

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into between the California Air Resources Board ("ARB"), with its principal office at 1001 I Street, Sacramento, California 95814, and Cody Motorsports, Inc., DBA, Wilson's Motorcycles ("WILSON'S MOTORCYCLES"), with its principal place of business at 2436 Foundry Park Avenue, Fresno, California 93706.

I. RECITALS

- (1) California Health and Safety Code section 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) 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, 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, 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 sections 39018 and 39019 define a motor vehicle as non-California certified if it does not possess an emission control system approved for use in California by ARB. California Health and Safety Code section 39042 and 43156 define a new motor vehicle as a vehicle that has an odometer reading of less than 7,500 miles.
- (5) Pursuant to Health and Safety Code section 43154, any person who violates any provision of this part, shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000) per vehicle.
- (6) Prior to November 2010, WILSON'S MOTORCYCLES removed the emission control devices from a new Aprilia motorcycle that was certified by ARB for use and sale in California.

The resulting motorcycle was thus uncertified. WILSON'S MOTORCYCLE offered for sale in California, and/or attempted or assisted in such actions, a new Aprilia motorcycle (the "subject vehicle") with under 7,500 odometer miles for use or registration in California that was not certified for sale or use in California pursuant to Chapter 2 of Part 5 of Division 26 of the Health and Safety Code in that the subject vehicle was not certified by ARB as meeting California emissions standards and that said actions on the part of WILSON'S MOTORCYCLES were unlawful and in violation of Health and Safety Code sections 43151-43153.

(7) ARB contends that if the allegations described in recital paragraphs (1) through (6) hereinabove were proven, penalties could be imposed against WILSON'S MOTORCYCLES pursuant to Health and Safety Code section 43154 for each and every violation alleged.

(8) WILSON'S MOTORCYCLES fully cooperated with ARB in the investigation of offers and sales of Aprilia motorcycles to California customers.

(9) At its own expenses, WILSON'S MOTORCYCLES restored the subject vehicle to its original, certified condition.

(10) WILSON'S MOTORCYCLES admits the facts as alleged in recital paragraphs (1) through (6) above.

(11) WILSON'S MOTORCYCLES 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.

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against WILSON'S MOTORCYCLES for the alleged violations referred to above, ARB and WILSON'S MOTORCYCLES agree as follows:

(1) As a condition of this Settlement Agreement, WILSON'S MOTORCYCLES and Cody Motorsports, Inc., jointly and severally, has paid the total sum of two thousand five hundred dollars (\$2,500.00) as a penalty to the California Air Pollution Control Fund.

(2) WILSON'S MOTORCYCLES shall not violate Health and Safety Code section 43150 *et seq.* with respect to the importation, delivery, purchase, rental, lease, acquisition, or receipt of any new (defined as less than 7,500 odometer miles) motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine for sale, use, or registration in California unless such motor vehicle engine or motor vehicle has been certified by ARB.

(3) This Agreement shall apply to and be binding upon WILSON'S MOTORCYCLES and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, 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 on behalf of WILSON'S MOTORCYCLES in the amount of two thousand five hundred dollars (\$2,500.00) payable to the California Air Pollution Control Fund, ARB hereby releases WILSON'S MOTORCYCLES and its principals, officers, agents, employees, shareholders, dealers, distributors, subsidiaries, predecessors and successors from any and all claims for past violations of Health and Safety Code section 43150 *et seq.* ARB may have based on the events described in paragraphs (1) - (6) of the Recitals. However, this Agreement shall not be construed to release Aprilia, Inc. or Piaggio Group Americas, Inc. based on any of the facts alleged in this Agreement. The undersigned represent that they have the authority to enter this Agreement.

(5) This Agreement constitutes the entire agreement and understanding between ARB and WILSON'S MOTORCYCLES 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 WILSON'S MOTORCYCLES 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.

(10) 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.

(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) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB to provide information on the basis for the penalties it seeks. This required 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 unit penalty in this case is a maximum of \$5000 per unit per strict liability violation. The penalty obtained in this case is \$2,500.00 per unit for approximately 1 unit. This reflects the facts that the one unit was restored to its original, certified configuration, resulting in a per unit penalty of \$2,500; this was an unintentional, first time violation; WILSON'S MOTORCYCLES's unusually diligent efforts to comply and to cooperate with the investigation; and the impact of current economic conditions on the cost of purchasing and restoring the motorcycles and the resulting impact on margins in the industry.

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

ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43154, is appropriate because WILSON'S MOTORCYCLES allegedly acquired, and/or offered for sale the subject vehicle that was not certified by ARB.

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. 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. There are no testing results available that would indicate how much emissions increased as a result of removal of the emission control devices. However, since the reconfigured vehicle was not certified for sale in California, emissions attributable to it are illegal. The parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

(13) WILSON'S MOTORCYCLES 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 Health and Safety Code section 43024, has explained the manner in which the

penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), 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.

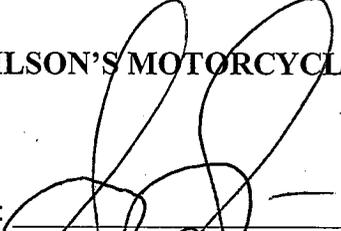
(14) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty was discounted in this matter based on the fact that this was an innocent, first time violation and because WILSON'S MOTORCYCLES made unusually diligent efforts to comply and to cooperate with the ARB's investigation, including restoring the one motorcycle to its original, certified configuration. Penalties in future cases might be smaller or larger on a per unit basis.

(15) The penalty in this case was based in part on confidential business information provided by WILSON'S MOTORCYCLES that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and WILSON'S MOTORCYCLES that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against WILSON'S MOTORCYCLES, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that WILSON'S MOTORCYCLES may have secured from its actions.

California Air Resources Board

By: 
Name: James Ryden
Title: Enforcement Division Chief
Date: 7/20/11

WILSON'S MOTORCYCLES

By: 
Name: Gary Georges
Title: Vice President
Date: July 15, 2011