

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the State of California, acting by and through the California Air Resources Board, with its principal location at 1001 I Street, Sacramento, California 95814 (CARB), and Evasive Motorsports, Inc., with its principal location at 10636 Midway Ave, Cerritos, California 90703 (Evasive). As referenced in this Settlement Agreement, CARB and Evasive are collectively the "Parties" and individually each a "Party".

### **LEGAL BACKGROUND**

- (1) **Purpose.** 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) **Regulation.** CARB adopted the "*Add-On Parts and Modified Parts*" Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225) (Aftermarket Parts Regulation) to ensure that these vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.
- (3) **Regulatory Provisions.** The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanisms that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156. (Cal. Code Regs., tit. 13, § 2220; Vehicle Code § 27156.) The Executive Officer may issue a cease and desist order and enjoin the sale, import, install, advertising, supply, distribution, or install in California of any add-on or modified part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit.13, § 2225; Health & Saf. Code 43017.) The sale of this product may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3)).
- (4) **Penalty Provisions.** Failure to comply with the regulatory requirements is a violation of state law that may result in penalties of up to one thousand five hundred dollars (\$1,500.00 USD) for each violation of the Vehicle Code and forty thousand fifty dollars (\$40,050.00 USD) per action, on a strict liability basis, respectively, for each noncompliant add-on or modified part. (Cal. Code Regs., tit. 13, §§ 2220-2225; Health & Saf. Code, §§ 43008.6, and 43016; and Vehicle Code § 27156.)

### **CASE BACKGROUND**

- (5) **Corporate Entity.** At all relevant times, Evasive was organized as a corporation under the laws of the State of California and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) # EPES-2021-C00491, which was issued on November 2, 2021. CARB alleges Evasive violated the Aftermarket Parts Regulation by selling non-exempted aftermarket parts, add-on or modified parts, and/or emissions-related parts, resulting in the violations outlined in NOV # EPES-2021-C00491. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Evasive for each and every aftermarket part, add-on or modified part, and emissions-related part involved in the violations.
- (7) Acknowledgment. Evasive admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein and below, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the violations alleged in NOV # EPES-2021-C00491, and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Evasive has taken, or agrees to take, the actions enumerated within the Terms and Conditions section below. Furthermore, upon Evasive's full compliance with all terms, conditions and provisions set out in this Settlement Agreement, CARB will accept this Settlement Agreement as full settlement of NOV # EPES-2021-C00491.

## **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Evasive for the alleged violations alleged in NOV # EPES-2021-C00491, and Evasive's agreement to complete and comply with all terms, conditions and provisions of this Settlement Agreement, CARB and Evasive agree to the foregoing and as follows:

- (9) Settlement Amount. Evasive shall pay to CARB a civil penalty of two hundred ninety-five thousand dollars (\$295,000.00 USD), in accordance with the payment schedule in Paragraph 10 below (Payment Plan and Schedule).
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, Evasive shall make the following payments as set out below. First payment shall be due and payable within 20 calendar days from the date CARB notifies Evasive that the Settlement Agreement has been fully executed by all Parties. All subsequent payments shall be due and payable within 90 days from the date of the last payment due date, as set out on page 3 below and in the Payment Transmittal Form:

<b>Payment Due Date:</b>	<b>Amount Due:</b>	<b>Payable To:</b>
20 Days from the Date Company is notified Settlement Agreement has been Fully Executed	\$75,000.00	California Air Resources Board
90 Days from Last Due Date	\$22,000.00	California Air Resources Board
90 Days from Last Due Date	\$22,000.00	California Air Resources Board
90 Days from Last Due Date	\$22,000.00	California Air Resources Board
90 Days from Last Due Date	\$22,000.00	California Air Resources Board
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90 Days from Last Due Date	\$22,000.00	California Air Resources Board

- (11) Civil Penalty Payment Method. Evasive shall pay the civil penalty by check, credit card, wire transfer, or CARB payment portal, using instructions provided separately by CARB in a Payment Transmittal Form. All payments shall be made payable to the California Air Resources Board. Evasive is responsible for all payment processing fees that are in addition to the civil penalty payments. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time each payment is made, Evasive shall provide CARB with proof of payment being made, including the Payment Transmittal Form, to via the email address provided in Paragraph 17 (Notices).
- (12) CARB will 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.
- (13) Should payment instructions change, CARB will provide notice to Evasive in accordance with Paragraph 17 below (Notices).

