

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95812, and ONYX ENTERPRISES INT'L, CORP. (hereinafter "ONYX"), with its principal place of business located at 1 Corporate Drive, Cranbury, New Jersey 08512 (collectively, "The Parties," or individually, "Party").

RECITALS

1. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles. (Health & Saf. Code §§ 43000; 43000.5, 43011.)
2. CARB adopted the "Add-On Parts and Modified Parts" Regulation (Cal. Code Regs., tit. 13, § 2220 et seq.) (hereinafter "Aftermarket Parts Regulation") to ensure that vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
3. Vehicle Code section 27156, subdivision (c) provides that "[n]o person shall install, sell, offer for sale, or advertise any device intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system." The manufacture, sale, offer for sale, or installation of these parts may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3)).
4. Vehicle Code section 27156, subdivision (h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device found by resolution of the State Air Resources Board to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle that are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
5. California Code of Regulations, title 13, section 2222, subdivision (b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisement contains a legally adequate disclaimer..." (Aftermarket Parts Regulation).

6. Pursuant to California Code of Regulations, title 13, section 1900, subdivision (b)(3), an "Emissions-related part" is "any automotive part, which affects any regulated emissions from a motor vehicle which is subject to California or federal emission standards. This includes, at a minimum, those parts specified in the 'Emissions-Related Parts List,' adopted by the State Board on November 4, 1977, as last amended June 1, 1990."
7. If the Executive Officer finds that any manufacturer, distributor, retailer, or installer is manufacturing, supplying, distributing, offering for sale, selling, advertising, or installing an emissions-related part for use on highway vehicles or motorcycles in California in violation of the Aftermarket Parts Regulation, he or she may enjoin said manufacturer, distributor, retailer, or installer from any further manufacture, supply, distribution, offer for sale, sale, advertisement, or installation pursuant to section 43017 of the Health and Safety Code and California Code of Regulations, title 13, section 2225. The Executive Officer may also assess civil penalties to the extent permissible under Division 26, Part 5 of the Health and Safety Code.
8. In addition, California Code of Regulations, title 13, section 2225, subdivision (a) provides, in pertinent part, that the Executive Officer may seek fines for violations of Vehicle Code section 27156 or other laws or regulations, as applicable.
9. Vehicle Code section 38391 provides that "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-highway motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
10. Vehicle Code section 38395 provides in pertinent part that section 38391 "shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board either: (a) To not reduce the effectiveness of any required off-highway motor vehicle pollution control device; or (b) To result in emissions from any such modified or altered off-highway vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted."
11. California Code of Regulations, title 13, section 2472, subdivision (a) provides that "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-road vehicle, engine, or equipment pollution control device or system which alters or modifies the original design or performance of any such pollution control device or system."
12. California Code of Regulations, title 13, section 2472, subdivision (c) provides that "[t]his section shall not apply to an alteration, modification, or modifying device,

apparatus, or mechanism found by resolution of the State Air Resources Board to do either of the following: (1) Not reduce the effectiveness of any required off-road vehicle, engine, or equipment pollution control device[; or] (2) To result in emissions from any such modified or altered off-road vehicle, engine, or equipment which are at levels which comply with existing state or federal standards for that model-year of the vehicle, engine or equipment being modified or converted.”

13. California Code of Regulations, title 13, section 2476, subdivision (a) provides, in pertinent parts, that the Executive Officer may seek fines for violations of Vehicle Code Sections 27156 or 38391, California Code of Regulations, title 13, Section 2472, or other laws or regulations, as applicable.
14. Failure to comply with the provisions set forth above could result in a civil penalty not to exceed \$500.00 for each action if it occurred prior to January 1, 2017, and \$37,500.00 for each such action that occurred after January 1, 2017, under Health and Safety Code section 43016, and \$1,500.00 for each violation of Vehicle Code section 27156 under Health and Safety Code section 43008.6(b). The Executive Officer may require the violating manufacturer or distributor to make the product compliant with applicable emission control laws as conditions for the continued sale into California.
15. CARB alleges that between September 2015 and September 2018, ONYX sold, offered for sale, and/or advertised add-on or modified parts developed, designed and manufactured by companies other than ONYX for use on off- and on-highway vehicles in California (hereinafter “Subject Parts”) that were not exempted by CARB pursuant to California Code of Regulations, title 13, section 2220 et seq. or California Code of Regulations, title 13, section 2470 et seq., and that these Subject Parts altered or modified the original design or performance of the motor vehicle pollution control devices or systems. ONYX received its first communication from CARB regarding the alleged violations in September 2018.
16. CARB alleges that the advertisements, offers for sale, and sale of the Subject Parts were unlawful and in violation of Vehicle Code sections 27156 and 38391 and California Code of Regulations, title 13, sections 2220 et seq. and 2470 et seq.
17. ONYX, a technology company operating, among other things, an eCommerce retail marketplace for the sale of automotive parts and accessories, is a corporation headquartered in Cranbury, New Jersey.
18. ONYX promptly and fully cooperated with CARB throughout its investigation.
19. ONYX has no prior enforcement record with CARB.

