

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made on this 14th day of May, 2018, by and between the State of West Virginia, acting through its Attorney General, Patrick Morrisey (the "Attorney General"); and Auto Trakk, LLC ("Auto Trakk") (collectively, the "Parties"). Each party separately is a "Party."

WHEREAS, on August 10, 2016, the Attorney General filed a Complaint (the "Complaint") against Auto Trakk, which is currently pending in the Circuit Court of Kanawha County, West Virginia, under the caption *State of West Virginia ex rel. Patrick Morrisey v. Auto Trakk, LLC*, No. 16-C-1211 (the "Lawsuit"), alleging, among other things, violations of the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101, *et seq.* ("WVCCPA");

WHEREAS, Auto Trakk denies the claims asserted in the Complaint and denies that it has engaged in any wrongdoing;

WHEREAS, the Parties desire to avoid litigation expenses and resolve the disputes between them;

NOW, THEREFORE, in consideration of the mutual releases and other consideration provided for below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**

- A. "Agreement" means this Settlement Agreement and Release.
- B. "Auto Trakk Released Persons" means Auto Trakk, LLC and any of its predecessors, successors, acquisitions, mergees, assigns, subsidiaries, parent companies, holding companies, trusts, affiliates, divisions, unincorporated business units, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, and trustees. In addition, "Auto Trakk Released Persons" shall include any third-party administrators or vendors solely to the extent that (1) an Auto Trakk Released Person would have an obligation to defend, contribute to, indemnify, or hold harmless such vendor or administrator, and (2) the Attorney General alleges claims against such vendors or administrators that arise out of or relate to the facts or allegations asserted in the Complaint.
- C. "Effective Date" means the date this Agreement has been executed by all Parties.
- D. "Claims" means claims, counterclaims, causes of action, remedies, damages (whether actual, compensatory, punitive, or otherwise), fines, penalties, liabilities, debts, suits, enforcement actions, demands, actions, costs, expenses, fees, controversies, and set-offs, whether at law, equity, administrative or otherwise, whether known or unknown, and whether discovered or undiscovered, without exception or limitation.

E. "Affected Accounts" means all of the accounts held by individuals who had entered into agreements to lease vehicles with Auto Trakk, wherein: (1) the lessees defaulted on the payments for the leased vehicles pursuant to a lease agreement with Auto Trakk; (2) Auto Trakk took physical possession of the leased vehicles between August 10, 2012 and the Effective Date; and (3) Auto Trakk did not notify the lessees of the default or provide an opportunity to cure the default. The term "Affected Accounts" does not include any accounts wherein the lessee voluntarily surrendered a leased vehicle to Auto Trakk, an agent of Auto Trakk, or an automobile dealer, the vehicle leased by the lessee was impounded, or the lessee died during the term of the lease.

2. Agreement

a) Auto Trakk will, with execution of this Agreement, make a payment by certified check or wire transfer of Twenty-five Thousand Dollars and Zero Cents (\$25,000.00) to the State of West Virginia that may be used by the Attorney General for any one or more of the following purposes: direct or indirect, administrative, investigative, compliance, enforcement, or litigation costs or services incurred for consumer protection purposes, or to be held for appropriation by the Legislature. Thereafter, within thirty days of execution of this Agreement, and again within sixty days of execution, and again within ninety days of execution, Auto Trakk will make like payments of Twenty-five Thousand Dollars in same manner as the initial payment, for a total of One Hundred Thousand Dollars and Zero Cents (\$100,000.00). The Parties agree that the payments described in this subparagraph are not a fine, civil penalty, or payment in lieu thereof.

b) Auto Trakk will not pursue any deficiency balances associated with the Affected Accounts. Auto Trakk represents the total value of such debt no longer being collected is approximately \$790,000.00.

c) Auto Trakk will not sell, convey, assign, or transfer any deficiency balances on the Affected Accounts; it will recall any of the Affected Accounts which have been placed with a third-party collection agency; it will vacate any judgments obtained by Auto Trakk against the individuals who hold the Affected Accounts; and it will dismiss all pending lawsuits relating to deficiency balances against the individuals who hold the Affected Accounts.

d) Within sixty (60) days of execution of this agreement, Auto Trakk will notify all consumer reporting agencies to which it has reported any information about the Affected Accounts to delete their trade lines and any other information that it has reported about the Affected Accounts from the lessees' credit records. Provided, however, the Attorney General acknowledges that the consumer reporting agencies are third parties over which Auto Trakk has no control and that a consumer reporting agency's failure to delete information when requested by Auto Trakk shall not be deemed a violation of this Agreement.

e) Auto Trakk will, within thirty (30) days after the Effective Date of this Agreement, provide the Attorney General with a spreadsheet in Microsoft Excel, Access, or other mutually agreed upon searchable electronic format, containing the following information for each lessee: name; address; all telephone numbers; the name of the original lessor; the date

and amount of any judgment entered against the lessee, if applicable; and the account balance allegedly owed at the time the spreadsheet is prepared. The Attorney General agrees that the information produced by Auto Trakk on this spreadsheet will be kept confidential to the extent allowed by confidentiality statutes under the West Virginia Consumer Credit and Protection Act and exemptions under the state's Freedom of Information Act.

f) Auto Trakk will provide to the Attorney General within ninety (90) days of execution of this Agreement an affidavit confirming and verifying that it has completed the foregoing actions.

g) The Parties agree that the Attorney General and Auto Trakk may, but are not required to, send correspondence to the lessees regarding this Agreement.

