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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA,)
19)
Plaintiff,)
20)
21 v.)
22)
VENTO NORTH AMERICA L.L.C.)
23 and VENTO CREDIT L.L.C.,)
24)
Defendant.)
25

CV10 7960
Case No. _____

DDP (AGR_x)

FILED
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10 OCT 22 AM 10:09
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

26 STIPULATION OF SETTLEMENT
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Defendant

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1 WHEREAS Plaintiff, the United States of America ("United States"), on
2 behalf of the United States Environmental Protection Agency ("EPA"), filed a
3 Complaint in this matter concurrently with the lodging of this Stipulation of
4 Settlement;
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6
7 WHEREAS the Complaint alleges Vento North America L.L.C. and Vento
8 Credit L.L.C. (collectively, "Defendant" or "Vento") violated Section 203 of the
9 Clean Air Act ("Act"), 42 U.S.C. § 7522, by importing and selling highway
10 motorcycles not covered by certificates of conformity issued by EPA as required
11 under Section 206 of the Act, 42 U.S.C. § 7525;
12

13
14 WHEREAS on May 6, 2006, EPA sent Vento a letter instructing Defendant
15 to stop the sale of any uncertified motorcycles;
16

17 WHEREAS Vento discontinued the sale of uncertified motorcycles on May
18 6, 2006;
19

20 WHEREAS Vento and the United States agree that this Stipulation of
21 Settlement resolves the violations alleged in the Complaint and occurring through
22 the date of the filing of the Complaint;
23

24 WHEREAS Vento does not admit liability to Plaintiff for the violations
25 alleged in the Complaint;
26
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1 WHEREAS the Parties recognize, and the Court by entering this Stipulation
2 of Settlement finds, that this Stipulation of Settlement has been negotiated in good
3 faith, will avoid litigation, and is fair, reasonable, and in the public interest;

4
5 NOW, THEREFORE, before the taking of any testimony, without the
6 adjudication or admission of any issue of fact or law, except as provided in Section
7 I below, and with the consent of the Parties, IT IS HEREBY ORDERED as
8 follows:
9
10

11 **I. JURISDICTION, VENUE, AND NOTICE**

12 1. This Court has jurisdiction over the subject matter of and the parties to
13 this action pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and
14 7524, and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this jurisdiction
15 pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, because
16 the violations set forth in the Complaint are alleged to have occurred in this
17 judicial district. For purposes of this Stipulation of Settlement or any action to
18 enforce this Stipulation of Settlement, Vento consents to this Court's jurisdiction
19 over the Stipulation of Settlement, Vento, and any such action, and consents to
20 venue in this judicial district.
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25 2. For the purposes of this Stipulation of Settlement, Vento agrees that
26 the Complaint states claims upon which relief may be granted pursuant to Sections
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28

1 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, for violations of Section 203
2
3 of the Act, 42 U.S.C. §§ 7522;

4 II. PARTIES BOUND

5 3. This Stipulation of Settlement is binding upon Plaintiff and Vento,
6
7 and Vento's successors, assigns, and any other entities or persons otherwise bound
8
9 by law. No transfer or change in ownership or corporate or other legal status of
10
11 Vento, including but not limited to any transfer of assets of real or personal
12
13 property, shall relieve the obligations of Vento under this Stipulation of Settlement.

14 4. Vento shall provide a copy of this Stipulation of Settlement (in paper
15
16 or electronic form) to all officers, directors, employees, agents, contractors, or any
17
18 other entities or persons bound by law whose duties might reasonably include
19
20 compliance with any provisions of this Stipulation of Settlement.

21 5. In any action to enforce this Stipulation of Settlement, Vento shall not
22
23 raise as a defense the failure by any of its officers, directors, employees, agents,
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25 contractors, or any other entities or persons otherwise bound by law, to take any
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27 actions necessary to comply with the provisions of this Stipulation of Settlement.
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III. DEFENDANT

6. Vento manufactures, imports, and sells motorcycles in the United States, and is incorporated under the laws of California as a limited liability company. Vento is headquartered at 6190 Cornerstone Court, Suite 200, San Diego, California 92121.

