

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Phoenix Motorcars Leasing LLC (PHOENIX) with its principal place of business at 401 South Doubleday Avenue, Ontario, California 91761, (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates implementation of emission standards for new motor vehicle and motor vehicle engines to control emissions; allows CARB to certify these vehicles; and prohibits any person from selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving a new motor vehicle or new motor vehicle engine for use, registration, or resale unless it is certified. This includes attempts or assistance. (Health & Saf. Code §§ 43100, 43101, 43151, 43153, 43211, and 43212.)
- (2) Regulation. CARB adopted "*Motor Vehicle Pollution Control Devices*" (*Vehicle Standards*) (Cal. Code Regs., tit. 13, §§ 1900-2048) to reduce emissions such as oxides of nitrogen (NOx) and hydrocarbons (HC) from new and used motor vehicles and motor vehicle engines in California.
- (3) Regulatory Provisions. Prior to vehicles or engines being sold, introduced into commerce, imported, delivered, purchased, rented, leased, acquired, or received into California, they must be certified based on reliable test data and procedures and obtain an Executive Order (EO) from CARB. (Cal. Code Regs., tit. 13, §§ 1900-2048.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to five thousand dollars (\$5,000 USD) for each strict liability violation of the Vehicle Standards that occurred prior to January 1, 2017, and thirty-seven thousand five hundred dollars (\$37,500 USD) for each strict liability violation of the Vehicle Standards that occurred on or after January 1, 2017, respectively, for each such action. (Health & Saf. Code, §§ 43016, 43154, 43211, 43212; Cal. Code Regs., tit.13, § 1900 et seq.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, PHOENIX was organized under the laws of California as a limited liability company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) C00239, which was issued on May 28, 2020. CARB alleges PHOENIX violated the Vehicle

Standards by selling, introducing into commerce, importing, delivering, purchasing, renting, leasing, acquiring, or receiving new motor vehicle or motor vehicle engines into California and not obtaining an EO, resulting in 22 violations, as outlined in Notice of Violation C00239. CARB alleges that if the allegations described in paragraph 6 were proven, civil penalties could be imposed against PHOENIX for each and every vehicle involved in the violations and each day.

- (7) Acknowledgment. PHOENIX acknowledges paragraphs 1 through 4 and admits to the facts in paragraphs 5 and 6, but denies any liability resulting from the foregoing paragraphs.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, PHOENIX has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against PHOENIX for the alleged violations set forth in paragraph 6, and PHOENIX's agreement to complete all terms and conditions set forth below, CARB and PHOENIX agree as follows:

- (9) Settlement Amount. PHOENIX shall pay a civil penalty of eleven thousand dollars (\$11,000.00 USD), for a total settlement of eleven thousand dollars (\$11,000.00 USD). PHOENIX shall make all payments in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule).
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, PHOENIX shall make payments below.

Payment Due Date:	In the Amount Of and Payable To:	
Within thirty (30) days following the Effective Date	\$5,500	California Air Resources Board
Within 4 months following the Effective Date	\$1,834	California Air Resources Board
Within 7 months following the Effective Date	\$1,833	California Air Resources Board

Within 11 months following the Effective Date	\$1,833	California Air Resources Board
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- (11) Civil Penalty Payment Method. PHOENIX shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. PHOENIX is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to PHOENIX in accordance with Paragraph 14 (Notices).
- (12) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (13) Documents. PHOENIX shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, and a copy of the Payment Transmittal Form(s) to the address or email in Paragraph 14 (Notices).
- (14) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Mobile Source Enforcement Branch / Engine and Parts Enforcement
Section
9480 Telstar Avenue, Suite 4
El Monte, California 91731
Settlement_Agreement@arb.ca.gov

As to PHOENIX:

Gillray Cadet, Chief Financial Officer
401 S. Doubleday Avenue
Ontario, CA 91761
gillrayc@phoenixmotorcars.com

As to PHEONIX's Legal Representation:

Joel Eagle
Thompson Hine LLP

Phoenix Motorcars Leasing LLC Settlement Agreement and Release
Notice of Violation: C00239

3900 Key Center, 127 Public Square
Cleveland, Ohio 44114
joel.eagle@ThompsonHine.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (15) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, PHOENIX shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (16) Repeat Violations. PHOENIX agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 35 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds PHOENIX, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (19) Effective Date. The Effective Date shall be the date upon which this Settlement Agreement is fully executed.
- (20) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (21) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (22) Choice of Law. This Settlement 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.

- (23) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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.
- (24) Not Tax Deductible. For purposes of this Settlement Agreement, PHOENIX shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (25) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (26) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (27) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (28) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (29) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (30) Release. In consideration of the full completion of civil penalty payments, and all other undertakings above, CARB hereby releases PHOENIX and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.

- (31) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (32) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of five thousand dollars (\$5,000 USD) for each alleged violation that occurred prior to January 1, 2017, and thirty-seven thousand, five hundred dollars (\$37,500 USD) for each alleged violation that occurred on or after January 1, 2017 under Health and Safety Code section 43016 and 43154, for violations of the Vehicle Standards (Cal. Code Regs., tit.13, §§ 1900 et seq.) The penalty of eleven thousand dollars (\$11,000 USD) over an unspecified number of days of violation is for 22 noncompliant vehicles or engines. The per unit penalty in this case is approximately five hundred (\$500 USD) per noncompliant unit. This amount reflects the facts that PHOENIX fully and immediately cooperated with CARB in its investigation, that these were an unintentional, first time alleged violations that resulted in the absence of emissions for the zero-emission vehicles at issue, and PHOENIX made efforts to comply prior to the alleged violations.
- (33) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on usage and emission rates, it is not practicable to quantify the excess emissions.
- (34) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the alleged violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the alleged violation; financial burden to the alleged violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by PHOENIX and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: _____ 8/17/2020 _____

Phoenix Motorcars Leasing LLC

Signature: _____ /S/ _____

Name: _____ Gillroy Cadet _____

Title: _____ CFO and Interim CEO _____

Date: _____ 7/31/2020 _____