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8 The State Air Resources Board

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF PLACER

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13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA ex rel. THE STATE AIR**
15 **RESOURCES BOARD,**

16 Plaintiff,

17 v.

18 **FORESTHILL MOTOR SPORTS, LLC;**
19 **WENDY LOWERY; LEIF LOWERY;**
20 **SHANNON SANDBANK; WILLIAM**
21 **SANDBANK and DOES 1-20, inclusive,,**

22 Defendants.

Case No. SVC0028389

**NOTICE OF ENTRY OF JUDGMENT
PURSUANT TO STIPULATION**

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 Please take notice that on October 27, 2011, the Court entered judgment in this matter in the form
25 attached and incorporated herein by reference.
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Dated: November 1, 2011

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
DENISE FERKICH HOFFMAN
Supervising Deputy Attorney General



TERI H. ASHBY
Deputy Attorney General
*Attorneys for People of the State of
California ex rel. The State Air Resources
Board*

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8 The State Air Resources Board

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT 27 2011

EXECUTIVE OFFICER & CLERK
By T. Ducharme Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF PLACER

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13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA ex rel. THE STATE AIR**
15 **RESOURCES BOARD,**

Plaintiff,

16 v.

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18 **FORESTHILL MOTOR SPORTS, LLC;**
19 **WENDY LOWERY; LEIF LOWERY;**
20 **SHANNON SANDBANK; WILLIAM**
21 **SANDBANK and DOES 1-20, inclusive,,**

Defendants.

Case No. SVC0028389

**[PROPOSED] JUDGMENT PURSUANT
TO STIPULATION**

Judge: None Assigned
Civil Trial Conf.: Nov. 18, 2011
Man. Settlement Conf.: Nov. 4, 2011
Trial Date: December 5, 2011

Action Filed: December 14, 2010

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24 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. THE CALIFORNIA
25 AIR RESOURCES BOARD (plaintiff), and Defendants Foresthill Motor Sports, LLC, Wendy
26 Lowery, and Leif Lowery stipulate that a Judgment in the terms set forth in the attached Judgment
27 may and should be entered in this matter. The parties have settled on these terms following good
28 faith negotiations and with the desire to avoid further litigation.

JUDGMENT

1
2 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. THE CALIFORNIA
3 AIR RESOURCES BOARD (Plaintiff), and Defendants Foresthill Motor Sports, LLC, Wendy
4 Lowery and Leif Lowery, having stipulated to entry of this judgment (Judgment), and good cause
5 appearing for approval of said stipulation:

6 IT IS HEREBY ORDERED that Judgment is awarded in favor of Plaintiff as set forth
7 below.

8 **1. PERMANENT INJUNCTION**

9 Defendants and their agents, servants, employees, representatives, and each of them are
10 permanently enjoined from and ordered:

11 (i) Not to import, deliver, purchase, rent, lease, acquire, or receive a new motor vehicle,
12 new motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration,
13 or resale in California unless such motor vehicle engine or motor vehicle has been certified under
14 an Executive Order of the California Air Resources Board pursuant to the Health and Safety
15 Code, Division 26, Part 5, Chapters 1 and 2 (Executive Order).

16 (ii) Not to sell, or offer to sell, to an ultimate purchaser who is a resident of or doing
17 business in California any new motor vehicle, new motor vehicle engine, or vehicle with a new
18 motor vehicle engine, which is intended primarily for use or for registration in California and
19 which has not been certified under an Executive Order.

20 (iii) Not to attempt or assist in any action prohibited under (i) or (ii), immediately above.
21 The words attempt or assist for purposes of this section shall include (a) representing to any
22 person or business entity, or to any government agency, that any new motor vehicle, new motor
23 vehicle engine, or vehicle with a new motor vehicle engine, which has not been certified under an
24 Executive Order, is so certified, or is legal for use, registration, or resale in California, or (b)
25 preparing, using, or distributing any writing to any person or business entity, or to any
26 government agency stating that any new motor vehicle, new motor vehicle engine, or vehicle with
27 a new motor vehicle engine, which has not been certified under an Executive Order, is so
28 certified, or is legal for use, registration, or resale in California.

1 No provision of the injunction shall bar Plaintiffs from seeking other judicial remedies
2 (including penalties or injunctive relief) as to future violations.

3 2. PENALTIES

4 Defendants, jointly and severally, are subject to a total penalty of One Hundred Fifty-five
5 Thousand dollars (\$155,000) under Health and Safety Code section 43154.

6 (i) Enforcement of the Judgment as to the payment of One Hundred Forty-five
7 Thousand dollars (\$145,000) of the total penalty amount shall be stayed (Stayed Penalty Amount)
8 for a period of five years after final payment of Ten Thousand dollars (\$10,000) as long as the
9 following conditions are met: a) the Defendants, or any of them do not willfully or intentionally
10 violate the permanent injunction; and (b) the Defendants, or any of them do not violate the
11 payment conditions for payment of Ten Thousand dollars (\$10,000) of the total civil penalty as
12 set forth below.

