

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB"), with its principal office at 1001 I Street, Sacramento, California, 95814, and WESTERN POWER SPORTS, INC. (hereinafter "WPS") with its principal place of business at 601 East Gowen Road, Boise, Idaho 83716, collectively, "The Parties."

RECITALS

1. California Vehicle Code (VC) section 27156(c) provides, in pertinent part, that "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system."
2. VC section 27156(h) provides, in pertinent part, that this section shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to either not reduce the effectiveness of any required motor vehicle pollution control device or result in emissions from any such modified or altered vehicle which are at levels that comply with existing state or federal standards for the model year of the vehicle being modified or converted.
3. California Code of Regulations (CCR), title 13, section 2222(b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 unless each advertisements contains a legally adequate disclaimer."
4. CCR, title 13, section 2222(e) provides, "The Executive Officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the 'Procedures for Exemption of Add-on and Modified Parts.' [The Procedures] adopted by the state board on November 4, 1977, as amended June 1, 1990."
5. The Procedures provide, "Examples of emission related parts are shown in Appendix 1 of these procedures. Such parts require an exemption from the prohibitions of section 27156 and 38391 of the Vehicle Code...in order to be legally advertised, offered for sale, sold, or installed in California."
6. CCR, title 13, section 2222(f) provides, "Each person engaged in the business of retail sale or installation of an add-on modified part which has not been exempted from Vehicle Code section 27156 shall maintain records of such activity which indicate date of sale, purchaser name and address, vehicle model and work performed if applicable. Such records shall be open for reasonable inspection by the Executive Officer or his/her representative. All such records shall be maintained for four years from the date of sale or installation."

7. In addition, CCR, title 13, section 2225(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of California Vehicle Code Section 27156 or other laws or regulations, as applicable.
8. VC section 38391 provides, "No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required off-highway motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system."
9. VC section 38395 provides, "This Article [of which VC section 38391 is a part] shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board either: (a) To not reduce the effectiveness of any required off-highway motor vehicle pollution control device; or (b) To result in emissions from any such modified or altered off-highway vehicle which are at levels which comply with existing state or federal standards for that model year of the vehicle being modified or converted."
10. CCR, title 13, section 2272(b)(2) provides, in pertinent part, that "no person or company doing business in interstate commerce shall advertise in California any device, apparatus, or mechanism which alters or modifies the original design or performance of any required motor vehicle pollution control device or system and not exempted from Vehicle Code section 27156 , 38391 or CCR, Title 13, Section 2472, unless each advertisements contains a legally adequate disclaimer."
11. CCR, title 13, section 2472(a) provides, in pertinent part, that "[n]o person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as part of, any required off-road vehicle, engine, or equipment pollution control device or system which alters or modifies the original design or performance of any such pollution control device or system."
12. CCR, title 13, section 2472(c)(1) provides, in pertinent part, that "[t]his section shall not apply to an alteration, modification, or modifying device, apparatus, or mechanism found by resolution of the State Air Resources Board to do either of the following: (1) Not to reduce the effectiveness of any required off-road vehicle, engine, or equipment pollution control device; (2) To result in emissions from any such modified or altered off-road vehicle, engine, or equipment which are at levels that comply with existing state or federal standards for the model year of the vehicle, engine or equipment being modified or converted."
13. CCR, title 13, section 2474(c) provides, "No person shall advertise, offer for sale, or install a part as an off-road vehicle, engine, or equipment pollution control device or as an exempted device, when in fact such part is not an off-road vehicle, engine, or equipment pollution control device or is not approved or exempted by the state board."
14. CCR, title 13, section 2474(e) provides, "The executive officer may exempt add-on and modified parts based on an evaluation conducted in accordance with the

'Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories,' adopted July 14, 2000, as last amended June 5, 2009, which is hereby incorporated by reference herein."

15. CCR, title 13, section 2474(g) provides, "A violation of any of the prohibitions set forth in this section shall be grounds for the executive officer to invoke the provisions of section 2476."
16. CCR, title 13, section 2476(a) provides, in pertinent part, that the Executive Officer may seek fines for violations of VC sections 27156, 38391 or CCR, title 13, section 2472, or other laws or regulations, as applicable.
17. California Health and Safety Code (HSC) section 43008.6 states, in pertinent part, "The state board may collect a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation of Section 27156 of the Vehicle Code."
18. HSC section 43016 in effect prior to January 1, 2017 states, in pertinent part, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations."
19. ARB alleges that WPS sold, offered for sale, and/or advertised aftermarket parts during calendar years 2011 through 2013 that were designed and intended for use on off-road vehicles in California, but these parts were not exempted by ARB pursuant to CCR, title 13, section 2220 et seq. and CCR, title 13, section 2470 et seq. (hereinafter "Subject Parts").
20. ARB alleges that the Subject Parts altered or modified the original design or performance of devices, apparatuses, or mechanisms intended for use with, or as part of, required off-road vehicle, engine, or equipment pollution control devices or systems.
21. ARB alleges that the advertisements, offers for sale, sales, and installations of the Subject Parts were unlawful and in violation of VC section 27156(c), VC section 38391, CCR, title 13, section 2220 et seq. and CCR, title 13, section 2470 et seq.
22. ARB alleges that if the facts described in recital paragraphs 1-21 were proven, civil penalties could be imposed against WPS as provided in Health and Safety Code section 43016 for each and every violation alleged.
23. WPS is an Idaho corporation.
24. WPS fully cooperated with ARB in its investigation of the Subject Parts.
25. WPS has no prior enforcement record with ARB.

