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California Air Resources Board

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA *ex rel.* THE CALIFORNIA**
15 **AIR RESOURCES BOARD,**

16 Plaintiffs,

17 v.

18 **THROTL, INC., A DELAWARE**
19 **CORPORATION, AND DOES 1-25,**
20 **INCLUSIVE,**
Defendants.

Case No. 37-2023-00024727-CU-MC-CTL

STIPULATION FOR ENTRY OF JUDGMENT; AND JUDGMENT

Dept: C-60
Judge: The Honorable Matthew C. Braner
Trial Date: None Set
Action Filed: June 13, 2023

21 **STIPULATION FOR ENTRY OF JUDGMENT**

22 This Stipulation for Entry of Judgment is made by and between plaintiff the State of
23 California *ex rel.* California Air Resources Board (CARB) and defendant throtl, Inc.(Defendant),
24 who shall be referred to collectively as the Parties.

25 **I. SETTLEMENT OF CLAIMS**

26 1. On June 5, 2023, the Parties reached a settlement to resolve a dispute described in the
27 Complaint in the above-captioned action.
28

1 2. In the Complaint, CARB asserts Defendant violated Vehicle Code sections 24005,
2 27156, Health and Safety Code section 43644, and California Code of Regulations, tit. 13, section
3 2220 *et seq.* by selling, offering for sale, and/or advertising parts or devices that alter or modify
4 the original design or performance of required motor vehicle pollution control devices or systems
5 on California vehicles, which devices and parts were not been exempted by CARB. Specifically,
6 CARB alleges Defendant sold, offered for sale and/or advertised the parts or devices identified in
7 Appendix A to this Stipulation for the Entry of Judgment and Judgment. CARB alleges
8 Defendant engaged in these activities during the period between September 6, 2017 and March
9 15, 2021. Defendant disputes CARB's allegations and do not admit to any statutory violations.

10 3. After an arms-length negotiations, CARB and Defendant reached the terms of a
11 settlement in which the Parties agreed to this Stipulation for Entry of Judgment in a good faith
12 effort to avoid the uncertainty and expense of protracted litigation.

13 4. Defendant stipulates and agrees to the terms of this Stipulation for Entry of Judgment
14 without any trial or adjudication of any fact or law.

15 5. The Parties agree that the resolution is fair and reasonable.

16 **II. JURISDICTION AND VENUE**

17 6. The Parties stipulate and agree that the Superior Court of California, County of San
18 Diego (Court) has subject matter jurisdiction over the matters alleged in this action, and personal
19 jurisdiction over the Parties and jurisdiction to enter any Judgment.

20 7. The Parties further stipulate and agree that the Court is the proper venue for this
21 matter to be heard.

22 8. The Parties further stipulate and agree that the Court should maintain jurisdiction over
23 the Parties, subject matter of their dispute, pursuant to California Code of Civil Procedure section
24 664.6, until final performance and enforcement of the Stipulation for Entry of Judgment.

25 **III. APPLICABILITY**

26 9. The terms and provisions of this Stipulation for Entry of Judgment, and any resultant
27 Judgment, shall be applicable to Defendant throtl, Inc., and to all persons, corporations or other
28 entities acting by, through, under or on behalf of said Defendant, and to all persons, corporations,

1 or other entities acting in concert with or participating with said Defedanant with actual or
2 constructive knowledge of this Stipulation for Entry of Judgment.

3 10. The terms and provisions of this Stipulation for Entry of Judgment, and any resultant
4 Judgment, pertain only to the activities described and specific statutory and regulatory violations
5 asserted in the Complaint, and do not extend to any other potential or related statuory or
6 regulatory violation committed by Defendant but not alleged in the Complaint.

7 11. The terms and provisions of this Stipulation for Entry of Judgment, and any resultant
8 Judgment, are binding on CARB, and do not bind any other local, state or federal public entity.