3. **Release and Covenant Not to Sue**

a) The Parties mutually agree that this Agreement fully resolves and releases any Claims they have or may have had against each other, including any claims against Auto Trakk Released Persons, arising from the Lawsuit.

b) The Parties agree that Auto Trakk is entering into this Agreement solely for the purpose of settlement of the Lawsuit. This Agreement does not create a waiver of, or limit to, Auto Trakk's legal rights, remedies, or defenses in any other action by the Attorney General, and does not waive or limit Auto Trakk's right to defend itself from, or make argument in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the subject matter or terms of this Agreement. Nothing in this Agreement shall waive, release, or otherwise affect any claims, defenses, or positions Auto Trakk may have in connection with any investigation, claims, or other matters the State is not releasing hereunder.

4. **Agreed Final Order**

a) The Parties shall submit to the Court a duly-executed Agreed Final Order ("Order") approving and incorporating by reference this Agreement and providing for the dismissal of the Complaint with prejudice within ten (10) days after receipt of the spreadsheet, payment, and affidavit required by Paragraph 2, items a), d), e), and f) herein, respectively. The Parties agree that such Order shall be final and non-appealable.

b) The Parties shall bear their own attorney's fees and costs in connection with the Lawsuit.

5. **Representations and Warranties**

The Parties acknowledge, warrant and represent that:

a) the only representations of law or fact on which they have relied are expressly set forth in the Agreement; they disclaim any reliance in executing the Agreement on any representations not contained herein; and no other representations or inducements by the

opposing Party, the opposing Party's attorney, agent or representative, or any third party, have caused their or it, respectively, to execute the Agreement;

b) the Parties had the opportunity to seek and rely upon the advice of their counsel in the negotiation and execution of this Agreement;

c) no advice, tax or otherwise, has been offered or given by any Party to any Party or the lessees in the course of these negotiations, and all Parties and lessees must rely upon the advice of their own tax consultants or other advisors with regard to any tax or other consequences that may arise as a result of the execution of this Agreement;

d) the Parties subsequently may discover facts different from or in addition to those now known or believed to be true regarding the subject matter of this Agreement, and agree that this Agreement shall remain in full force and effect notwithstanding the existence or discovery of any such different or additional facts;

e) the Parties mutually drafted this Agreement and therefore this Agreement shall not be construed more strictly against any Party; and

f) the signatories to the Agreement warrant that they have full authority to execute the Agreement on behalf of their respective Parties.

6. **Merger, Integration, and Amendment**

The Parties acknowledge that this Agreement contains the entire agreement of the Parties and that any other agreements not expressly stated herein are void and have no further force and effect. The Parties agree that the Agreement may not be amended or modified except by a subsequent, written agreement executed by all of the Parties

7. **No Admission of Liability**

The Parties agree that this Agreement, its terms, and the Parties' negotiations of it shall not constitute or be construed as an admission of the truth of any of the allegations made or of any liability, fault, or wrongdoing of any kind whatsoever.

8. **Confidentiality.**

While this Agreement will be a public document, the settlement negotiations, discussions, statements, and other communications by the Parties that preceded the formation of this Agreement shall be treated as confidential and shall not be disclosed to the public or to any non-party to this Agreement, except as may be required by law.

9. **Counterparts**

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE, FULLY UNDERSTAND IT, AND AGREE TO THE TERMS SET FORTH HEREIN.

Douglas L. Davis (WV State Bar No. 5502)
Assistant Attorney General
Consumer Protection/Antitrust Division
P.O. Box 1789
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Counsel for State of West Virginia ex rel. Patrick Morrissey, Attorney General

Date



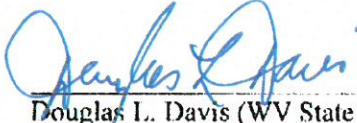
Auto Trakk, LLC



Date

By: Merril Davis
Title: Chief Executive Officer

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Douglas L. Davis (WV State Bar No. 5502)

Assistant Attorney General

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Charleston, WV 25326-1789

Phone: (304) 558-8986

Counsel for State of West Virginia ex rel. Patrick Morrissey, Attorney General

5/22/2018

Date



Auto Trakk, LLC

5/22/18

Date

By: Merril Davis

Title: Chief Executive Officer