13 (ii) Defendant shall pay Plaintiff the sum of Ten Thousand dollars (\$10,000) in
14 penalty payments in monthly and lump sum payments over a two year period as follows:

15 (a) A first monthly payment of Two Hundred, Ten dollars (\$210) shall be made within 10
16 days of Plaintiff giving notice to Defendants of the entry of this Judgment.

17 (b) Twenty-three subsequent payments of Two Hundred, Ten dollars (\$210) each shall be
18 made monthly (within 30 days) following the previous payment.

19 (c) At the end of the first year, (twelve (12) months from the date of entry of this
20 Judgment), Defendants shall pay Plaintiff a lump sum of Two Thousand, Five Hundred dollars
21 (\$2,500).

22 (d) At the end of the second year, (twenty-four (24) months from the date of entry of this
23 Judgment), Defendants shall pay Plaintiff a lump sum of Two Thousand, Four Hundred Sixty
24 dollars (\$2460).

25 (e) Defendants can make and Plaintiff shall accept early payments which shall be applied
26 first to the lump sum payments and then to the monthly payments.

27 (iii) All penalty payments shall be made payable to the "California Air Pollution Control
28 Fund." All payments and documents shall be sent to the attention of:

1 Kerry Albert
2 Air Resources Board, Enforcement Division
3 1001 I Street
4 Sacramento, California 95814

5 (iv.) After payment by Defendants of the sums as called for in (ii) above and upon the
6 expiration of five years from the date of the last payment without Plaintiff commencing action as
7 provided in 4(B) below for violation of the permanent injunction, the Stayed Penalty Amount
8 shall be finally satisfied and be of no further force or effect.

9 **3. RETAINED JURISDICTION**

10 The Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 to
11 enforce this settlement and Judgment including but not limited to determining that any violation
12 of the payment provisions of this judgment has occurred or to determine pursuant to noticed
13 motion that any alleged violations of the permanent injunction has occurred, whether the stay on
14 enforcement of the Stayed Penalty amount shall be set aside or lifted as to Defendants, and
15 whether to order the Defendants to pay the entire Judgment of One Hundred, Fifty-five Thousand
16 dollars (\$155,000) within thirty (30) days following the order less credit for any monies already
17 received pursuant to this Judgment.

18 **4. ENFORCEMENT**

19 **A. Failure to Make Payments**

20 (i) If Defendants fail to timely make any of the monthly or lump sum payments in Section
21 2.(ii) in full, then Plaintiff or its counsel shall give notice by electronic mail and by U.S. mail to
22 the Defendants at the following street addresses:

23 Wendy Lowery
24 E-mail: leif@ftcnet.net
25 PO Box 46
26 Foresthill, CA 95631

27 And

28 Leif Lowery
E-mail: 'leif@ftcnet.net'
P.O. Box 46
Foresthill, CA 95631

1 Defendants shall have ten (10) calendar days from the date of said notice to cure the violation and
2 make the payment (Cure Period). There will be no further notices required. Defendants shall
3 provide timely, written notification to Plaintiff whenever Defendants' foregoing contact
4 information changes. If Defendants fail to provide Plaintiff with such notification, any notice by
5 Plaintiff to Defendant at the foregoing address shall constitute sufficient notice.

6 (ii) If Defendants fail to pay the full amount within the Cure Period, then Plaintiff or its
7 counsel may make an ex parte application, without further notice, to the Court seeking to lift or
8 set aside the stay on the Stayed Penalty Amount and to order the Defendants to pay the entire
9 Judgment of One Hundred, Fifty-five Thousand dollars (\$155,000) within thirty (30) days
10 following the order, less credit for any monies already received by Plaintiff pursuant to this
11 Judgment.

12 (iii) If the Attorney General's Office files a civil action to enforce this Judgment,
13 Defendants, and each of them, shall pay all costs of investigation and prosecuting the action,
14 including expert fees, reasonable attorney's fees and costs.

15 **B. Failure to Comply With Injunction**

16 (i) If Plaintiff believes that any willful or intentional violation of the permanent injunction
17 has taken place before the Ten Thousand dollars (\$10,000) has been paid or within five years of
18 payment in full of the Ten Thousand dollars (\$10,000), then Plaintiff or its counsel shall meet and
19 confer with the Defendants in an attempt to resolve any dispute without Court intervention.

20 (ii) If Defendants fail to meet and confer with Plaintiff or its counsel and the willful or
21 intentional violation of the permanent injunction has taken place before the Ten Thousand dollars
22 (\$10,000) has been paid or within five years of payment in full of the Ten Thousand dollars
23 (\$10,000) then Plaintiff may bring a regularly noticed motion seeking to lift or set aside the stay
24 on the Stayed Penalty Amount and to order Defendants to pay the entire Judgment of One
25 Hundred, Fifty-five Thousand dollars (\$155,000) within thirty (30) days following the order, less
26 credit for any monies already received by Plaintiff pursuant to this Judgment.