9 **IV. TERMS OF STIPULATION FOR ENTRY OF JUDGMENT**

10 12. Pursuant to their agreement, the Parties stipulate and agree that Defendant will pay
11 CARB one hundred seventy five thousand dollars, zero cents (\$175,000.00), inclusive of CARB's
12 attorneys' fees and costs incurred up to the date of judgment is entered. Payment shall be made
13 as follows:

- 14 a. Defendant shall make the payment of one hundred seventy five thousand dollars,
15 zero cents (\$175,000.00) within 30 days of the Court issuing an order effectuating
16 the Judgment.
- 17 b. Defendant shall make the full payment by check, credit card, wire transfer, or
18 CARB payment portal, using instructions provided separately by CARB in a
19 Payment Transmittal Form. The payment shall be made payable to the California
20 Air Resources Board. Defendant is responsible for all processing fees that are in
21 addition to the payment. The payment shall be accompanied by the Payment
22 Transmittal Form to ensure proper application.

23 13. The Parties further stipulate and agree that Defendant will be enjoined from
24 committing any further violations of Vehicle Code sections 24005, 27156, Health and Safety
25 Code section 43644, and California Code of Regulations, tit. 13, section 2220 *et seq.* by selling,
26 offering for sale, and/or advertising for sale aftermarket motor vehicle devices or parts, not
27 exempt or certified by CARB.

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1 14. In return, CARB stipulates and agrees to forgo litigation to prosecute Defendant, its
2 officers, directors, employees, successors in interest, affiliates and assigns, including, Wheel Pros,
3 LLC, for Defendant's alleged statutory violations identified in NOV # EPES-2022-C00489
4 occurring on or between September 6, 2017 and March 15, 2021, as alleged in the Complaint.
5 CARB further agrees to release Defendant, its officers, directors, employees, successors in
6 interest, affiliates and assigns, including, Wheel Pros, LLC, from all liability associated with the
7 alleged statutory violations identified in NOV # EPES-2022-C00489 occurring on or between
8 September 6, 2017 and March 15, 2021, as alleged in the Complaint. CARB further agrees this
9 stipulation reflects a complete and final resolution of the alleged statutory violations identified in
10 NOV # EPES-2022-C00489 occurring on or between September 6, 2017 and March 15, 2021.

11 15. The Parties stipulate and agree to be bound by the terms of the Stipulation for Final
12 Judgment, and the Parties further stipulate and agree that CARB can move to enforce the terms of
13 the Stipulation for Final Judgment, or any Judgment, pursuant to Code of Civil Procedure, section
14 664.6.

15 16. The Court shall enter Judgment against Defendant through legally-acceptable means
16 including by way of an order from the Court, the Clerk of the Court, Commissioner, or Judge Pro
17 Tem at the option of CARB and/or the Court.

18 17. Upon default on any term of the Stipulation for Entry of Final Judgment or Judgment,
19 CARB may, without limitation, lodge a notice of judgment lien with the California Secretary of
20 State, apply for and obtain judgment liens and abstracts of judgment and/or writs of execution
21 against Defendant in any county in California, domesticate and enforce the Judgment in any state
22 of the United States, and, utilize any and all other procedures legally available to CARB to collect
23 the full amount of said Judgment against Defendant.

24 18. This Stipulation for Entry of Judgment contains all of the terms and conditions agreed
25 upon by the Parties relating to matters covered by this Stipulation for Entry of Judgment.

26 19. This Stipulation for Entry of Judgment shall be construed according to the laws of the
27 State of California.
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1 20. Each party to this Stipulation for Entry of Judgment represents and warrants the
2 person who has signed on its behalf is duly authorized to enter into this Stipulation for Entry of
3 Judgment, and to bind the party to the terms and conditions of the Stipulation for Entry of
4 Judgment.

