

<p align="center">FILED CLERK, U.S. DISTRICT COURT</p> <p align="center">Dec 19, 2016</p> <p align="center">CENTRAL DISTRICT OF CALIFORNIA BY: <u>PMC</u> DEPUTY</p>

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GOLDENVALE, INC.,

Defendant.

Civil No. 5:16-CV-00443-SVW


**~~PROPOSED~~ ORDER
ON STIPULATION
AND SETTLEMENT**

Note Changes Made by Court

Plaintiff United States of America and Defendant Goldenvale, Inc., entered into a Stipulation and Settlement (“Stipulation”) of this action which was filed with the Court on September 19, 2016 [Dkt. # 21-1]. Pursuant to paragraph 8 of the Stipulation, the Stipulation was made available to the public for comment for a period of not less than 30 days. The United States has advised the Court that it is prepared to proceed with the Stipulation.

Accordingly, for good cause shown, IT IS HEREBY ORDERED that the case is dismissed pursuant to the terms set forth in the Stipulation.

DATED: December 19, 2016.



STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

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3 Environment and Natural Resources Division
4 Environmental Enforcement Section
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25 **UNITED STATES DISTRICT COURT**

26 **CENTRAL DISTRICT OF CALIFORNIA**

27 UNITED STATES OF AMERICA,)
28)
29 Plaintiff,)
30) Civil No. 5:16-CV-00443-SVW (SPx)
31 v.)
32)
33 GOLDENVALE, INC.,) **STIPULATION and**
34) **SETTLEMENT AGREEMENT**
35 Defendant.)
36)

1 WHEREAS, Plaintiff United States of America, on behalf of the United
2 States Environmental Protection Agency (“EPA”), filed a complaint in this action
3 (“Complaint”) alleging that Defendant Goldenvale, Inc. (“Defendant”) violated
4 Sections 203(a) and 213(d) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7522(a) and
5 7547(d), and the regulations promulgated thereunder, in connection with the
6 importation into the United States of recreational vehicles and highway
7 motorcycles from March 2007 to January 2009.

8 WHEREAS, Defendant asserts that it has not imported any recreational
9 vehicles or highway motorcycles subject to regulation under the Act since
10 February 2009.

11 WHEREAS, Defendant does not admit any liability to the United States
12 arising out of the transactions or occurrences alleged in the Complaint.

13 WHEREAS, the United States has reviewed Financial Information regarding
14 Defendant and has determined that Defendant has a limited ability to pay a civil
15 penalty in this matter. “Financial Information” as used in this paragraph means the
16 tax returns, balance sheets, financial statements, and bank records that Defendant
17 submitted to the United States prior to May 1, 2016.

18 WHEREAS, the United States and the Defendant (the “Parties”) agree that
19 settlement of the United States’ claims against Defendant, without further
20 litigation, is in the public interest.

21 WHEREAS, the Parties further agree that the Court’s approval of this
22 Stipulation is an appropriate means of resolving the claims in this action.

23 NOW THEREFORE, before the taking of any testimony, without
24 adjudication or admission of any issue of fact or law, except as provided in
25 Paragraph 1, below, as the Parties agree as follows:
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1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 205(b) of the Act, 42 U.S.C. § 7524(b). Venue is proper in this district under Section 205(b) of the Act, 42 U.S.C. § 7524(b), and 28 U.S.C. §§ 1391 and 1395(a). Defendant waives any and all objections it may have to the Court’s jurisdiction for purposes of this Stipulation, and agrees to be bound by this Stipulation.

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2. The effective date of this Stipulation (“Effective Date”) is the date upon which the Court enters an Order approving this Stipulation.