20. CARB alleges that if the allegations described in recital paragraphs 1 through 16 were proven, civil penalties could be imposed against ONYX as provided in Health and Safety Code sections 43008.6(b) and 43016.
21. ONYX admits the facts in recital paragraphs 15 through 20, but disagrees with the allegations and denies any liability arising thereunder.
22. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. ONYX has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this Agreement in termination and settlement of this matter.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against ONYX for the violations alleged above, and in consideration of the other terms set out below, CARB and ONYX agree as follows:

1. As a condition of this Agreement, ONYX shall pay one hundred forty thousand five hundred dollars (\$140,500.00) as a civil penalty to the State of California Air Resources Board for deposit into the California Air Pollution Control Fund in four (4) installment payments as follows:

Payment Due Date:	In the Amount of and Paid to:
(1) Within thirty (30) days of the execution of this Agreement	\$35,125.00 paid to Air Pollution Control Fund
(2) Within one hundred twenty (120) days of the execution of this Agreement	\$35,125.00 paid to Air Pollution Control Fund
(3) Within two hundred ten (210) days of the execution of this Agreement	\$35,125.00 paid to Air Pollution Control Fund
(4) Within three hundred (300) days of the execution of this Agreement	\$35,125.00 paid to Air Pollution Control Fund

ONYX shall mail the signed Agreement and any future mailings or documents per the terms of this Agreement to:

Mr. Nathan Biasotti
Air Pollution Specialist
California Air Resources Board
Enforcement Division
8340 Ferguson Ave
Sacramento, California 95828

ONYX shall send the payment along with the "Settlement Agreement Payment Transmittal Form" to:

California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812

If payment is by wire transfer, the payment shall be sent to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #EPES-2020-C00190

Wire Transfer Fee: ONYX is responsible for any bank charges incurred for processing wire transfers.

2. As a further condition of this Agreement, ONYX has requested, and CARB has agreed, that ONYX be permitted to fund a Supplemental Environmental Project (SEP) entitled Installation of School Air Filtration Systems- El Centro (Imperial County) as described in the "SEP Proposal Summary" in the total amount of one hundred forty thousand five hundred dollars (\$140,500.00) consistent with CARB's SEP Policy.
3. ONYX will pay the total sum of \$140,500.00 by wire transfer or check payable to the SEP implementer, Imperial County Air Pollution Control District in four (4) installment payments as follows:

Payment Due Date:	In the Amount of and Paid to:
(1) Within thirty (30) days of the execution of this Agreement	\$35,125.00 paid to Imperial County Air Pollution Control District

(2) Within one hundred twenty (120) days of the execution of this Agreement	\$35,125.00 paid to Imperial County Air Pollution Control District
(3) Within two hundred ten (210) days of the execution of this Agreement	\$35,125.00 paid to Imperial County Air Pollution Control District
(4) Within three hundred (300) days of the execution of this Agreement	\$35,125.00 paid to Imperial County Air Pollution Control District

For payment to the SEP implementer (Imperial County Air Pollution Control District), ONYX will send payment to:

Imperial County Air Pollution Control District
ATTN: Belen Leon
150 S 9th Street
El Centro, California 92243

If payment is by wire transfer, the payment shall be sent to:

Treasurer of Imperial County
c/o Union Bank, Branch El Centro
Routing No. 122000496 Account No. 0700463621
Notice of Transfer: Belen Leon Phone: (442) 265-1800
Reference: CARB Case #EPES-2020-C00190

Wire Transfer Fee: ONYX is responsible for any bank charges incurred for processing wire transfers.

