

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Mildred Enterprises, LLC, *dba* Steady Garage (STEADY GARAGE), with its principal location at 861 Meridian Street, Duarte, California 91010 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of emission of air pollution from motor vehicles. (Health & Saf. Code §§ 43000, 43000.5, 43011.)
- (2) Regulation. CARB adopted the "*Add-On Parts and Modified Parts*" Regulation (Cal. Code Regs., tit. 13, §§ 2220-2225 and 2472-2476) (Aftermarket Parts Regulation) to ensure that these vehicle add-on and modified parts have been evaluated by CARB and do not increase vehicle emissions.

CARB adopted the "*Small Off-Road Engines*" Regulation (Cal. Code Regs., tit. 13, §§ 2400-2409) (SORE Regulation) to reduce emissions of, *inter alia*, oxides of nitrogen (NO_x) and hydrocarbons (HC) from off-road spark-ignited small off-road engines (SORE) rated at equal to or less than 19 kilowatts, and equipment utilizing such engines.

- (3) Regulatory Provisions. The Aftermarket Parts Regulation and Vehicle Code prohibit any person or company doing business in California from advertising, offering for sale, selling, or installing any device, apparatus, or mechanism that alters or modifies the original design or performance of a motor vehicle air pollution control device, unless it is exempted from Vehicle Code section 27156 or Vehicle Code section 38391 for on-road or off-road vehicles, respectively. (Cal. Code Regs., tit. 13, § 2220 et seq. and Veh. Code § 27156 or Cal. Code Regs., tit. 13, § 2470 et seq. and Veh. Code § 38391, respectively.) The Executive Officer may issue a cease and desist order and enjoin the sale, import, advertising, supply, distribution, or install in California of any aftermarket part that does not comply with the Aftermarket Parts Regulation. (Cal. Code Regs., tit.13, §§ 2225 and 2476; Health & Saf. Code 43017.) The sale of this product may also be illegal nationwide under the federal Clean Air Act (42 U.S.C. § 7522(a)(3)).

The SORE Regulation requires all SORE engines that are manufactured for sale, sold, or offered for sale in California, or introduced, delivered, or imported into California for introduction into commerce to be covered by an Executive Order showing, *inter alia*, the engine meets the exhaust emission standards as determined; was properly tested following all required test procedures; contains

an emission control label; meets all defect warranty requirements; and complies with the reporting requirements. (Cal. Code Regs., tit. 13, § 2400-2409.)

- (4) Settlement Provisions. Failure to comply with the Aftermarket Parts Regulation is a violation of state law that may result in penalties up to one thousand five hundred dollars (\$1,500.00 USD) for each violation of the Vehicle Code and forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action, for strict liability violations, respectively, for each noncompliant aftermarket part. (Cal. Code Regs., tit. 13, §§ 2220-2225 and 2472-2476; Health & Saf. Code, §§ 43008.6; Vehicle Code § 27156.)

Failure to comply with the SORE Regulation is a violation of state law that may result in penalties up to five hundred sixty-six dollars (\$566.00 USD) for each strict liability violation of the SORE Regulation for each noncompliant SORE engine or equipment. (Cal. Code Regs., tit.13, § 2407; Health & Saf. Code § 43016.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, STEADY GARAGE was organized under the laws of California as a limited liability company, doing business as Steady Garage and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation # C00145, which was issued on April 7, 2021. CARB alleges STEADY GARAGE violated the Aftermarket Parts Regulation by advertising, offering for sale, selling, or installing 1,802 non-exempted add-on or modified aftermarket parts for on- or off-highway vehicles that modify a California vehicle's emission control system, resulting in 1,802 violations, as outlined in Notice of Violation # C00145. CARB alleges STEADY GARAGE violated the SORE Regulation by manufacturing for sale in California, selling, offering for sale in California, or introducing, delivering or importing into California for introduction into commerce in California SORE engines in California that failed to comply with the requirements of the SORE Regulation by failing to obtain an Executive Order pursuant to the certification requirements and protocols (Cal. Code Regs., tit. 13, § 2400(a)(2)), resulting in fourteen violations, as outlined in Notice of Violation # C00145. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against STEADY GARAGE for each, and every vehicle involved in the violations.
- (7) Acknowledgment. STEADY GARAGE admits to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed allegations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the

allegations described herein, STEADY GARAGE has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

