 18-20; (b) complied with Paragraphs 14-17 for at least three years after the Effective Date; (c) submitted the reports required by Section VI; (d) paid all civil penalties required by Section IV, including any accrued Interest; and (e) paid any accrued stipulated penalties demanded by the United States pursuant to Section VII, Defendant and GBZ Owners may serve upon the United States a Request for Termination, stating that Defendant and GBZ Owners have satisfied these requirements, together with all necessary supporting documentation.

77. Following receipt by the United States of Defendant's and the GBZ Owners' Request for Termination, the Parties shall confer informally concerning

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

6 78. If the United States does not agree that the Decree may be  
 7 terminated, Defendant and the GBZ Owners may invoke Dispute Resolution under  
 8 Section IX of this Decree. However, Defendant and the GBZ Owners shall not  
 9 seek Dispute Resolution of any dispute regarding a Request for Termination until  
 10 90 Days after service of its Request for Termination.

#### 11 **XVIII. PUBLIC PARTICIPATION**

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

#### 22 **XIX. SIGNATORIES/SERVICE**

23 80. Each undersigned representative of the Defendant and the Assistant  
 24 Attorney General for the Environment and Natural Resources Division of the  
 25 Department of Justice identified on the DOJ signature line below certifies that he  
 26 or she is fully authorized to enter into the terms and conditions of this Consent  
 27 Decree and to execute and legally bind the Party he or she represents to this  
 28 document.



**XXIII. HEADINGS**

85. Headings to the Sections and Subsections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

**XXIV. APPENDICES**

86. The following Appendices are attached to and part of this Consent Decree:

“Appendix A,” which lists generally the financial information submitted by Defendant and the GBZ Owners and reviewed by the United States, is attached to and part of this Consent Decree.

“Appendix B,” is list of Defendant’s products that were identified in Attachment A to the Court’s March 17, 2021 Order granting the United States’ Motion for Preliminary Injunction, identifying certain products subject to that Order. The products listed in Appendix B are a partial list of Subject Products, as defined in this Consent Decree.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2021.

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UNITED STATES DISTRICT JUDGE

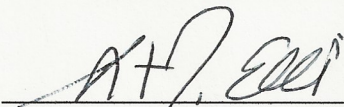


1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 *United States of America v. Gear Box Z, Inc.*

3 FOR THE UNITED STATES OF AMERICA:  
4  
5

6 TODD KIM  
7 Assistant Attorney General  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice

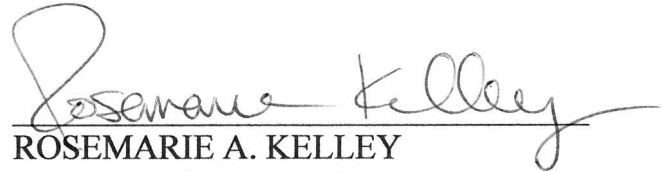
10 August 30, 2021  
11 Date

12   
13 STEVEN D. ELLIS  
14 Senior Counsel  
15 RACHAEL A. KAMONS  
16 Senior Counsel  
17 STEFAN J. BACHMAN  
18 Trial Attorney  
19 Environmental Enforcement Section  
20 Environment and Natural Resources Division  
21 U.S. Department of Justice  
22 Washington, DC 20044-7611  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 *United States of America v. Gear Box Z, Inc.*

3 FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:  
4

5  
6 Date: 8/10/2021



ROSEMARIE A. KELLEY

Director, Office of Civil Enforcement

Office of Enforcement and Compliance

Assurance

United States Environmental Protection Agency

Washington, DC 20460

11 EVAN BELSER

12 Acting Director, Air Enforcement Division

13 Office of Civil Enforcement

14 Office of Enforcement and Compliance

Assurance


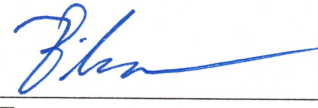
15 United States Environmental Protection Agency