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3. **Civil Penalty.**

a. Defendant shall pay \$150,000 as a civil penalty. The payment shall be made within 30 days after the Effective Date.

b. Defendant shall make payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Central District of California (“FLU”). The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Stipulation. The FLU shall provide the payment instructions to Defendant’s representative in accordance with Paragraph 8.

c. At the time of payment, Defendant shall send notice that payment has been made to EPA and the Department of Justice (“DOJ”) in accordance with Paragraph 8, and to the EPA Cincinnati Finance

1 Office by email at acctsreceivable.cinwd@epa.gov or by mail in
2 accordance with Paragraph 8. Such notice shall reference the CDCS
3 Number and DOJ Reference Number 90-5-2-1-10415 (the “DJ
4 Number”).
5

6 **4. Certifications.**

- 7 a. Defendant hereby certifies, to the best of its knowledge and belief,
8 after thorough inquiry, (a) that it has submitted to the United States
9 Financial Information that fairly, accurately, and materially sets forth
10 its financial circumstances; (b) that those circumstances have not
11 materially changed between May 1, 2016 and the date that Defendant
12 signed this Stipulation; and (c) that it does not have any insurance
13 policies that may cover any payment of a civil penalty relating to this
14 matter.
15
- 16 b. Defendant hereby certifies that during the period from February 1,
17 2009 to May 1, 2016, it did not: (a) apply for or hold any “certificates
18 of conformity” under Section 203(a) of the Act, 42 U.S.C. § 7522(a)
19 (“COCs”); or (b) import into the United States any recreational
20 vehicles, highway motorcycles, or other vehicles or engines covered
21 by Title II of the Act (“Covered Vehicles and Engines”).
22

23 **5. Future Importation of Covered Vehicles and Engines.**

- 24 a. Defendant shall notify EPA at least six months before Defendant
25 applies for a COC or imports into the United States any Covered
26 Vehicles and Engines, for the purpose of negotiating a compliance
27 plan to be made enforceable through an amendment to this Stipulation
28 that has been approved by the Court.

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b. During the period from the Effective Date until the termination of this Stipulation, Defendant may not apply for a COC or import into the United States any Covered Vehicles and Engines, unless such importation is covered by a compliance plan that is made enforceable through an amendment to this Stipulation that has been approved by the Court.

c. Defendant shall submit semi-annual reports regarding whether Defendant has applied for any COCs or is importing into the United States any Covered Vehicles and Engines. Each report shall cover the preceding six months and shall be due by the end of the month following the second and fourth calendar quarters (*i.e.*, by July 31 and January 31). Each report shall be signed by an official of Defendant and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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2 **6. Stipulated Penalties and Interest.**

3 a. If Defendant violates Paragraph 3, Defendant shall pay to EPA, as a
4 stipulated penalty, \$500 for each day that such payment is late, plus an
5 additional sum for interest. The interest shall be calculated from the
6 date payment is due through the date of payment. For purposes of this
7 Paragraph “interest” means interest at the rate specified in 28 U.S.C.
8 § 1961 as of the Effective Date. The FLU shall send a calculation of
9 the Interest due to Defendant.

10 b. If Defendant violates Paragraph 5(b), Defendant shall pay to EPA, as
11 a stipulated penalty, \$10,000 for each vehicle, and \$2,000 for each
12 engine imported into the United States that is not covered by a
13 compliance plan that has been made enforceable through an
14 amendment to this Stipulation.

15
16 c. Defendant shall pay to EPA a stipulated penalty of \$250 for each day
17 that a semi-annual report due under Paragraph 5(c) is late.

18 d. Stipulated penalties are due and payable within 30 days after the date
19 of the demand for payment of the penalties by EPA. All payments
20 under this Paragraph shall be identified as “stipulated penalties” and
21 shall be made by Fedwire Electronic Funds Transfer to:

22 Federal Reserve Bank of New York
23 ABA = 021030004
24 Account = 68010727
25 SWIFT address = FRNYUS33
26 33 Liberty Street
27 New York NY 10045
28 Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

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- e. All payments under this Paragraph shall reference the CDCS Number and the DJ Number.
- f. At the time of payment, Defendant shall send notice that payment has been made for stipulated penalties to EPA and DOJ in accordance with Paragraph 8, and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov or by mail in accordance with Paragraph 8. Such notice shall reference the CDCS Number and the DJ Number.
- g. Notwithstanding any other provision of this Stipulation, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Stipulation. Payment of stipulated penalties shall not excuse Defendant from payment of the civil penalty as required by Paragraph 3.
- h. Payments made pursuant to this Paragraph shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendant's failure to comply with the requirements of this Stipulation.