7. Vento is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

8. Vento is a "manufacturer" within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1), which defines the term "manufacturer" to include, *inter alia*, "any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale"

9. Vento manufactured the vehicles at issue and imported the vehicles at issue into the United States. Vento's manufacture and importation of motorcycles violated Section 203 of the Act, 42 U.S.C. § 7522, and the regulations promulgated thereunder at 40 C.F.R. Parts 86, pertaining to emissions certification for highway motorcycles.

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IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Stipulation of Settlement that are defined in the Act or the regulations promulgated pursuant to the Act shall have the meanings assigned to them under the Act or such regulations. Whenever the terms set forth below are used in this Stipulation of Settlement, the following definitions shall apply.

a. "Act" shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

b. "Complaint" shall mean the complaint filed by the United States of America against Defendant in this action.

c. "Day" shall mean a calendar day. In computing any period of time under this Stipulation of Settlement, where the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities.

e. "Effective Date" shall mean the date as defined in Section X of this Stipulation of Settlement.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

1 g. "Interest" shall mean interest at the rate specified for debts
2 owed to the departments or agencies of the United States pursuant to 28 U.S.C.
3 § 1961.
4

5 h. "Paragraph" shall mean a portion of this Stipulation of
6 Settlement identified by an arabic numeral.
7

8 i. "Parties" shall mean Plaintiff and Vento.

9 j. "Plaintiff" shall mean the United States of America.
10

11 k. "Section" shall mean a portion of this Stipulation of Settlement
12 identified by a roman numeral.
13

14 l. "Stipulation of Settlement" shall mean this Stipulation of
15 Settlement.
16

17 m. "United States" shall mean the United States of America and its
18 successor departments, agencies, or instrumentalities.
19

20 n. "Vento" shall mean Vento North America L.L.C. and Vento
21 Credit L.L.C., each a limited liability company headquartered in San Diego,
22 California.
23

24 V. CIVIL PENALTY

25 11. Vento shall pay the United State a civil penalty in the amount of
26 twenty-five thousand dollars (\$25,000), together with Interest on that amount, in
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1 accordance with the payment provisions set forth in this section. Payment shall be
2 due and owing as follows:

3
4 a. within 30 days of the Effective Date of this Stipulation of
5 Settlement, Vento shall pay the United States a civil penalty in the amount of
6 twenty-five thousand dollars (\$25,000), together with Interest on that amount, with
7 such Interest accruing from the Effective Date of the Stipulation of Settlement
8 through the date of payment. Payment shall be made to the United States
9 Department of Justice by FedWire Electronic Funds Transfer ("EFT") in
10 accordance with EFT instructions provided to Vento by the Financial Litigation
11 Unit of the U.S. Attorney's Office for the Central District of California. In
12 accordance with Section IX (Notices and Submissions), at the time of payment,
13 Vento shall send a copy to DOJ and EPA of the EFT authorization form and
14 transaction record, together with a transmittal letter, stating the payment is for the
15 civil penalty owed pursuant to this Stipulation of Settlement. Such written notice
16 shall reference Department of Justice Case Number 90-5-2-1-09330, the Civil
17 Action Number assigned to this matter by this Court, and a statement of the
18 calculation of the Interest on the payment. Notice of payment to the United States
19 also shall be provided as set forth in Section IX (Notices and Submissions).
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1 b. Vento shall not deduct any civil or stipulated penalties paid
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3 pursuant to this Section or Section VI (Stipulated Penalties) in calculating its
4 federal and state income tax.

