

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into between the California Air Resources Board ("ARB"), with its principal office at 1001 I Street, Sacramento, California 95814, and Amazon.com, LLC ("AMAZON") with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109 (collectively hereinafter the "Parties").

RECITALS

1. California Code of Regulations, title 13, section 2400(a)(2) states, "Every new small off-road engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article."
2. Health and Safety Code sections 39018 and 39019 define a motor vehicle as non-California certified if it does not possess an emission control system approved for use in California by ARB. California Health and Safety Code section 39042 and 43156 define a new motor vehicle as a vehicle that has an odometer reading of less than 7,500 miles.
3. California Health and Safety Code section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."
4. ARB contends that between February 2010 and October 2013, AMAZON introduced, delivered, or imported into California for introduction into commerce, offered for sale, and/or sold in California at least 257 non-certified Patmont Motor Works, Inc. (aka Go-Ped) scooters (the "subject vehicles") with under 7,500 odometer miles for use or registration in California that were not certified for sale or use in California by ARB (Chapter 2 of Part 5 of Division 26 of the Health and Safety Code) in violation of California Code of Regulations, title 13, section 2400(a)(2) (individually "Violation" and collectively "Violations").

SETTLEMENT AGREEMENT AND RELEASE

ARB and AMAZON

Page 2 OF 6

5. Penalties up to \$500 may be imposed pursuant to Health and Safety Code section 43016 for each Violation.
6. AMAZON has fully cooperated with ARB in its investigation of the alleged Violations and for purposes of resolving this action only, ARB has concluded that Amazon's Violations were unintentional.
7. For purposes of resolving this action only, AMAZON admits its sale of the 257 subject vehicles in California but denies liability arising therefrom.
8. The Parties hereby agree to resolve Amazon's alleged Violations involving the subject vehicles by means of this Agreement as set forth more fully below.

TERMS AND RELEASE

For good and valuable consideration, the sufficiency of which is hereby acknowledged, ARB and AMAZON agree as follows:

1. AMAZON shall pay the total sum of sixty-four thousand two hundred fifty dollars (\$64,250) to the Air Pollution Control Fund no later than April 10, 2015. Payment shall be made by check payable to the **Air Pollution Control Fund** and addressed to:

Air Resources Board
Accounting Branch
P.O. Box 1436
Sacramento, CA 95812-1436
2. This Agreement shall apply to and be binding upon AMAZON and its successors and assignees, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
3. Now therefore, in consideration of the payment on behalf of AMAZON in the amount of sixty-four thousand two hundred fifty dollars (\$64,250) to the California Air Pollution Control Fund, ARB, for itself alone and not on behalf of the State of California or any other agency or public entity, hereby releases AMAZON and its principals, officers, directors, agents, employees, shareholders, parents, affiliates, subsidiaries, predecessors and successors and assignees from any and all claims for past violations of California Code of Regulations, title 13, sections 2400 et seq. based on the specific events described in paragraph 4 of the Recitals.

SETTLEMENT AGREEMENT AND RELEASE

ARB and AMAZON

Page 3 OF 6

4. AMAZON, in consideration of the settlement of the allegations stated above and in consideration of the covenants, promises, terms and conditions herein, hereby releases ARB and its agents, contractors, employees and attorneys from any and all claims that may exist arising out of the specific events and allegations made in paragraph 4 of the Recitals.
5. The undersigned represent that they have the authority to enter this Agreement.
6. This Agreement constitutes the entire agreement and understanding between ARB and AMAZON concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between ARB and AMAZON concerning these claims.
7. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
8. Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other party in deciding to enter into this Agreement.
9. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
10. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
11. Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
12. This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

13. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The maximum per unit penalty in this case is \$500 per unit per strict liability violation. The penalty obtained in this case is \$250 per unit for all 257 units. This amount reflects the mitigating facts that this was: (i) an unintentional, first time violation; and, (ii) AMAZON's diligent efforts to comply and to cooperate with this investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

Health and Safety Code section 43016 is most appropriate to address the asserted Violations because AMAZON allegedly delivered, sold, and/or offered for sale the subject vehicles that were not certified pursuant to Health and Safety Code Division 26, Part 5, Chapter 2.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so, is a quantification of excess emissions practicable.

The provisions cited above do not prohibit emissions at a specified level.

14. AMAZON acknowledges its belief that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, Amazon believes ARB has considered all relevant facts, including those listed in Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants above a specified level.

SETTLEMENT AGREEMENT AND RELEASE

ARB and AMAZON

Page 5 OF 6

15. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty amount was discounted upon ARB's determination that this was an unintentional, first time violation and because AMAZON made diligent efforts to comply and to cooperate with the ARB's investigation. Penalties in any potential future cases might be smaller or larger on a per unit basis.
16. The penalty amount in this case was based, in part, on confidential business information provided by AMAZON that is not retained by ARB in the ordinary course of business. The penalty amount was also based on confidential settlement communications between ARB and AMAZON that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against AMAZON, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that AMAZON may have secured from its alleged actions.

California Air Resources Board

By: 

Name: Ellen M. Peter

Title: Chief Counsel

Date: 3/23/2015

Amazon.com, LLC

By: 

Name: Andrew C. DeLuca

Title: VP, Litigation & Regulatory

Date: 3/18/15