27 (iii) If after the meet and confer takes place the Plaintiff believes that a willful or
28 intentional violation of the injunction has not been resolved, Plaintiff may bring a regularly

1 noticed motion seeking to lift or set aside the stay on the Stayed Penalty Amount and to order
2 Defendants to pay the entire Judgment of One Hundred, Fifty-five Thousand dollars (\$155,000)
3 within thirty (30) days following the order, less credit for any monies already received by
4 Plaintiff pursuant to this Judgment.

5 (iv) If the Court determines that any willful or intentional violation(s) of the permanent
6 injunction has occurred before the Ten Thousand dollars (\$10,000) has been paid or within five
7 years of payment in full of the Ten Thousand dollars (\$10,000), the Court shall lift or set aside the
8 stay on the Stayed Penalty Amount and order Defendants to pay the entire Judgment of One
9 Hundred, Fifty-five Thousand dollars (\$155,000) within thirty (30) days following the order, less
10 credit for any monies already received by Plaintiff pursuant to this Judgment. For purposes of the
11 Stipulated Judgment, the parties agree that criteria for determining whether a willful or intentional
12 violation has occurred shall include:

- 13 1. whether the model vehicle at issue was previously cited by the Air Resources Board;
- 14 2. the number of vehicles acquired, received, imported, offered for sale, or sold;
- 15 3. the procedures taken by Defendants to prevent violations of the permanent injunction;
- 16 4. whether Defendants knowingly misrepresented or advertised the vehicles or engines as
17 certified or legal for sale in California;
- 18 5. the extent of dissemination or any representation or advertisement that claims or
19 implies that the vehicles or engines are certified or legal for sale in California;
- 20 6. Defendants' misrepresentations as to other matters related to the vehicles or engines;
- 21 and
- 22 7. any other factor the court determines relevant in evaluating whether the violation was
23 willful or intentional.

24 (v.) If Plaintiff believes that any willful or intentional violation of the permanent
25 injunction has taken place after five years following payment in full of the Ten Thousand dollars
26 (\$10,000), then Plaintiff or its counsel shall meet and confer with the Defendants in an attempt to
27 resolve any dispute without Court intervention.

28 (vi.) If Defendants fail to meet and confer or if after the meet and confer takes place the

1 Plaintiff believes that a willful or intentional violation of the injunction occurring after five years
2 following payment in full of the Ten Thousand dollars (\$10,000) has not been resolved, Plaintiff
3 may bring a regularly noticed motion seeking an order that Defendants have violated the
4 permanent injunction and are entitled to the maximum penalties provided by statute for each
5 violation of the permanent injunction according to proof. For purposes of the Stipulated
6 Judgment, the parties agree that criteria for determining whether a willful or intentional violation
7 has occurred shall include:

- 8 1. whether the model vehicle at issue was previously cited by the Air Resources Board;
- 9 2. the number of vehicles acquired, received, imported, offered for sale, or sold;
- 10
- 11 3. the procedures taken by Defendants to prevent violations of the permanent injunction;
- 12 4. whether Defendants knowingly misrepresented or advertised the vehicles or engines as
13 certified or legal for sale in California;
- 14 5. the extent of dissemination or any representation or advertisement that claims or
15 implies that the vehicles or engines are certified or legal for sale in California;
- 16 6. Defendants' misrepresentations as to other matters related to the vehicles or engines;
- 17 and
- 18 7. any other factor the court determines relevant in evaluating whether the violation was
19 willful or intentional.

20 **C. Effect of Bankruptcy**

21 It is agreed that the penalty described in paragraph 2, above is punitive in nature, rather
22 than compensatory. Furthermore, the penalty is intended to deter and punish defendants for
23 violations of state environmental statutes, and this penalty is payable to and for the benefit of Air
24 Resources Board, a governmental unit. Therefore, it is agreed that this penalty imposed on
25 Defendants by the Air Resources Board arising from the facts described in the complaint are
26 nondischargeable under 11 U.S.C. § 523 (a)(7), which provides an exception from discharge for
27 any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of
28 governmental unit, and is not compensation for actual pecuniary loss, other than certain types of

1 tax penalties.

2 D. COMPUTATION OF TIME

3 If the last day for the performance of any act provided or required by this Judgment falls
4 on a weekend or holiday, then that period is extended to the next business day. "Holiday" means
5 all holidays specified in Code of Civil Procedure section 135, and to the extent provided in Code
6 of Civil Procedure section 12b, all days that by terms of section 12b are required to be considered
7 as holidays.

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10 **IT IS SO ORDERED ADJUDGED AND DECREED.**

11 Dated: OCT 27 2011, 2011.

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13 **Alan V. Pineschi**

14 By: _____
15 **Judge of the Superior Court**
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Air Resources Board v. Foresthill Motor Sports et al.**

Placer Superior Court Case No. SVC0028389

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On November 1, 2011, I served the attached **NOTICE OF ENTRY OF JUDGMENT PURSUANT TO STIPULATION** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Rick R. Rothman, Esq.
Bingham McCutchen - Los Angeles
355 South Grand Avenue, Ste. 4400
Los Angeles, CA 90071-3106

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 1, 2011, at Sacramento, California.

Robyn Baldwin
Declarant

Robyn Baldwin
Signature