5 **VI. INTEREST AND STIPULATED PENALTIES**

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7 12. Interest on Late Payments: Should Vento fail to make payment within
8 the time limit set forth under Section V (Civil Penalty), Paragraph 11, Interest shall
9 continue to accrue on the unpaid balance through the date of payment.
10

11 13. Stipulated Penalties: Should Vento fail to make payments when due
12 as required under Section V (Civil Penalty), Paragraph 11, it shall be in violation
13 of this Stipulation of Settlement and subject to stipulated penalties. In addition to
14 Interest assessed on any late payment, as set forth in Paragraph 12 of this Section,
15 Vento shall be subject to stipulated penalties in the amount of one hundred dollars
16 (\$100) per violation per day for each day that payment is late. Stipulated penalties
17 shall begin to accrue on the day after payment is due, and shall continue to accrue
18 through the date of the payment. Nothing herein shall prevent the simultaneous
19 accrual of separate penalties for separate violations under this Stipulation of
20 Settlement. Stipulated penalties shall accrue regardless of whether Vento has been
21 notified of a violation or demand for payment by Plaintiff, but need only be paid
22 upon demand.
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1 14. The United States may seek stipulated penalties due by sending a
2 written demand to Vento. Vento shall pay stipulated penalties within 30 days of
3 receiving a written demand from Plaintiff. If stipulated penalties are not paid in
4 full within 30 days of demand, Vento shall owe Interest on unpaid stipulated
5 penalties from the 30th day after the demand through the date of payment. The
6 payment of stipulated penalties (including accrued Interest on such stipulated
7 penalties) shall be identified as “stipulated penalties” and reference the name of
8 Vento, the Department of Justice Case Number, and the Civil Action Number
9 assigned to this case by the Court. Stipulated penalties shall be paid to the United
10 States Department of Justice in accordance with the instructions provided by the
11 Financial Litigation Unit of the U.S. Attorney’s Office for the Central District of
12 California. In accordance with Section IX (Notices and Submissions), Vento shall
13 provide written notice to the United States within 7 days of payment of stipulated
14 penalties and such notice shall include a statement showing the calculation of
15 Interest included in any such payment. Payment of stipulated penalties does not
16 excuse Defendant from payment as required by Section V (Civil Penalty)
17 Paragraph 11, or from performance of any other requirement of this Stipulation of
18 Settlement.
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26 15. The United States, may, in its unreviewable discretion, reduce or
27 waive any portion of stipulated penalties otherwise due under this Section.
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1 16. Subject to the provisions of Section VII (Effect of
2 Settlement/Reservation of Rights), stipulated penalties provided for in this
3 Stipulation of Settlement shall be in addition to any other rights, remedies, or
4 sanctions available to Plaintiff for Vento's violation of this Stipulation of
5 Settlement or other applicable law.
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8 **VII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**
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10 17. Vento's complete performance of all obligations under this
11 Stipulation of Settlement shall resolve its civil liability for the violations alleged in
12 the underlying Complaint through the date of the filing of the Complaint.
13

14 18. Plaintiff reserves all legal and equitable remedies available to enforce
15 the provisions of this Stipulation of Settlement in the event Vento does not
16 completely perform all obligations under this Stipulation of Settlement. This
17 Stipulation of Settlement shall not be construed to limit the rights of Plaintiff to
18 obtain penalties or injunctive relief under the Act or its implementing regulations,
19 or seek relief under any other federal, state, or local laws, regulations, or permits,
20 except as expressly specified in Paragraph 17. Plaintiff further reserves all legal
21 and equitable remedies to address any situation which may present an imminent
22 and substantial endangerment to the public health or welfare or the environment
23 posed by Vento's activities, whether related to violations addressed in this
24 Stipulation of Settlement or otherwise.
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1 19. In any subsequent administrative or judicial proceeding initiated by
2 Plaintiff for injunctive relief, civil penalties, or other appropriate relief relating to
3 Vento's activities, Vento shall not assert, and may not maintain, any defense or
4 claim based upon the principles of waiver, res judicata, collateral estoppel, issue
5 preclusion, claim preclusion, claim-splitting, or other defenses based upon any
6 contention that the claims raised by Plaintiff in the subsequent proceeding were or
7 should have been brought in this instant case, except with respect to the claims that
8 have been specifically resolved pursuant to Paragraph 17 of this Section.
9

