

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 at 1001 I Street, Sacramento, California 95814 and JORDAN & ASSOCIATES INVESTMENTS, INC., DBA SUN BUGGIE FUN RENTALS (hereinafter "SUN BUGGIE"), with its principal place of business at 54 Saratoga Avenue, Grover Beach, CA 93433.

RECITALS

- (1) California Health and Safety Code (H&SC) §43151 states, "No person who is a resident of, or who operates an established place of business within this state shall import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle has been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (2) H&SC §43152 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently import, deliver, purchase, receive, or otherwise acquire a new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, which has not been certified pursuant to this chapter. No person shall attempt or assist in any such act."
- (3) H&SC §43153 states, "No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing new motor vehicles or new motor vehicle engines, including, but not limited to, manufacturers, distributors, and dealers, shall intentionally or negligently sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state any new motor vehicle, new motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use or for registration in this state, and which has not been certified pursuant to this chapter. No person shall attempt or assist in any such action."
- (4) H&SC §43154(a) currently states, "Any person who violates any provision of this article shall be liable for a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action." At the time of the alleged violations, H&SC §43154(a) stated, "Any person who violates any provision of

this article shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle.”

- (5) California Vehicle Code (VC) §27156(c) states, “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.” Although the vehicles at issue are off-highway vehicles, this VC section was referenced by CARB in the NOV.
- (6) VC §38391 states, “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.” This VC section was not cited by CARB in the NOV, but is included by CARB in this Agreement. VC §38391 applies to off-road motor vehicle pollution control devices or systems.
- (7) Article 3, Chapter 9, Division 3 of Title 13 of the California Code of Regulations (CCR) states that “This article applies to all new off-highway recreational vehicles and engines manufactured for use in such vehicles produced on or after January 1, 1997, for sale, lease, use, and introduction into commerce in California.” [§2410(a)(1)]. It further states that “This article includes provisions for certification, labeling requirements, emission standard enforcement, recall, and use restrictions.” [§2410(c)].
- (8) On February 23, 2016, CARB Enforcement Staff along with California Department of Parks and Recreation (PARKS) Staff visited SUN BUGGIE’s facility located at 54 Saratoga, Grover Beach, California. CARB alleges that its staff inspected a portion of SUN BUGGIE’s available rental fleet, taking photos and documenting rental vehicles.
- (9) On July 28, 2016, SUN BUGGIE representatives met with CARB Enforcement and PARKS Staff. CARB provided SUN BUGGIE with hardcopies of the CARB “Certification Program Overview” and the CARB presentation entitled “Sand Car Emissions Certification” dated October 24, 2006.
- (10) On July 28, 2016, CARB issued SUN BUGGIE Notice to Correct (NTC) #5401 for eleven (11) vehicles that did not have a CARB Executive Order (EO). The NTC required SUN BUGGIE to submit proof of correction within fourteen (14) days.¹ On July 28, 2016, CARB extended this proof of correction deadline to

¹The eleven (11) vehicles referred to in this Settlement Agreement bear Vehicle Identification Numbers CA957520, CA978667, CA972266, CA977817, OHVNV000499, OHVNV000517, OHVNV000490, OHVNV000494, OHVNV000502, OHVNV000489, and OHVNV000488

sixty (60) days. During that time, SUN BUGGIE provided a letter dated August 23, 2016, stating that the vehicles had been removed from service. SUN BUGGIE did not proffer documentation demonstrating that steps were being undertaken to become a vehicle manufacturer to obtain vehicle CARB EOs for the vehicles listed in the NTC.

- (11) During the month of October 2016, CARB mailed SUN BUGGIE Notice of Violation VES-2016-057 (NOV) alleging violations for the same eleven (11) uncertified vehicles as identified in the NTC. The NOV requires that the vehicles be removed from California.
- (12) CARB alleges SUN BUGGIE introduced into California for sale, rent, lease, use, and introduction into commerce in California; eleven (11) vehicles that do not have a CARB EO for use, registration, leasing or rental in California pursuant to Article 1.5 of Chapter 2, Part 5, Division 26 of H&SC. To date, SUN BUGGIE does not have a vehicle CARB EO for the eleven (11) vehicles which CARB alleges are in violation of H&SC §§43151-43153, Vehicle Code §§ §27156(c) 38391, and CCR title 13, §2410 et seq.
- (13) SUN BUGGIE has denied and continues to deny CARB's allegations, legal interpretations, claims, and alleged violations as set forth herein and any liability for said allegations, claims and alleged violations.
- (14) SUN BUGGIE and CARB are willing to enter into this Agreement solely for the purpose of settlement and resolution of the allegations, claims, and alleged violations set forth herein. CARB accepts this Agreement in termination and full settlement of the allegations, claims, and violations identified herein. Accordingly, SUN BUGGIE and CARB agree to resolve the allegations, claims, and violations alleged herein completely by means of this Agreement, without the allegations, legal interpretations, claims and alleged violations being adjudicated before a Court with jurisdiction over such matters. No provisions of this Agreement shall be construed as an admission of any wrongdoing or violation of any statute, regulation, ordinance, order or legal requirement by SUN BUGGIE.

