

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814, and Moinfar Enterprises, Inc., dba ATV Galaxy (hereinafter "ATV GALAXY"), with its principal place of business located at 16951 Armstrong Avenue, Irvine, California 92606 (collectively, the "PARTIES" or, individually, a "PARTY").

### RECITALS

1. Vehicle Code section 27156 requires that, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system."
2. Vehicle Code section 38391 requires that, "No 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."
3. Health and Safety Code section 43008.6 provides that, "The civil penalty specified in subdivision (b) may be collected for one or more violations involving the tampering with or disabling of a gasoline-powered vehicle's air injection, exhaust gas recirculation, crankcase ventilation, fuel injection, carburetion, ignition timing, or evaporative control system, fuel filler neck restrictor, oxygen sensor or related electronic controls, or catalytic converter, or for the use of leaded fuel in a vehicle certified for the use of unleaded fuel only."
4. California Code of Regulations, title 13, section 2222(c) requires that, "No person shall advertise, offer for sale, or install a part as a motor vehicle pollution control device or as an approved or certified device, when in fact such part is not a motor vehicle pollution control device or is not approved or certified by the state board."
5. California Code of Regulations, title 13, section 2474(c) requires that, "No person shall advertise, offer for sale, or install a part as an off-road vehicle, engine, or equipment pollution control device or as an exempted device, when in fact such part is not an off-road vehicle, engine, or equipment pollution control device or is not approved or exempted by the state board."
6. Health and Safety Code section 43016, as in effect through December 31, 2016, states, in pertinent part, "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 board regulations.”

7. Health and Safety Code section 43008.6(b) states, in pertinent part, “The state board may collect a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code.”
8. On April 18, 2019, CARB issued a subpoena to ATV GALAXY for business records relating to the advertisements, sales, offers for sale, and installations of non-exempted on-highway add-on or modified parts for use in California. ATV GALAXY provided to CARB sales information in an electronic and sortable format on February 6, 2019. CARB has identified alleged violations from ATV GALAXY’s sales information for advertising, selling, and offering for sale of non-exempted on- and off-highway add-on or modified parts (hereinafter “SUBJECT PARTS”) in California that altered or modified the original design or performance of the motor vehicle’s emission control system.
9. Based upon the sales information ATV GALAXY submitted to CARB, CARB alleges that the SUBJECT PARTS violated Vehicle Code sections 27156 and 38391, Health and Safety Code section 43008.6, and California Code of Regulations, title 13, sections 2222 and 2474. ATV GALAXY sold one hundred sixty-seven (167) SUBJECT PARTS.
10. ATV GALAXY fully cooperated with CARB in the investigation of this subject matter.
11. ATV GALAXY is a California corporation doing business in interstate commerce.
12. This is ATV GALAXY’s first aftermarket parts enforcement record with CARB.
13. CARB alleges that if the allegations described in recital paragraphs 1 through 9 were proven, civil penalties could be imposed against ATV GALAXY as provided in pre-January 1, 2017, version of Health and Safety Code sections 43016 and/or 43008.6(b).
14. ATV GALAXY admits the facts in recital paragraphs 1 through 9, but denies any liability arising thereunder.
15. 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 of the Parties 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. ATV GALAXY 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 settlement of any and all claims that CARB has against ATV GALAXY for the violations alleged above, and in consideration of CARB not filing a legal action, as well as of the other terms set out below, CARB and ATV GALAXY agree as follows:

1. ATV GALAXY agrees and shall pay **forty-two thousand dollars (\$42,000)** as a penalty by check or wire transfer to the **Air Pollution Control Fund**, as described in the Settlement Agreement Payment Transmittal Form (ATTACHMENT A).

If payment is by check, ATV GALAXY's check shall be accompanied by the attached "Settlement Agreement Payment Transmittal Form" (ATTACHMENT A) and sent to:

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

If payment is by wire, upon ATV GALAXY's wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (ATTACHMENT A) 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 #C00222

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

2. ATV GALAXY shall send the original signed and dated AGREEMENT, copies of payment, the Settlement Agreement Payment Transmittal Form (ATTACHMENT A), and any future mailings or documents required per the terms of this AGREEMENT to:

Allen Pham  
Air Resources Engineer  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

3. The PARTIES agree that this AGREEMENT may be executed by facsimile and in counterparts by the PARTIES and their representatives, and that the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
4. The PARTIES agree that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of California environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on ATV GALAXY by CARB arising from the facts described in recital paragraphs 1-9 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
5. ATV GALAXY shall not install, sell, offer for sale, or advertise in California any add-on or modified aftermarket parts in violation of Vehicle Code sections 27156 and 38391, Health and Safety Code section 43008.6, or California Code of Regulations, title 13, sections 2220 et seq. and 2470 et seq.
6. ATV GALAXY shall advertise each and every non-exempted aftermarket emissions-related part offered for sale in California with one of the following disclaimers in a minimum font size 8, appearing on each page on which any of the above non-exempted aftermarket emissions-related part appears:
  - a. "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))."
  - b. "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))."
  - c. "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)).”

- d. “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)).”

Use of one of the above disclaimers, as prescribed above, shall be deemed a “legally adequate disclaimer” pursuant to California Code of Regulations, title 13, sections 2222(b)(2) and 2474(b)(2).

7. This AGREEMENT shall apply to and be binding upon ATV GALAXY 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.
8. Now, therefore, in consideration of the payment by ATV GALAXY to the Air Pollution Control Fund as specified in Terms and Release paragraph 1 above, CARB hereby releases ATV GALAXY and its shareholders, 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 and based on the allegations described in recital paragraphs 1-9.
9. This AGREEMENT constitutes the entire agreement and understanding between CARB and ATV GALAXY 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 ATV GALAXY concerning these claims.
10. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. 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.

**17. Penalty Determination**

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.), which is also provided throughout this AGREEMENT.

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

The penalty amount for ATV GALAXY in this case is forty-two thousand dollars (\$42,000) with a per unit penalty of approximately two hundred fifty-one dollars and fifty cents (\$251.50) per unit for one hundred sixty-seven (167) SUBJECT PARTS. The penalties in this matter reflect the fact that ATV GALAXY fully cooperated with the investigation, and the violation was corrected in a timely manner.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors, (Health & Saf. Code § 42403), such as 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 CARB's assessment of the relative strength of its case against ATV GALAXY, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that ATV GALAXY may have secured from its alleged actions. Penalties in other

cases may be smaller or larger, depending on the unique circumstances of the case.

**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 as provided in pre-January 1, 2017, of Health and Safety Code sections 43016 and/or 43008.6(b), because ATV GALAXY advertised, sold, and offered for sale of non-exempted on-highway add-on or modified parts in California that altered or modified the original design or performance of the motor vehicle's emission control system.

**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 the emission of pollution at a specified level. However, it is not practicable to quantify the emissions attributable to the affected motor vehicles, because the information necessary to do so, such as emission rates and time of use, is not available.

18. ATV GALAXY acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.
19. The penalty in this case was based in part on confidential business information provided by ATV GALAXY 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 ATV GALAXY that CARB does not retain in the ordinary course of business either.
20. 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**

By: \_\_\_\_\_ /S/  
Name: Todd P. Sax, D.Env.  
Title: Chief, Enforcement Division  
Date: 4/13/2020

**Moinfar Enterprises, Inc., dba ATV Galaxy**

By: \_\_\_\_\_ /S/  
Name: Mike Moinfar  
Title: President  
Date: 3/23/2020