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12 20. This Stipulation of Settlement does not alter or relieve Vento of the
13 responsibility to comply with the Act, 42 U.S.C. §§ 7401 et seq., or any other
14 federal, state, or local laws, regulations, or permit conditions. Vento is responsible
15 for achieving and maintaining complete compliance with all applicable federal,
16 state, and local laws, regulations, and permits. Compliance with this Stipulation of
17 Settlement shall not be a defense to any action commenced pursuant to such laws
18 or regulations, except as provided in Paragraph 17.
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22 21. This Stipulation of Settlement does not limit or affect the rights of
23 Vento or Plaintiff against any third parties not parties to this Stipulation of
24 Settlement, nor does it limit the rights of third parties not parties of this Stipulation
25 of Settlement against Vento, except as otherwise provided by law.
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1 22. This Stipulation of Settlement shall not be construed to create rights in
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3 or grant any cause of action to any third party not a party to this Stipulation of
4 Settlement.

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6 **VIII. COSTS**

7 23. The Parties shall bear their own costs for this action, including
8 attorneys' fees, except that Plaintiff shall be entitled to collect the costs (including
9 attorneys' fees) incurred in any action to enforce this Stipulation of Settlement
10 and/or collect any portion of the civil penalty, Interest, or stipulated penalties due
11 but not paid by Vento.
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14 **IX. NOTICES AND SUBMISSIONS**

15 24. Unless otherwise specified herein, whenever written notifications,
16 submissions, communications, or payments are required by this Stipulation of
17 Settlement, they shall be provided in writing and addressed as follows:
18

19 As to the United States:
20

21 For the Department of Justice:
22

23 Chief, Environmental Enforcement Section
24 Environment and Natural Resources Division
25 U.S. Department of Justice
26 Re: DOJ # 90-5-2-1-09330 (Att: Elizabeth F. Kroop, Esq.)
27 Box 7611, Ben Franklin Station
28 Washington, DC 20044-7611

1 For the Environmental Protection Agency:

2
3 EPA
4 Cincinnati Finance Office (Re: DOJ # 90-5-2-1-09330)
5 26 Martin Luther King Drive
6 Cincinnati, OH 45268

7 As to Defendant Vento Motorcycle North America L.L.C. and Vento Credit
8 L.L.C.:

9 Isaac Calderon
10 Vento North America L.L.C.
11 Vento Credit L.L.C.
12 9265 Activity Road; Suite 112
13 San Diego, California 92121

14 25. Any Party may, by written notice to the other Party, change its
15 designated notice recipient or notice address as provided in this Section.

16 **X. EFFECTIVE DATE**

17 26. The Effective Date of this Stipulation of Settlement shall be the date
18 upon which it is entered by the Court or the date upon which a motion to enter the
19 Stipulation of Settlement is granted, whichever occurs first, as recorded on the
20 Court docket.
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23 **XI. RETENTION OF JURISDICTION**

24 27. The Court shall retain jurisdiction over this case for the purpose of
25 interpreting and enforcing the terms of this Stipulation of Settlement, until such
26 time as Vento has met all of its obligations under this Stipulation of Settlement.
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1 **XII. SIGNATORIES/SERVICE**

2 28. Each undersigned representative of Vento or Plaintiff certifies that he
3
4 or she is fully authorized to enter into the terms and conditions of this Stipulation
5 of Settlement and to execute and legally bind the Party he or she represents.
6

7 29. Vento agrees not to oppose entry of this Stipulation of Settlement by
8 the Court or to challenge any provision of this Stipulation of Settlement unless the
9 United States has notified Vento in writing that it is no longer supports entry of the
10 Stipulation of Settlement.
11

