

## SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814 and Coleman Powersports (hereinafter "COLEMAN PS"), with its principal place of business located at 1775 E. University Drive, Tempe, Arizona 85281 (collectively as the "PARTIES" or individually as a "PARTY").

### RECITALS

1. The California Health and Safety Code mandates the reduction of the emission of air pollution from off-road engines. (Health & Saf. Code §§ 43013; 43018.)
2. CARB adopted the exhaust and evaporative emissions regulations (Cal. Code Regs., tit. 13, §§ 2400-2409; 2750-2774) (hereinafter "EMISSIONS REGULATIONS") for off-road spark-ignited small off-road engines and equipment utilizing such engines.
3. Small off-road engine is any engine that produces a gross horsepower less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), or is designed to produce less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year). (Cal. Code Regs., tit. 13, § 2401(a)(39).)
4. CARB recognizes that certain emissions-critical and/or emissions-related parts must be properly labeled in order to identify equipment that meets applicable EMISSIONS REGULATIONS. Engine or equipment manufacturers and Holders must affix a certification label(s) on each production equipment unit (or engine, as applicable). (Cal. Code Regs., tit. 13, §§ 2404(a); 2759(a).)
5. The labeling requirement applies to engines, equipment, fuel lines, fuel tanks, and carbon canisters that have been certified to the applicable evaporative emission standards. (Cal. Code Regs., tit. 13, § 2759(b).)
6. The label must be welded, riveted, or otherwise permanently attached to the engine or equipment that is readily visible and must contain the following information:
  - A. The label heading must read: "IMPORTANT ENGINE INFORMATION"; "IMPORTANT EMISSION INFORMATION"; "EMISSION CONTROL INFORMATION"; or "IMPORTANT EMISSIONS INFORMATION." "EMISSIONS" relates to both exhaust and evaporative emissions.
  - B. The full corporate name or trademark of the engine manufacturer and Holder.

- C. Identification of the exhaust and evaporative emissions control system.
  - D. Engine family and evaporative emissions family identification.
  - E. The date (month and year) of engine manufacture and evaporative emission control system manufacture.
  - F. An unconditional statement of compliance with the appropriate model year(s) (2000 and later for exhaust and 2006 and later for evaporative) California regulations. (Cal. Code Regs., tit. 13, §§ 2404(c); 2759(c).)
7. Executive Order U-N-239-0001 states, in pertinent part, "The manufacturer listed above (holder of this Executive Order) must ensure that the eighth (8th) character of the vehicle identification number (VIN) of all vehicles certified under this Executive Order be either a "C" or "3" as indicated below. Violation of this VIN requirement may subject the manufacturer to enforcement actions."
  8. The Executive Officer may suspend or revoke the Executive Order and may seek penalties for each engine, equipment unit, or evaporative component that does not comply with the requirements of the EMISSIONS REGULATIONS. (Cal. Code Regs., tit.13, § 2772)
  9. Health and Safety Code section 43212 states, in pertinent part, "A manufacturer or distributor who does not comply with the emission standards or the test procedures adopted by the state board shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each vehicle that does not comply with the standards or procedures and that is first sold in this state."
  10. On November 7, 8, and 19, 2018, CARB field staff documented and issued Notices of Violations (Notice #: 6555 and 6556) for the offers for sale of six (6) Model Year 2018 COLEMAN PS CK100-S Go-Karts (engine family JCQHS.0981HH) by Sam's Club. On November 11, 2018, CARB field staff documented and issued another Notice of Violation (Notice #: 6213) for the offers for sale of two (2) Model Year 2018 COLEMAN PS K196 Go-Karts (engine family JCQHS.1961HH) by Sportsman's Warehouse. On January 4, 2019, CARB field staff documented and issued another Notice of Violation (Notice #: 3327) for the offers for sale of two (2) Model Year 2019 COLEMAN PS CT200U Mini Bikes (engine family KHSNX.196MB9) by Hills Flat Lumber Co. (hereinafter "SUBJECT UNITS").
  11. Model Year 2018 COLEMAN PS CK100-S Go-Karts and Model Year 2018 COLEMAN PS K196 Go-Karts were certified by CARB. Model Year 2019 COLEMAN PS CT200U Mini Bikes were certified by CARB under the Red

Sticker Program.

12. COLEMAN PS subsequently reported one hundred twenty-five (125) offers for sale of the SUBJECT UNITS in California.
13. Based upon the information COLEMAN PS submitted to CARB, CARB alleges that the SUBJECT UNITS were mislabeled. Seventy-eight (78) affected Model Year 2018 COLEMAN PS CK100-S Go-Karts and twenty-nine (29) affected Model Year 2018 COLEMAN PS K196 Go-Karts lacked an unconditional statement of compliance with the appropriate model year(s) (2000 and later for exhaust and 2006 and later for evaporative) California regulations on its emissions label. Eighteen (18) affected Model Year 2019 COLEMAN PS CT200U Mini Bikes did not have a "C" or "3"(as indicated in the Executive Order) in the eighth character of its VINs.
14. COLEMAN PS fully cooperated with CARB in the investigation of this subject matter.
15. COLEMAN PS is an Arizona corporation doing business in interstate commerce.
16. This is COLEMAN PS's first enforcement record with CARB.
17. CARB alleges that if the allegations described in recital paragraphs 1 through 13 were proven, civil penalties could be imposed against COLEMAN PS as provided in Health and Safety Code section 43212.
18. COLEMAN PS admits the facts in recital paragraphs 1 through 13, but denies any liability arising thereunder.
19. 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 alleged violations and voluntarily agree to resolve this matter by means of this AGREEMENT, without the need for formal litigation. COLEMAN PS has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this AGREEMENT in termination and settlement of this matter.