26. WPS admits the facts described in recital paragraphs 1-21 but denies the allegations and any liability resulting from the allegations therein.
27. WPS is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against WPS for the violations alleged above, and in consideration of the other terms set out below, ARB and WPS agree as follows:

1. As a condition of this Agreement, WPS shall pay the total sum of one hundred ninety-two thousand seven hundred fifty dollars (\$192,750.00) to the **California Air Pollution Control Fund**. An initial payment of ninety-two thousand seven hundred and fifty dollars (\$92,750.00) shall be paid no later than ten (10) business days after this Agreement is fully executed, and one hundred thousand dollars (\$100,000.00) shall be paid within one year of the date of full execution.

WPS shall send the signed Agreement and any future mailing or documents required per the terms of this Agreement to:

**Dean Hermano, Staff Air Pollution Specialist
Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731**

WPS shall send a copy of the signed Agreement, and each payment using the attached "Settlement Agreement Payment Transmittal Form" (ATTACHMENT A) to:

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

2. As a further condition of this Agreement, WPS has agreed to undertake a Supplemental Environmental Project (SEP) (ATTACHMENT B), which ARB has approved as mitigation for past violations. Pursuant to this Agreement, WPS shall, no later than ten (10) business days after this Agreement is fully executed:
 - a. Send a check in the amount of \$64,250 payable to the **South Coast Air Quality Management District** (SCAQMD) with the annotation "Installation of Air Filtration

Systems in Schools SEP" in the check's note or memo line to:

South Coast Air Quality Management District
ATTN: Ms. Patricia Kwon
21865 Copley Drive
Diamond Bar, California 91765

- b. Send a copy of the payment check and Settlement Agreement Payment Transmittal Form (ATTACHMENT A) to ARB's Accounting Office listed above.
3. WPS has agreed that by funding the Installation of Air Filtration Systems in Schools SEP, they will not receive any direct or indirect financial benefit, and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
4. Upon agreeing to the terms set forth in the SEP Agreement (ATTACHMENT B), and funding the Installation of Air Filtration Systems in Schools SEP, WPS is released of all liabilities as they relate to the Installation of Air Filtration Systems in Schools SEP as reflected in this underlying Settlement Agreement.
5. Effect of Untimely Payment. If the penalty or SEP payment described in Terms and Release paragraphs 1 and 2, respectively, is more than fifteen (15) days late, the entire balance shall become immediately due and payable without notice or demand. In addition, if the Attorney General files a civil action to enforce this settlement agreement on account of such untimely payment, WPS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
6. It is agreed that if WPS at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving WPS, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against WPS as a result of such adverse event, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of WPS's properties, or if any deposit account or other property of WPS be attempted to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or WPS takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.
7. It is agreed that the penalty described in terms and release paragraphs 1-2 are 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 ARB and SCAQMD, both governmental units. Therefore, it is agreed that this penalty imposed on WPS by ARB arising from the facts described in recital paragraphs 1-21 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.

8. WPS shall not install, sell, offer for sale, or advertise in California any aftermarket parts for use on on-road and off-road vehicles, engines, or equipment, in violation of title 13, CCR, sections 2222, 2472 or 2474, or Vehicle Code sections 27156 or 38391.
9. This Agreement shall apply to and be binding upon WPS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and predecessors and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
10. Now, therefore, contingent on the payment in full by WPS to the California Air Pollution Control Fund and the South Coast Air Quality Management District for funding of the Installation of Air Filtration Systems in Schools SEP in the amounts specified above, ARB hereby releases WPS and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs 1-21, above.
11. This Agreement constitutes the entire agreement and understanding between ARB and WPS 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 ARB and WPS concerning these claims.
12. 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.
13. Advice of Counsel. 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.
14. 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.
15. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect to the extent necessary to fulfill the Agreement's purpose and the intent of the parties.
16. Waiver. 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. Captions. The captions by which the sections and subsections of this Agreement are identified are for convenience only, and shall have no effect whatsoever upon their interpretation.
18. The Parties agree that this Agreement may be executed by facsimile and in multiple 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.
19. 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.

20. SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of \$2,000 per unit per strict liability violation. The penalty obtained in this case is \$500 per unit for 514 Subject Parts. WPS is a first time violator and was fully cooperative with the investigation.

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

The penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because WPS allegedly sold, offered for sale, and/or advertised the subject non-California certified aftermarket parts for on- and off-road vehicles that were not exempted pursuant to CCR, title 13, sections 2472 and 2474.

Is the penalty 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. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. There are no testing results available that would indicate how much emissions increased as a result of the use of the non-exempt aftermarket parts. However, since the Subject Parts were not exempt from applicable anti-tampering laws in California, all emissions attributable to them are illegal. The Parties had adequate opportunity to conduct such testing, but elected not to do so in the interests of settlement and because of the time and expense involved.

21. WPS acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
22. Penalties were determined based on 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 negotiations, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
23. The penalty in this case was based in part on confidential business information provided by WPS that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and WPS that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against WPS, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that WPS may have secured from its alleged actions.

24. The undersigned represent that they have the authority to enter this Agreement.

California Air Resources Board

WESTERN POWER SPORTS, INC.

By:  _____

By:  _____

Name: Richard W. Corey

Name: Steve Lester

Title: Executive Officer

Title: Chief Operating Officer

Date: 9/18/2017

Date: 8/29/17