(14) Disclaimer. Evasive shall add the following disclaimer to all advertised add-on or modified parts:

- "NOT LEGAL FOR SALE OR USE IN CALIFORNIA. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
- "FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."

(15) Acceleration. **If any payment is more than twenty (20) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.**

(16) Documents. Evasive shall promptly email the signed and dated Settlement directly to the CARB Investigator managing the settlement or to the email address provided in Paragraph 17 (Notices); alternatively, Evasive may mail the signed and dated Settlement Agreement to the address provided in the Payment Transmittal Form.

(17) 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  
Vehicle, Parts, Consumer Products Enforcement Branch / Engine and  
Parts Enforcement Section  
P.O. Box 2815

Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov ([Send Proof of Payment](#))

As to CARB's Legal Representative:

California Air Resources Board  
Legal Office  
1001 I Street, 1st Floor  
Sacramento, California 95814  
Shirley.Edwards@arb.ca.gov

As to Evasive:

Evasive Motorsports, Inc.  
Attn: Michael Chang, CEO and  
Tony Kwan, President, CFO  
10636 Midway Avenue  
Cerritos, California 90703  
mike@evasivemotorsports.com  
and  
tony@evasivemotorsports.com

As to Evasive's Legal Representation:

Seth Weinstein, Esq.  
Law Offices of Seth Weinstein, P.C.  
15260 Ventura Blvd., Suite 1200  
Sherman Oaks, California 91403  
sweinsteinlaw@gmail.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.

- (18) Recovery of Costs. If the California Attorney General files a civil action to enforce this Settlement Agreement in whole or in part, then Evasive shall pay all of the State of California's costs of investigating and prosecuting the action, including but not limited to expert fees, attorneys' fees, and other costs.
- (19) Repeat Violations. Evasive agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (20) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning NOV # EPES-2021-C00491 and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning NOV # EPES-2021-C00491. This Settlement Agreement consists of 10 pages and 39 paragraphs.

- (21) Binding Effect. This Settlement Agreement binds Evasive, and its 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.
- (22) Effective Date. The effective date shall be the last date upon which this Settlement Agreement is fully executed by all the Parties.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) 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.
- (29) Intent to be Bound. The Parties each represent, warrant and agree 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.

- (30) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (31) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (32) Release. In consideration of and upon full payment of the civil penalty, and all other undertakings above, CARB will release Evasive and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from all claims CARB specifically alleged to have been violated in NOV # EPES-2021-C00491.
- (33) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.
- (34) Survival. Those terms, conditions and provisions which by their nature should survive termination or expiration of this Settlement Agreement shall so survive, including but not limited to paragraphs 13, 14, 15, 17 through 34, and 39, inclusive.

#### **PENALTY BASIS**

- (35) Per Unit Penalty. The per unit penalty in this case could be forty thousand fifty dollars (\$40,050.00 USD) per action under Health and Safety Code section 43016, and/or one thousand, five hundred (\$1,500.00) per unit under California Health and Safety Code section 43008.6, for violations of the Aftermarket Parts Regulation and Vehicle Code section 27156. (Cal. Code Regs., tit.13, §§ 2220-2225.) The penalty of \$295,000.00 is for 1,180 noncompliant add-on or modified parts. The per unit penalty in this Settlement Agreement is \$250.00 per noncompliant add-on or modified part. Evasive acknowledges, accepts and understands that this settlement amount is a compromise and that if this matter were to proceed to court, the total amount of civil penalties, as well as the number and type of violations claimed, will be substantially more.
- (36) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. Since CARB has alleged that the add-on or modified parts did not meet the regulatory requirements, any emissions resulting from the use of the add-on or modified parts were excess and illegal.

- (37) 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 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 violation; financial burden to the 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.
- (38) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Evasive or confidential settlement communications.
- (39) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in NOV # EPES-2021-C00491.
  - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Evasive with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Evasive with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by Evasive to CARB.
    - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
    - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
    - (v) Any criminal liability.



- (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Evasive represents, warrants and agrees that neither Evasive, nor any of its representatives, will assert, and will 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 CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Evasive or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Evasive, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Evasive is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Evasive's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Evasive's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED, AGREED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: May 24, 2023

**Evasive Motorsports, Inc.**

Signature: /S/

Name: Tony Kwan

Title: President

Date: May 17, 2023