

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 Hurst Jaws of Life, Inc. (hereinafter "HURST"), with its principal place of business located at 711 N. Post Road, Shelby, North Carolina 28150 (collectively, "The Parties").

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 "*Evaporative Emission Requirements for Off-Road Equipment Regulation* (Cal. Code Regs., tit. 13, §§ 2750–2774) (hereinafter "Evaporative Emissions Regulation") to reduce emissions of oxides of nitrogen and hydrocarbons from off-road spark-ignited small off-road engines rated at equal to or less than 19 kilowatts, and equipment utilizing such engines.
3. The Evaporative Emissions Regulation prohibits small off-road engines (SORE) that are not equipped with an evaporative emissions control system that is certified and labeled according to the Evaporative Emissions Regulation from being (a) manufactured for sale or lease for use or operation in California; (b) sold, leased for use, or operation in California; or (c) delivered or imported into California for introduction into commerce in California. (Cal. Code Regs., tit. 13, § 2751(a).)
4. Failure to comply with any requirement of the Evaporative Emissions Regulation for SORE engines is a violation of state law which may result in penalties up to five hundred dollars (\$500) for each action. (Health & Saf. Code, § 43016.)
5. On June 3, 2019, HURST voluntarily disclosed to CARB that thirteen (13) model year 2015–2017 HURST hydraulic pumps ("Subject Units") without Executive Orders were sold into California.
6. CARB alleges that the manufacture, sale, and delivery into California of the Subject Units was unlawful and in violation of the Evaporative Emission Regulation.
7. HURST fully cooperated with CARB in the investigation of this subject matter.
8. HURST is a North Carolina corporation doing business in California.
9. CARB alleges that if the allegations described in recital paragraphs 1 through 6 were proven, civil penalties could be imposed against HURST as provided in Health and Safety Code section 43016.

10. HURST admits the facts in recital paragraphs 1 through 6, but denies any liability arising thereunder.
11. 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. HURST 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 HURST 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 HURST agree as follows:

1. Upon execution of this agreement, HURST shall pay the total sum of **three thousand two hundred fifty dollars (\$3,250.00)** as a penalty by check or wire transfer to the **California Air Pollution Control Fund** within **30 days** from the date it signs this agreement.

Each check shall be accompanied with the "Settlement Agreement Payment Transmittal Form" provided by CARB and sent to:

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

Each wire transfer shall be accompanied with the "Settlement Agreement Payment Transmittal Form" provided by CARB and 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: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #C00249

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

2. HURST shall send the original signed and dated Settlement Agreement, copies of payment and the Settlement Agreement Payment Transmittal Form, and any future

mailings or documents required per the terms of this Agreement to:

Gretchen Ratliff
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731

3. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.
4. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.
5. HURST represents that it understands the legal requirements applicable to selling small off-road engines in California and agrees that it will not introduce products into commerce in California unless the units have valid Executive Orders from CARB.
6. HURST agrees that this penalty imposed on HURST by CARB is nondischargeable under 11 U.S.C § 523 (a)(7).
7. This Agreement shall apply to and be binding upon HURST 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.
8. Now, therefore, in consideration of the payment by HURST to the California Air Pollution Control Fund in the amount specified above, CARB hereby releases HURST and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have relating to the Subject Units or based on the allegations described in recital paragraphs 1 through 6.
9. This Agreement constitutes the entire agreement and understanding between CARB and HURST 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 HURST concerning these claims.
10. The effective date of this Agreement shall be the date upon which it is fully executed.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. The terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
18. This Agreement shall further serve to toll any statute of limitations until all terms and conditions of this Agreement have been fulfilled.

19. **Penalty Determination**

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

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 43016, because HURST manufactured, sold, and delivered or imported into California uncertified small off road engines that failed to comply with the Evaporative Emissions Regulation, in violation of California Code of Regulations,

title 13, section 2750, et seq., which CARB adopted under the authority of Health and Safety Code section 43013, which is in Part 5 of Division 26 of the Health and Safety Code.

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

The per unit penalty in this case is two hundred fifty dollars (\$250) per unit for thirteen (13) Subject Units. This reflects the fact that HURST voluntarily disclosed the violations in writing, this was a first time violation for HURST, and HURST fully cooperated with the investigation.

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 HURST, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that HURST may have secured from its alleged actions. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.

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.

20. HURST 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.
21. The penalty in this case was based in part on confidential business information provided by HURST 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 HURST that CARB does not retain in the ordinary course of business either.
22. 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

Hurst Jaws of Life, Inc.

By: _____/S/
Name: Todd P. Sax, D.Env.
Title: Chief, Enforcement Division
Date: 12/20/19

By: _____/S/
Name: Ellie Mulcay
Title: General Manager
Date: 11/20/19