### **TERMS AND RELEASE**

In settlement of any and all claims that CARB has against COLEMAN PS for the violations alleged above, and in consideration of CARB not filing a legal action as well as the other terms set out below, CARB and COLEMAN PS agree as follows:

1. COLEMAN PS shall pay the total sum of **sixteen thousand four hundred twenty-**

**five dollars (\$16,425.00)** as a penalty by check or wire transfer to the California Air Pollution Control Fund within **30 days** from the date COLEMAN PS executes this AGREEMENT.

If payment is by check, COLEMAN PS's check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) and sent to:

California Air Resources Board  
Accounting Office  
P.O. Box 1436  
Sacramento, California 95812-1436

If payment is by wire, thereupon COLEMAN PS's wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) shall be sent to:

State of California Air Resources Board  
c/o Bank of America, Inter Branch to 0148  
Routing No. 0260-0959-3 Account No. 01482-80005  
Notice of Transfer: Nabila Abusway Fax: (916) 322-9612  
Reference: CARB Case #C00200

*Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.*

2. COLEMAN PS shall send the original signed and dated AGREEMENT, copies of payment and the Settlement Agreement Payment Transmittal Form (Attachment A), and any future mailings or documents required per the terms of this AGREEMENT to:

Allen Pham  
Air Resources Engineer  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

3. The PARTIES agree that this AGREEMENT may be executed by facsimile and in counterparts by the PARTIES and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
4. COLEMAN PS represents that it understands the legal requirements applicable to small off-road engines and off-highway recreational vehicles in California and

agrees that it will not manufacture for sale, sell, offer for sale, lease for use or operation, introduce, deliver, or import products into commerce in California unless the units are properly labeled.

5. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on COLEMAN PS by CARB arising from the facts described in recital paragraphs 1-13 are nondischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
6. This AGREEMENT shall apply to and be binding upon COLEMAN PS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this AGREEMENT.
7. Now, therefore, in consideration of the payment by COLEMAN PS to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases COLEMAN PS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and Hills Flat Lumber Co., Sam's Club, Sportsman's Warehouse, Wal Mart, and Tractor Supply (hereinafter "SUBJECT RETAILERS") from any and all claims that CARB may have relating to the SUBJECT UNITS and based on the allegations described in recital paragraphs 1-13.
8. This AGREEMENT constitutes the entire agreement and understanding between CARB and COLEMAN PS concerning the claims and settlement in this AGREEMENT, and this AGREEMENT fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and COLEMAN PS concerning these claims.
9. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
10. No agreement to modify, amend, extend, supersede, terminate, or discharge this AGREEMENT, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all PARTIES to this AGREEMENT.
11. Each PARTY to this AGREEMENT has reviewed the AGREEMENT independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this AGREEMENT, and has not relied in any way on any inducement,

representation, or advice of any other PARTY in deciding to enter into this AGREEMENT.

12. This 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.
13. Each provision of this AGREEMENT is severable, and in the event that any provision of this AGREEMENT is held to be invalid or unenforceable in any jurisdiction, the remainder of this AGREEMENT remains in full force and effect.
14. This AGREEMENT is deemed to have been drafted equally by the PARTIES; it will not be interpreted for or against either PARTY on the ground that said PARTY drafted it.
15. The failure of any PARTY to enforce any provision of this 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 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 AGREEMENT or otherwise provided by law.
16. This AGREEMENT shall further serve to toll any statute of limitations until all terms and conditions of this AGREEMENT have been fulfilled.

#### 17. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.), which is also provided throughout this AGREEMENT.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit basis for the penalty.**

The per unit penalties for COLEMAN PS in this case are twenty-five dollars (\$25.00) per unit for one hundred seven (107) non-compliant emissions labels and three hundred seventy-five dollars (\$375.00) per unit for eighteen (18) non-compliant VINs. In addition to COLEMAN PS's penalty amount, COLEMAN PS agreed to assume penalty responsibility for its SUBJECT RETAILERS. The per unit penalties for COLEMAN PS's retailers in this case are twenty-five dollars (\$25.00) per unit for eighty-five (85) non-compliant emissions labels and three hundred seventy-five dollars (\$375.00) per unit for thirteen (13) non-compliant VINs. The penalties in this matter reflects the fact that COLEMAN PS fully cooperated with the investigation, there were no emission impacts in excess of any applicable law or regulation, the violation was corrected in a timely manner.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors, (Health & Saf. Code § 42403), including the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and CARB's assessment of the relative strength of its case against COLEMAN PS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that COLEMAN PS may have secured from its alleged actions. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provisions being applied in this case is Health and Safety Code section 43212, because COLEMAN PS manufactured for sale, sold, offered for sale, introduced, delivered, and imported into commerce in California mislabeled small off road engines and off-highway recreational vehicles that failed to comply with and violated the EMISSIONS REGULATIONS, which CARB adopted under the authority of Health and Safety Code sections 43013 and 43018, which are in Part 5 of Division 26 of the Health and Safety Code.


**Whether the penalty is being assessed under a provision of law that prohibits the emission of pollution at a specified level, and if so, a quantification of excess emissions, if it is practicable to do so.**

The provisions cited above do not prohibit emissions above a specified level.

18. COLEMAN PS acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.
19. The penalty in this case was based in part on confidential business information provided by COLEMAN PS that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and COLEMAN PS that CARB does not retain in the ordinary course of business either.
20. Each of the undersigned represents that he or she has full power and authority to enter this AGREEMENT.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

By:   
Name: Todd P. Sax, D.Env.  
Title: Chief, Enforcement Division  
Date: 6/4/19

**Coleman Powersports**

By:   
Name: Rich Godfrey  
Title: President / CEO  
Date: 5/29/2019