TERMS AND CONDITIONS

In consideration of CARB not filing a legal action against STEADY GARAGE for the alleged violations referred to above in the Legal Background and Case or for any matter covered under Notice of Violation # C00145 and of STEADY GARAGE's agreement to complete all terms and conditions set forth below, CARB and STEADY GARAGE agree as follows:

- (9) Settlement Amount. STEADY GARAGE shall pay a civil penalty of twenty-six thousand six hundred thirty-one dollars (\$26,631.00 USD) and agrees to fund a Supplemental Environmental Project (SEP) entitled Fresno Trees in the amount of twenty-six thousand six hundred thirty-one dollars (\$26,631.00 USD), consistent with CARB's SEP Policy, for a total settlement of fifty-three thousand two hundred sixty-two dollars (\$53,262.00 USD). STEADY GARAGE shall make all payments in accordance with the payment schedule in Paragraph 10 (Payment Plan and Schedule).
- (10) Payment Plan and Schedule. Pursuant to this Settlement Agreement, STEADY GARAGE shall make all the payments listed below.

Payment Due Date:	In the Amount of and Payable To:
30 Days from the effective date	\$26,631.00 California Air Resources Board
90 Days from the effective date	\$26,631.00 SEP Administrator

- (11) Civil Penalty Payment Method. STEADY GARAGE shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. STEADY GARAGE is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to STEADY GARAGE in accordance with Paragraph 19 (Notices).
- (12) SEP Payment Method(s). STEADY GARAGE shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Fresno Trees, using instructions provided separately by CARB in a Payment Transmittal

Form. STEADY GARAGE is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to STEADY GARAGE in accordance with Paragraph 19 (Notices).

- (13) Prohibition Against Financial Benefit. STEADY GARAGE has agreed that by funding the SEP entitled Fresno Trees, STEADY GARAGE will not receive any direct or indirect financial benefit, and that whenever STEADY GARAGE publicizes or refers to the SEP or the results of the SEP, STEADY GARAGE will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, STEADY GARAGE assigns any and all rights against the SEP implementer to CARB.
- (15) Compliance Plan. STEADY GARAGE shall implement a Compliance Plan within 30 days of the effective date to ensure that STEADY GARAGE complies with all provisions of the laws and regulations outlined in the Legal Background.
- (16) Disclaimer. STEADY GARAGE shall add the following disclaimer to the advertisements of all non-exempt aftermarket parts advertised, sold, or offered for sale in California with one of the following disclaimers in approximately font size 8 on each page on which any aftermarket non-exempt part appears:
 - "NOT LEGAL FOR SALE OR USE IN CALIFORNIA. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - "NOT LEGAL FOR SALE OR USE IN CALIFORNIA ON ANY POLLUTION CONTROLLED MOTOR VEHICLE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3))."
 - "LEGAL IN CALIFORNIA ONLY FOR RACING VEHICLES WHICH MAY NEVER BE USED, OR REGISTERED OR LICENSED FOR USE, UPON A HIGHWAY. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS

PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3)).”