7. If the United States brings an action to enforce this Stipulation, Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

8. **Notice.** Whenever, under the terms of this Stipulation, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in

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writing. Written notice as specified in this Paragraph shall constitute complete satisfaction of any written notice requirement of the Stipulation with respect to the United States, EPA, DOJ and Defendant, respectively.

As to DOJ:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ Case No.: 90-5-2-1-10415

As to EPA:
Meetu Kaul
Attorney-Advisor
Air Enforcement Division (2242A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

As to the EPA
Cincinnati Finance Office:
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

As to Defendant:
Bin Li
Bin Li & Associates
730 N. Diamond bar Blvd.
Diamond Bar, CA 91765
(909) 861-6880
info@libinlaw.com

9. Defendant shall not deduct any civil penalty paid pursuant to Paragraph 3 or any stipulated penalties paid pursuant to Paragraph 6 in calculating its federal income tax.

- 1 10. This Stipulation resolves the civil claims of the United States for the
2 violations alleged in the Complaint, through the date of lodging of this
3 Stipulation, as to the vehicles listed in the Appendix to the Complaint.
4
- 5 11. The United States reserves, and this Stipulation is without prejudice to, all
6 rights against Defendant with respect to all other matters not asserted by the
7 United States in the Complaint, including, but not limited to, any criminal
8 liability.
- 9 12. Notwithstanding any other provision of this Stipulation, the United States
10 reserves, and this Stipulation is without prejudice to, the right to reinstitute
11 or reopen this action, or to commence a new action seeking relief other than
12 as provided in this Stipulation, if the Financial Information provided, or the
13 financial certification made in Paragraph 4(a), is false, or in a material
14 respect, inaccurate.
15
- 16 13. This Stipulation shall be lodged with the Court for a period of not less than
17 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7.
18 The United States reserves the right to withdraw or withhold its consent if
19 the comments regarding the Stipulation disclose facts or considerations
20 indicating that the Stipulation is inappropriate, improper, or inadequate.
21
- 22 14. The obligations under this Stipulation may be terminated at any time after
23 three years from the Effective Date if the United States determines that
24 Defendant has made the payment required by Paragraph 3 (including all
25 accrued interest), paid in full any stipulated penalties imposed by this
26 Stipulation, and satisfactorily completed all other applicable requirements of
27 this Stipulation. At any time after three years from the Effective Date,
28 Defendant may send a certification to the United States stating that these

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requirements have been fulfilled, and requesting termination of its obligations. After having made this determination, the United States shall issue a certification, reciting that the requirements of the Stipulation have been met and notifying Defendant of the termination of its obligations under the Stipulation. Disputes regarding whether the obligations under the Stipulation may be terminated may be resolved by the Court.

15. Each party shall bear its own costs and attorneys' fees in this matter, except as provided in Paragraph 7.

16. Yongzhi Ma, as President of Defendant, and the Section Chief of the U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section each certify that he or she is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind Defendant and the United States, respectively, to it.

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FOR THE UNITED STATES OF AMERICA:

8/23/2106
Date

/s T A Mariani, Jr.
THOMAS A. MARIANI, JR.
Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

MARK A. GALLAGHER
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FOR GOLDENVALE, INC.:

8/23/2016
Date

/s/ Yongzhi MA
YONGZHI MA, President
Goldenvale, Inc.
2031 South Turner Avenue
Ontario, CA 91761

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