16 Washington, DC 20460  
17  
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19  
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21  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 *United States of America v. Gear Box Z, Inc.*

3 FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
4 REGION 9:

5  
6 Date: 8/16/2021

7 *For*    
8 SYLVIA QUAST  
9 Regional Counsel  
10 U.S. Environmental Protection Agency,  
11 Region 9  
12 Office of Regional Counsel  
13 75 Hawthorne St.  
14 San Francisco, CA 94105

12 OF COUNSEL:

13 RYAN BICKMORE  
14 Attorney-Advisor  
15 U.S. Environmental Protection Agency

16 DENISE LEONG  
17 Attorney-Advisor  
18 U.S. Environmental Protection Agency  
19  
20  
21  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of  
2 *United States of America v. Gear Box Z, Inc.*

3 FOR DEFENDANT GEAR BOX Z, INC.:

4 Date: 08/03/2021

5   
JERRY BLACK

6 Owner


7 Gear Box Z, Inc.

8 PO Box 2246

9 Colorado City, Arizona 86021

10  
11 FOR SIGNATORY JERRY BLACK:

12 Date: 08/03/2021

13   
JERRY BLACK

14 Jerry Black

15 PO Box 3406

16 Hildale, Utah 84784

17  
18 FOR SIGNATORY ORLIN JAMES BLACK:

19 Date: 08/03/2021

20   
ORLIN JAMES BLACK

21 James Black

22 PO Box 1701

23 Colorado City, Arizona 86021

**APPENDIX A:  
DEFENDANT'S AND GBZ OWNERS' FINANCIAL INFORMATION**

At the request of the United States, Defendant Gear Box Z, Inc. and GBZ Owners Jerry Black and Orlin James Black provided the following information regarding the ability to pay a civil penalty in this matter:

1. Tax return information for:
  - a. Defendant Gear Box Z, Inc. for 2015 through 2019;
  - b. Signatory Jerry Black for 2015 through 2019; and
  - c. Signatory Orlin James Black for 2015 through 2019.
2. Responses to questions posed by the United States, including information related to:
  - a. Corporate filings, structure, and history;
  - b. Real estate leases, purchases, transfers, mortgages, and taxes;
  - c. Wages and miscellaneous income;
  - d. Bank accounts and credit card statements;
  - e. Motor vehicles and watercraft; and
  - f. Other miscellaneous questions regarding assets, liabilities, and any other contingent obligations.

In addition, the United States accessed publicly available information in assessing Defendant Gear Box Z, Inc. and GBZ Owners Jerry Black and Orlin James Black's ability to pay a civil penalty in this matter, including:

1. Online investigative reports and compilations of public information;
2. Financial data reports for relevant industry sectors;
3. Local real estate records and real estate market information;
4. Motor vehicle and watercraft valuation information; and
5. Cost of living and basic demographic information.

**APPENDIX B:**  
**LIST OF DEFENDANT’S PRODUCTS IDENTIFIED IN ATTACHMENT A**  
**TO COURT’S MARCH 17, 2021 PRELIMINARY INJUNCTION ORDER**

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## ATTACHMENT A-GEAR BOX Z DEFEAT DEVICE PRODUCT LIST

Name	Vehicle Make Application	GBZ Part Number	Type of Defeat Device
DPF-R Ford EGR Block Plates	Ford	GBZ-FBP	Software
Ford 4.0 Programmer	Ford	GBZ-FD40	Software
Ford 4.0 Plus Programmer	Ford	GBZ-FED40	Software
Electron - Ford 2008-2010 6.4L Power Stroke	Ford	GBZ-EM1.0	Software
Electron - Ford 2011-2017 6.7L Power Stroke	Ford	GBZ-EM1.0	Software
Ford Electron Add-Ons (including Plus Tune, Tachyon Tune, and Maintenance Mode)	Ford	GBZ-EM1.0	Software
GBZ - E41 Maintenance Mode & Economy Tune 2011-2016	Ford	Unknown	Software
GBZ - 41 Maintenance Mode 2011-2016 6.7L	Ford	Unknown	Software
Dodge 3.0	Dodge	GBZ-DD30	Software
Dodge Electron Add-Ons (including Plus Tune, Tachyon Tune, and Maintenance Mode)	GM	GBZ-EM1.0	Software
Duramax 4.0 Programmer	GM	GBZ-GMD40	Software
Duramax 4.0 Plus Programmer	GM	GBZ-GMED40	Software