5 21. Defendant agrees to waive its right to appeal from this Stipulation for Entry of
6 Judgment and any resultant Judgment. Nothing in this Stipulation for Entry of Judgment shall be
7 construed as a waiver of any party's right to appeal from an order that arises from a action to
8 enforce the terms of the Stipulation for Entry of Judgment.

9 22. Each party to this Stipulation for Entry of Judgment acknowledges it has been
10 represented by legal counsel, and each party has reviewed, and has had the benefit of legal
11 counsel's advice concerning all of the terms and conditions of this Stipulation for Entry of
12 Judgment.

13 23. Defendant shall be liable for any and all expenses including but not limited to,
14 attorney's fees and costs incurred by CARB and/or the Attorney General's Office for enforcing
15 any portion of the Stipulated for Entry of Judgment and Judgment. For the purpose of
16 interpreting this paragraph, the Parties agree and acknowledge that CARB is the sole prevailing
17 party in this action within the meaning of Code of Civil Procedure sections 1021.8 and 1032, *et*
18 *seq.*, and that Defendant shall not be entitled to the recovery to the recovery of any costs or fees
19 as a result of this action or Defendant's opposition to CARB's enforcement of the judgment.
20 CARB shall be entitled to interest on any unpaid amount of the Judgment which shall begin to
21 accrue at the rate of ten percent per annum from the date of any default of the terms of this
22 Stipulation for Entry of Judgment.

23 24. The effective date of this Stipulation for Entry of Judgment shall be the date it is
24 signed by CARB's counsel at the California Office of the Attorney General.

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1 25. The Stipulation for Entry of Judgment may be executed by the Parties in counterpart
2 originals with the same force and effect as if fully and simultaneously executed as a single,
3 original document.

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5 Dated: 6/13/2023



Phillip Hoos
Deputy Attorney General
Attorney for Plaintiff California Air Resources
Board

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9 Dated: 6/13/2023



Edward Burns
General Counsel
throtl, Inc.
Defendant

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13 Approved as to form:
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15 Dated: June 13, 2023



Peter W. McGaw
Buchalter, a Profession Corporation
Attorney for Defendant throtl, Inc.

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JUDGMENT

The Court finds to its satisfaction that the Stipulation for Entry of Judgment between the Parties and Entry of Judgment against Defendant throtl, Inc. (Defendant) are proper, and for good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 1. The Stipulation for Entry of Judgment against Defendant is incorporated herein with the same force and effect as if fully set forth herein.
- 2. This Court has jurisdiction of the subject matter hereof and the parties hereto.
- 3. Venue is proper in this Court.
- 4. Defendant shall pay CARB the sum of \$175,000.00 as provided in the Stipulation for Entry of Judgment.
- 5. Defendant shall be and hereby are permanently enjoined and restrained from engaging in any further violations of Vehicle Code sections 24005, 27156, Health and Safety Code section 43644, and California Code of Regulations, tit. 13, section 2220 *et seq.* by selling, offering for sale, and/or advertising aftermarket motor vehicle devices or parts, not exempt or certified by CARB.
- 6. The Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 for the purposes of enabling CARB to apply to the Court at any time for any such orders and directions as may be necessary or appropriate to enforce the injunctive relief and monetary provisions provided in the Stipulation for Entry of Judgment, and to seek attorney’s fees and costs relating to CARB’s enforcement of this Judgment.



Judge Matthew C. Braner

Dated: 6/23/23

Judge of the Superior Court

DECLARATION OF SERVICE BY E-MAIL

Case Name: **State of California ex rel California Air Resources Board v. throtl., Inc.**
Case No.: **37-2023-00024727-CU-MC-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On June 16, 2023, I served the attached:

STIPULATION FOR ENTRY OF JUDGMENT; AND JUDGMENT

by transmitting a true copy via electronic mail.

Peter W. McGaw
BUCHALTER a Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105
E-mail Address: pmcgaw@buchalter.com

Attorneys for throtl, Inc.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 16, 2023, at San Diego, California.

A. Espinoza



Declarant

Signature