TERMS AND RELEASE

In consideration of CARB not filing a legal action against SUN BUGGIE for the allegations, claims, and violations referred to above and in the NTC and NOV, and in consideration of the terms set forth below, CARB and SUN BUGGIE agree as follows:

- (1) Within one hundred twenty (120) days after execution of this Agreement by both parties, SUN BUGGIE shall make full payment of penalties in the sum of fifty-five thousand dollars (\$55,000) as follows:

Payment Due Date:	In the Amount of and Payable to:	
Within 60 Days of Settlement Execution	\$27,500	Air Pollution Control Fund
Within 90 Days of Settlement Execution	\$13,750	Air Pollution Control Fund
Within 120 Days of Settlement Execution	\$13,750	Air Pollution Control Fund

The signed Agreement and any future mailings or documents required per the terms of this Agreement shall be mailed to:

To CARB

**Erin Blanton, Air Pollution Specialist
California Air Resources Board, Enforcement Division
8340 Ferguson Avenue
Sacramento, CA 95828
erin.blanton@arb.ca.gov
(916) 229-0552**

With a copy to:

**Jeremiah Bearden
California Air Resources Board, Enforcement Division
8340 Ferguson Avenue
Sacramento, CA 95828
jeremiah.bearden@arb.gov
(916) 229-0877**

To SUN BUGGIE

**Randolph Jordan
Sun Buggie Fun Rentals
6925 Speedway Blvd, Suite C-106
Las Vegas, NV 89115**

With a copy to:

**Charo Bolanos
11001 SW 124th Street
Miami, FL 33176**

Please submit payment with the attached "**Settlement Agreement Payment Transmittal Form**" (**Attachment A**) and send to:

Certified or Cashier's Checks:

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

Wire Transfers:

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: Asha Sharma Fax: (916) 322-9612
Reference: CARB Case # MSES-016-043

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

Notification of each wire transfer shall be provided to:

Erin Blanton
California Air Resources Board
Enforcement Division
Erin.Blanton@arb.ca.gov
(916) 229-0552

- (2) Effect of Untimely Payment. If a payment or payment installment is not made within ten (10) business days of the date specified above without first obtaining written permission from CARB Enforcement, the entire remaining balance, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.
- (3) This Agreement is limited to the allegations, claims, and violations described above, as well as those set forth in NTC #5401 and NOV VES-2016-057. This Agreement does not release liability for any alleged claims or violations not identified or alleged herein, or any claims or violations based on allegations other than those identified herein.

- (4) If the Attorney General files and is the prevailing party in a civil action to enforce this Agreement, SUN BUGGIE shall pay all reasonable costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (5) It is agreed that if SUN BUGGIE at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving SUN BUGGIE, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against SUN BUGGIE, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of SUN BUGGIE's properties, or if any deposit account or other property of SUN BUGGIE be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or SUN BUGGIE takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
- (6) SUN BUGGIE shall not import, acquire, use, register, sell, offer for sale, lease, offer for lease, rent, offer for rent, or introduce into commerce in California any motor vehicle or engine in violation of California Code of Regulations, title 13, §2410 *et seq.*; VC §§ 38391 or 27156(c); or Part 5, Division 26 of H&SC.
- (7) This Agreement shall apply to and be binding upon SUN BUGGIE and its principals, officers, directors, agents, dealers, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (8) In consideration of the payment by SUN BUGGIE in the amount of Fifty Five Thousand Dollars (\$55,000) to the California Air Pollution Control Fund, CARB hereby releases SUN BUGGIE and its principals, officers, directors, agents, dealers, subsidiaries, predecessors, and successors from the claims CARB may have based upon the events described in Recital paragraphs 8-12 above. The undersigned represent that they have the authority to enter this Agreement.
- (9) Notwithstanding any other provision of this Agreement, including Terms and Release paragraph 6, SUN BUGGIE may import, deliver, receive, use, register, lease, offer for lease, rent, or offer for rent, in California the eleven (11) vehicles that were the subject of NTC #5401 and NOV VES 2016-057,² provided that either, (A) the vehicle contains any engine that has a CARB EO, or (B) the vehicle has a vehicle CARB EO. Either an engine CARB EO or a vehicle

² See vehicles referenced in footnote 1.