12 30. Vento agrees to accept service of process by mail with respect to all
13 matters arising under or relating to this Stipulation of Settlement and to waive the
14 formal service requirements set forth in Federal Rules of Civil Procedure 4 and 5
15 and any applicable Local Rules of this Court including, but not limited to, service
16 of a summons.
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19 **XIII. INTEGRATION**

20 31. This Stipulation of Settlement constitutes the final, complete, and
21 exclusive agreement and understanding between the Parties with respect to the
22 settlement embodied herein and supersedes all prior agreements and
23 understandings, whether oral or written concerning the settlement embodied
24 herein. No other document, nor any representation, inducement, agreement,
25 understanding, or promise, constitutes any part of this Stipulation of Settlement or
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1 the settlement it represents, nor shall it be used in construing the terms of this
2 Stipulation of Settlement.
3

4 **XIV. FINAL JUDGMENT**

5 32. Upon approval and entry of this Stipulation of Settlement by the
6 Court, this Stipulation of Settlement shall constitute a final judgment of the Court
7 as to the United States and Vento in this matter. The Court finds there is no just
8 reason for delay and therefore enters this judgment as final judgment under Federal
9 Rules of Civil Procedure 54 and 58.
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12 Dated and entered this _____ day of _____, 2010.
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16 UNITED STATES DISTRICT JUDGE
17 Central District of California
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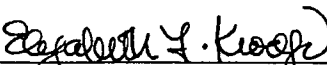
1 The UNDERSIGNED PARTIES enter into this Stipulation of Settlement in
2 the matter of United States v. Vento North America L.L.C. and Vento Credit
3 L.L.C.:

4
5 FOR PLAINTIFF UNITED STATES OF AMERICA:

6
7 Date: 10/5/10

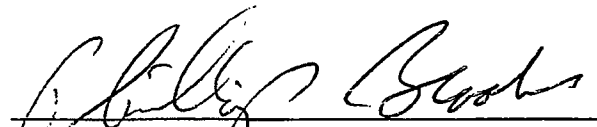
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9 W. BENJAMIN FISHEROW
10 Deputy Chief
11 United States Department of Justice
12 Environment and Natural Resources Division
13 Environmental Enforcement Section

14 Date: 10/21/10

15 
16 ELIZABETH F. KROOP
17 Trial Attorney
18 United States Department of Justice
19 Environment and Natural Resources Division
20 Environmental Enforcement Section
21 P.O. Box 7611
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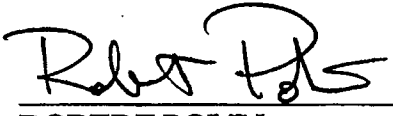
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Date: 10/15/10



PHILLIP A. BROOKS
Director
Environmental Protection Agency
Air Enforcement Division
1200 Pennsylvania Ave, NW (MC 2242A)
Washington, DC 20460

Date: 10/15/10

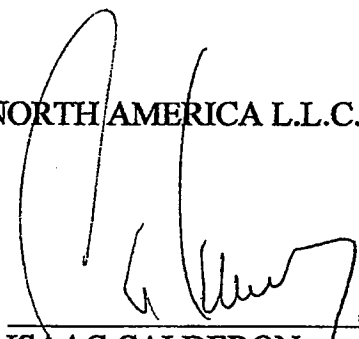


ROBERT POLIN
Attorney Advisor
Environmental Protection Agency
Air Enforcement Division
1200 Pennsylvania Ave, NW (1101 A)
Washington, DC 20460

1
2 The UNDERSIGNED PARTIES enter into this Stipulation of Settlement in
3 the matter of United States v. Vento North America L.L.C. and Vento Credit
4 L.L.C.:

5 FOR DEFENDANT VENTO NORTH AMERICA L.L.C. AND VENTO CREDIT
6 L.L.C.:

7
8
9 Date: 9/23/2010



10 ISAAC CALDERON
11 President
12 Vento North America L.L.C.
13 Vento Credit L.L.C.
14 9265 Activity Road; Suite 112
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