## ATTACHMENT A-GEAR BOX Z DEFEAT DEVICE PRODUCT LIST

Electron - GM 2007.5-2010 LMM Duramax	GM	GBZ-EM1.0	Software
Electron - GM 2011-2017 LML Duramax	GM	GBZ-EM1.0	Software
AFE 4" Down-Pipe Back CAT/DPF Delete Race Exhaust for Ford Trucks	Ford	AFEFP4F	Hardware
AFE CAT/DPF Delete Race Exhaust for Ford Trucks	Ford	AFEFP2	Hardware
AFE DPF Delete Race Exhaust for Ford Trucks	Ford	AFEFP	Hardware
Race Exhaust for Ford Trucks	Ford	Unknown	Hardware
CAT/DPF Delete Race Exhaust	Ford	Unknown	Hardware
4" Down-Pipe Back Cat/DPF Delete Race Exhaust	Ford	Unknown	Hardware
11-16 6.7L Diesel MBRP/P1 Installer Series Competition Race Pipe	Ford	Uknown	Hardware
AFE 4" Down-Pipe Back CAT/DPF Delete Race Exhaust for GM Trucks	GM	AFEGMP4F	Hardware
AFE DPF Delete Race Exhaust for GM Trucks Crew Cab Long Box	GM	AFEGMP- CCLB	Hardware
AFE DPF Delete Race Exhaust for GM Trucks Crew Cab Short Bed	GM	AFEGMP- CCSB	Hardware
AFE DPF Delete Race Exhaust for GM Trucks Extended Cab Short Box	GM	AFEGMP- ECSB	Hardware

## ATTACHMENT A-GEAR BOX Z DEFEAT DEVICE PRODUCT LIST

1	DPF Delete Race Exhaust for Extended Cab Long Box	GM	Unknown	Hardware
2				
3	DPF Delete Race Exhaust-Crew Cab long Box	GM	Unknown	Hardware
4				
5	DPF Delete Race Exhaust for Extended Cab Short Box	GM	Unknown	Hardware
6				
7	DPF Delete Race Exhaust-Crew Cab Short Box	GM	Unknown	Hardware
8				
9	4" Down-Pipe Back Cat/DPF Delete Race Exhaust	GM	Unknown	Hardware
10				
11	DPF Emulator	Dodge	GBZ-DD30	Hardware
12				
13	EGT Emulator	Dodge	Unknown	Hardware
14				
15	AFE 4" Turbo Back DPF Delete Race Exhaust for Dodge Trucks	Dodge	AFEDP4F	Hardware
16				
17	AFE CAB & Chassis DPF Delete Race Exhaust for Dodge Trucks	Dodge	AFEDPCC	Hardware
18				
19	AFE CAT/DPF Delete Race Exhaust for Dodge Trucks	Dodge	AFEDP2	Hardware
20				
21	AFE DPF Delete Race Exhaust for Dodge Trucks	Dodge	AFEDP	Hardware
22				
23	DPF Delete Race Exhaust	Dodge	Unknown	Hardware
24				
25	CAT/DPF Delete Race Exhaust	Dodge	Unknown	Hardware
26				

ATTACHMENT A-GEAR BOX Z DEFEAT DEVICE PRODUCT LIST

Cab & Chassis DPF Delete Race Exhaust	Dodge	Unknown	Hardware
4" Full DPF Delete Race Exhaust	Dodge	Unknown	Hardware