4. For each SEP payment above, send a copy of the check or wire transfer confirmation and corresponding "Supplemental Environmental Project Payment Transmittal Form" to CARB's Accounting Office listed above.
5. ONYX agrees that it does not have a financial interest in the Installation of School Air Filtration Systems- El Centro (Imperial County). ONYX agrees that it will not receive any direct or indirect financial benefit from the Installation of School Air Filtration Systems- El Centro (Imperial County). If ONYX publicizes its support for the SEP or the results of the SEP, it will state in a recognizable manner that ONYX's support is being undertaken as part of a settlement with CARB.

6. Upon agreeing to the terms set forth in Terms and Release paragraphs 2 through 5, ONYX is released of all liabilities as they relate to the SEP as reflected in this underlying Agreement.
7. In the event a SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, ONYX assigns any and all rights against the SEP implementer to CARB.
8. Effect of Untimely Payment. If any payment is more than fifteen (15) business days late, it shall be considered in default. Upon default, CARB agrees they will provide written notice to ONYX of the default, at which time ONYX will have ten (10) business days to cure the default ("Cure Period"). In the event that ONYX fails to satisfy the payment within the Cure Period, the Attorney General shall have the right to accelerate the entire remaining balance, which hereby becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, ONYX shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
9. ONYX agrees that this penalty imposed on ONYX by CARB is nondischargeable under 11 U.S.C § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
10. ONYX shall not install, sell, offer for sale, or advertise in California any aftermarket part in violation of Vehicle Code sections 27156 and 38391 and California Code of Regulations, title 13, sections 2220 et seq. and 2470 et seq.
11. This Agreement shall apply to and be binding upon ONYX and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
12. Now, therefore, in consideration of the payments by ONYX to the California Air Pollution Control Fund and SEP in the amounts specified above in Terms and Release paragraph 1 through 4, CARB hereby releases ONYX and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all

claims that CARB may have relating to the Subject Parts or based on the allegations described in recital paragraphs 15 through 20.

13. This Agreement constitutes the entire agreement and understanding between CARB and ONYX concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and ONYX concerning these claims.
14. The effective date of this Agreement shall be the date upon which it is fully executed.
15. 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.
16. 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.
17. 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.
18. Each provision of this Agreement is severable, and, in the event that any provision of this Agreement is held to be invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
19. 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.
20. 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.
21. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
22. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

23. Penalty Determination

Health and Safety Code section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this Agreement, is summarized here.

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

The penalty provisions being applied in this case are Health and Safety Code sections 43008.6 and 43016, because ONYX sold, offered for sale, and/or advertised the Subject Parts which were not exempted pursuant to Vehicle Code sections 27156 and 38391 and California Code of Regulations, title 13, sections 2220 et seq. and 2470 et seq.

The penalty provisions of Health and Safety Code sections 43008.6 and 43016 apply to violations of the Aftermarket Parts Regulations because the Regulations were adopted under authority of Health and Safety Code section 43013, which is in Part 5 of Division 26 of the Health and Safety Code.

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or vehicle basis for the penalty.

The per unit penalty in this case for violations that occurred prior to January 1, 2017, is a maximum of \$500.00 per unit per violation. The per unit penalty in this case for violations that occurred on or after January 1, 2017, is a maximum of \$37,500.00 per unit per violation. The penalty obtained in this case is \$250.00 per unit for 1,124 Subject Parts. This reflects the fact that this was a first time alleged violation for ONYX; ONYX responded in good faith and expeditiously in its efforts to correct the alleged violations; and ONYX cooperated with the investigation.

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

The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the non-exempted add-on or modified parts. However, since the aftermarket parts were not exempted for sale in California, emissions attributable to them are illegal and excess as well.

24. ONYX acknowledges that CARB has complied with Health and Safety Code section 39619.7 in settling this case. Specifically, CARB has considered all relevant facts, including those listed at Health and Safety Code sections 42403 and 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 at a specified level.
25. 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 negotiations, and the potential costs and risks 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.
26. The penalty in this case was based in part on confidential business information provided by ONYX that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and ONYX that CARB does not retain in the ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against ONYX, and the desire to avoid the uncertainty, burden, and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that CARB believes ONYX may have secured from its alleged actions. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.
27. Each of the undersigned represents that he or she has full power and authority to enter this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Onyx Enterprises Int'l, Corp.

By: _____ /S/ _____

By: _____ /S/ _____

Name: Richard W. Corey

Name: Steven Royzenshteyn

Title: Executive Officer

Title: Chief Executive Officer

Date: 7/2/2020

Date: 6/19/2020