

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 "ARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and Enterprise Holdings, Inc. with its principal place of business at 600 Corporate Park Drive, St. Louis, MO 63105, on behalf of itself and its subsidiaries operating in the state of California (hereinafter collectively "Enterprise").

RECITALS

1. California Health and Safety Code (HSC) section 43151(a) states, "No person who is a resident of, or 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. Health and Safety Code section 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, a 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. Health and Safety Code section 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 or 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. Health and Safety Code section 43154(a) states, "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. ARB has concluded that over the last three years Enterprise had rented from its Burbank location for other California Enterprise destinations certain vehicles that

had not been certified for sale in California, with less than 7,500 miles on the odometer at the time of rental. With the full cooperation of Enterprise, ARB has further investigated this matter and concluded that Enterprise has rented 140 non-California certified vehicles from various California locations, which were dropped off at other California Enterprise destinations.

6. In the course of ARB's investigation, Enterprise provided ARB with information documenting that, notwithstanding having contracted with a vehicle seller to provide only California certified vehicles in neighboring Western region states, Enterprise subsequently discovered that the vehicle manufacturer had actually delivered to Enterprise non-California certified vehicles without Enterprise's knowledge or consent.
7. Enterprise took prompt action to correct the violations and prevent them from occurring in the future.
8. Enterprise is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

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

1. Enterprise shall pay the sum of five hundred and sixty thousand dollars (\$560,000.00) to the California Air Pollution Control Fund as a penalty. The full payment is due immediately and shall be payable as follows:

\$560,000.00 to the Air Pollution Control Fund

2. Please submit payment with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

3. It is agreed that if Enterprise at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving Enterprise, 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 Enterprise, or a trustee in bankruptcy, custodian, receiver or agent is

appointed or authorized to take charge of any of Enterprise's properties, or if any deposit account or other property of Enterprise be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or Enterprise takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

3. This Agreement shall apply to and be binding upon Enterprise and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. Now, therefore, in consideration of the payment by Enterprise to the California Air Pollution Control Fund in the amount specified above, ARB hereby releases Enterprise and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiaries and parent corporations, predecessors, affiliates, customers, end-users, and suppliers from any and all claims that ARB may have based on the facts and allegations described in recital paragraph 5, above. The undersigned represent that they have the authority to enter this Agreement.
5. This Agreement constitutes the entire agreement and understanding between ARB and Enterprise 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 ARB and Enterprise concerning these claims.
6. 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.
7. 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.
8. 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.
9. 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 to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
10. This Agreement may be executed in multiple counterparts, each of which shall be

deemed to be an original, and such counterparts together shall constitute one and the same agreement.

11. 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.
12. **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.
13. **SB 1402 Statement:** Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this settlement agreement, is summarized here.

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 Health and Safety Code section 43024.

The per-vehicle penalty authorized by statute in this case is a maximum of \$5,000 per unit per strict liability violation. The penalty obtained in this case is \$4,000 per vehicle for one hundred forty vehicles for a total of \$560,000. The penalty was reduced because this was an innocent, first time violation and because Enterprise cooperated fully with the investigation and implemented measures to prevent such violations in the future.

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 Health and Safety Code section 43154 because Enterprise rented non-California certified vehicles in California in violation of Health and Safety Code section 43151-43153 and Vehicle Code section 24007 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 for sale in California, emissions

attributable to them are illegal. 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.

14. Enterprise acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 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.
15. 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.
16. The penalty was also based on confidential business information provided by Enterprise that is not retained by ARB in the ordinary course of business. The penalty was also based on confidential settlement communications between ARB and Enterprise that ARB does not retain in the ordinary course of business either. The penalty is the product of an arms length negotiation between ARB and Enterprise and reflects ARB's assessment of the relative strength of its case against Enterprise, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Enterprise may have secured from its actions.
17. Enterprise represents that it understands the legal requirements applicable to introducing non-California certified vehicles into California.

California Air Resources Board

By: 

Name: Richard W. Corey

Title: Executive Officer

Date: 11/20/2014

Enterprise Holdings, Inc.

By: 

Name: Thomas P. Laffey

Title: Vice President & General Counsel

Date: 10/23/14