CARB EO shall satisfy the criteria under Terms and Release paragraphs 9 and 10 of the Settlement Agreement for SUN BUGGIE to import, deliver, receive, use, register, lease, offer for lease, rent, or offer for rent, in California each and any of said eleven (11) vehicles. SUN BUGGIE shall provide written notification (herein "Inspection Notice") to CARB of SUN BUGGIE's plan to use, register, lease, offer for lease, rent, or offer for rent, said eleven (11) vehicles in California. Prior to the use, registration, lease, offer for lease, rent, or offer for rent of said eleven (11) vehicles in California, SUN BUGGIE will make said vehicles available for CARB to inspect, document, photograph and confirm that the vehicles have either an engine with a CARB EO or a vehicle CARB EO. Said inspection shall take place on a mutually agreeable date within thirty (30) days after the Inspection Notice is provided to CARB, at CARB's Vehicle Enforcement Branch, 9528 Telstar Avenue, El Monte, California.

(10) It is hereby acknowledged by SUN BUGGIE that the future use in California of the eleven (11) vehicles provided for under Terms and Release paragraphs 9 and 10 of this Agreement is for purposes of settlement only, and applies only to the specific eleven (11) vehicles that were the subject of NTC #5401 and NOV VES 2016-057; it does not extend to any other vehicles that are not in full compliance with the applicable certification requirements, including any applicable vehicle CARB EO requirements. Any material failure on SUN BUGGIE's part to satisfy the terms of this Agreement shall render Terms and Release paragraph 9 of this Agreement inapplicable, and the eleven (11) vehicles referenced above shall immediately be removed from use in California. Furthermore, if SUN BUGGIE offers for sale, introduces into commerce, imports, delivers, purchases, rents, leases, acquires, or receives in this state any new vehicles lacking the applicable CARB EO other than the eleven (11) vehicles referenced above, then this provision shall no longer be applicable, and the eleven (11) vehicles referenced above shall immediately be removed from use in California.

(11) This Agreement constitutes the entire agreement and understanding between CARB and SUN BUGGIE concerning the alleged claims, violations, 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 SUN BUGGIE concerning these alleged claims and violations.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) This Agreement may be executed by facsimile and in counterparts by the Parties and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.

(19) Senate Bill 1402 (Dutton, chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (see H&SC §§ 39619.7, 43023, and 43024). This information is provided throughout this Agreement and summarized below. CARB alleges the following as set forth below in Terms and Release paragraphs 19-22 of this Agreement, inclusive:

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 H&SC §43024. The per-vehicle penalty in this case is a maximum of \$5,000 per vehicle per strict liability violation. The penalty obtained in this case is five thousand dollars (\$5,000) per vehicle for eleven (11) vehicles, for a total of Fifty Five Thousand Dollars (\$55,000.) The penalty is significant because SUN BUGGIE did not submit requested

documentation, and did not cooperate with the investigation.

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

The penalty provision being applied in this case is H&SC §43154 because SUN BUGGIE brought uncertified vehicles into California commerce, in violation of H&SC §§43151-43153 and VC §38391 and imported, acquired, delivered, used, registered, sold, offered for sale, leased, offered for lease, rented, offered for rent, or registered an uncertified vehicle as described above.

Is the penalty 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. However, since the vehicles were not certified, and as such all emissions attributable to them are illegal and excess, but quantifying them is not practicable because the information required to do so is unavailable.

(20) CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB has considered all relevant facts, including those listed at H&SC §43024, has explained the manner in which the penalty amount was calculated, 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.

(21) 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 cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(22) The penalty was also based on confidential business information provided by SUN BUGGIE that is not retained by CARB in the ordinary course of business. The penalty was also based on confidential settlement communications between CARB and SUN BUGGIE that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's-length negotiation between CARB and SUN BUGGIE and reflects CARB's assessment of the relative strength of its case against SUN BUGGIE, the desire to avoid the uncertainty, burden, and expense of litigation, to obtain swift compliance with the

law, and to remove any unfair advantage that SUN BUGGIE may have secured from its actions.

(23) SUN BUGGIE agrees, as a condition of this Agreement, that it will not challenge CARB's compliance with SB 1402 in determining the penalties in this case, or in any other aspect of entering into this Agreement.

(24) This SETTLEMENT AGREEMENT AND RELEASE becomes effective on the date both PARTIES sign below.

California Air Resources Board

By: _____ /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: 3/26/2019

SUN BUGGIE

By: _____ /S/

Name: Randolph Jordan

Title: SUN BUGGIE OFFICER

Date: 3/23/2019