- “FOR CLOSED COURSE COMPETITION USE ONLY. NOT INTENDED FOR STREET USE. THE MANUFACTURE, SALE, OFFER FOR SALE, OR INSTALLATION OF THIS PRODUCT MAY ALSO BE ILLEGAL NATIONWIDE UNDER THE FEDERAL CLEAN AIR ACT (42 U.S.C. § 7522(A)(3)).”
- (17) Acceleration. If any payment is more than thirty (30) calendar days late from the payment schedule deadline, the entire remaining balance is accelerated to become due and payable immediately without notice or demand.
- (18) Documents. STEADY GARAGE shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty and SEP, and a copy of the Payment Transmittal Form(s) to the address or email in Paragraph 19 (Notices).
- (19) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board
Enforcement Division / Settlement Agreements
Engine and Parts Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to STEADY GARAGE:

Mildred Enterprises, LLC, dba Steady Garage
861 Meridian Street
Duarte, California 91010
kevin@steadygarage.com

As to STEADY GARAGE’s Legal Representation:

Stephen L. Hewitt, Esq.
21550 Oxnard Street, Suite 880
Woodland Hills, California 91367
slhewitt@hewittlegal.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing. Any

notification, submission, or communication required to be sent to STEADY GARAGE shall be sent to STEADY GARAGE's Legal Representation as well.

- (20) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, STEADY GARAGE shall pay all reasonable costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (21) Repeat Violations. STEADY GARAGE agrees to comply with all requirements under the Aftermarket Parts Regulation and the SORE Regulation and acknowledges that repeat violations could result in increased penalties in the future.
- (22) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 10 pages and 40 paragraphs.
- (23) Binding Effect. This Settlement Agreement binds STEADY GARAGE, and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (24) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (25) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (26) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (27) Choice of Law. This Settlement 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.
- (28) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent

such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

- (29) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (30) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (31) Intent to be Bound. The Parties represent that they: have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; entered into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation; and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (32) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (33) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (34) Release. In consideration of full payment of the civil penalty and SEP payment, and all other undertakings above, CARB hereby fully and finally releases STEADY GARAGE and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (35) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (36) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of forty-two thousand four hundred fifty dollars (\$42,450.00 USD) per action under

Health and Safety Code section 43016, and/or one thousand, five hundred dollars (\$1,500.00 USD) per unit under California Health and Safety Code section 43008.6, for violations of the Aftermarket Parts Regulation and Vehicle Code section 27156. (Cal. Code Regs., tit.13, §§ 2220-2225.) The per unit or per vehicle penalty in this case is a maximum of five hundred sixty-six dollars (\$566.00 USD) per action under Health and Safety Code section 43016, for violations of the Evaporative Emissions Regulation. (Cal. Code Regs., tit.13, § 2772; Health & Saf. Code § 43016.) The penalty of \$53,262.00 over an unspecified number of days of violation is for 14 noncompliant SORE engines and 1,802 noncompliant aftermarket parts. The per unit penalty in this case is approximately \$29.33 per noncompliant unit.

- (37) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without information on part, engine usage and emission rates, it is not practicable to quantify the excess emissions. Since CARB has alleged that the product did not meet the regulatory requirements, it further alleges that the emissions were illegal.
- (38) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. In the present case, STEADY GARAGE retained a forensic accountant, who demonstrated with clear and convincing evidence that STEADY GARAGE is suffering from financial hardship, and more particularly (a) retained very meager earnings, (b) had no taxable profits during the years at issue, (c) lost money during certain years at issue, (d) is unable to pay a higher penalty, and (e) a higher penalty would significantly impact STEADY GARAGE's viability as an ongoing business. Penalties or amounts settled upon in future cases might be smaller or larger depending on the unique circumstances of the case.
- (39) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by STEADY GARAGE or confidential settlement communications.

(40) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against STEADY GARAGE with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against STEADY GARAGE with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement,
 - (ii) Facts that were not disclosed by STEADY GARAGE to CARB,
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement,
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise,
 - (v) Any criminal liability, or
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, STEADY GARAGE shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of STEADY GARAGE or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against STEADY GARAGE, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

(e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. STEADY GARAGE is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; STEADY GARAGE's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that STEADY GARAGE's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: June 17, 2022

Mildred Enterprises, LLC, *dba* Steady Garage

Signature: /S/

Name: Kevin Dunn

Title: President and Managing Partner

Date: June 8, 2022