

## 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 "CARB"), with its principal office at 1001 I Street, Sacramento, California 95814 and Tractor Supply Company (hereinafter "TSC") with its principal place of business at 5401 Virginia Way, Brentwood, TN 37027, collectively, "The Parties."

### RECITALS

1. California Code of Regulations, title 13, section 2400(a)(2) states, in pertinent part "Every new small off-road engine that is manufactured for sale, sold or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article."
2. California Code of Regulations, title 13, section 2401(a)(39) defines "small off-road engine" as "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 (e.g., through fuel feed, valve timing, etc.) to produce less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), that is not used to propel a licensed on-road motor vehicle, an off-road motorcycle, an all-terrain vehicle, a marine vessel, a snowmobile, a model airplane, a model car, or a model boat... Uses for small off-road engines include, but are not limited to, applications such as lawn mowers, weed trimmers, chain saws, golf carts, specialty vehicles, generators and pumps."
3. California Code of Regulations, title 13, section 2404(a) provides, "The Air Resources Board recognizes that certain emissions-critical or emissions-related parts must be properly identified and maintained in order for engines to meet the applicable emission standards... These specifications require engine or equipment manufacturers to affix a label (or labels) on each production engine (or equipment, as applicable) to provide the engine or equipment owner and service mechanic with information necessary for the proper maintenance of these parts in customer use..."
4. California Code of Regulations, title 13, section 2404(c)(4)(H) requires "An unconditional statement of compliance with the appropriate calendar year (for 1995-1999) or model year(s) (for 2000 and later) California regulations; for example, 'THIS ENGINE MEETS 2005 CALIFORNIA EXH EMISSION REGULATIONS FOR SMALL OFF-ROAD ENGINES.'"
5. Health and Safety Code section 43212 states, in pertinent part, "Any 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 of fifty dollars (\$50) for each vehicle which does not comply with the standards or

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procedures and which is first sold in this state.”

6. On April 4, April 5 and April 7, 2016, CARB field staff documented and issued 10 offers for sale violations (Notice #: 6211, 6256, 6258, 6259, and 6309) by TSC of model year 2015 Earthquake brand rototillers, engine model number R100-III, engine family FCRPS.0991GA manufactured by Ardisam (“Subject Units”).
7. The relevant portion of the label on these Subject Units states “THIS ENGINE MEETS U.S.EPA EXH/EVP REGS FOR 2015 MODEL YEAR. THIS ENGINE IS CERTIFIED TO OPERATE ON UNLEADED GASOLINE.”
8. TSC subsequently reported 133 offers for sale of the Subject Units.
9. Based upon the information CARB received from TSC, CARB alleges that the Subject Units were mislabeled since the engine labels lacked an unconditional statement of compliance with the appropriate model year(s) California regulations.
10. TSC fully cooperated with CARB in the investigation of this subject matter.
11. TSC is a Delaware corporation doing business in interstate commerce.
12. TSC has two prior enforcement records with CARB in 2012 and 2014.
13. CARB alleges that if the allegations described in recital paragraphs 1-9 were proven, civil penalties could be imposed against TSC as provided in Health and Safety Code section 43212.
14. TSC admits the facts in recital paragraphs 1-9, but denies any liability arising thereunder.
15. TSC is willing to enter into this Agreement with CARB, solely for the purpose of settlement and resolution of this subject matter. CARB accepts this Agreement in termination of this subject matter. Accordingly, the Parties agree to resolve this subject matter completely by means of this Agreement, without the need for formal litigation.

### TERMS AND RELEASE

In consideration of CARB not filing a legal action as well as the other terms set out below, CARB and TSC agree as follows:

1. As a condition of this Agreement, TSC shall pay the total sum of six thousand six hundred and fifty dollars (\$6,650.00) as a penalty by cashier's check to the **California Air Pollution Control Fund**.

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TSC shall send the signed Agreement and any future mailing 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, CA 91731

TSC 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. TSC 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 unless CARB certification has first been obtained and that all units are properly labeled.
3. This Agreement shall apply to and be binding upon TSC and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, customers, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
4. Now, therefore, in consideration of the payment by TSC to the California Air Pollution Control in the amount specified above, CARB hereby releases TSC and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and customers from any and all claims that CARB may have relating to the Subject Units or based on the allegations described in recital paragraphs 1-9, above. The undersigned represent that they have the authority to enter this Agreement.
5. This Agreement constitutes the entire agreement and understanding between CARB and TSC 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 TSC concerning these claims.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

**13. SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39619.7) requires the CARB 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 subject 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 \$50 per unit per strict liability

violation. The penalty obtained in this case is \$50 per unit for 133 units, which is the maximum allowable penalty. This reflects the fact that TSC is a repeat violator.

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

CARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43212, is appropriate because TSC manufactured for sale, sold or offered for sale in California, or introduced, delivered or imported into California for introduction into commerce generators that were not properly labeled pursuant to Title 13, California Code of Regulations section 2404(c)(4)(H).

**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. There are no excess emissions since the Subject Units were certified by CARB.

14. TSC acknowledges that CARB has complied with SB 1402 in prosecuting and settling this case. Specifically, CARB 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.
15. Penalties were determined based on the unique circumstances of this subject 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 the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. The penalty was discounted in this subject matter based on the fact that this was an innocent and because TSC made diligent efforts to comply and to cooperate with the CARB's investigation. Penalties in future cases might be smaller or larger on a per unit basis.
16. The penalty in this case was based in part on confidential business information provided by TSC 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 TSC that CARB does not retain in the

ordinary course of business either. The penalty also reflects CARB's assessment of the relative strength of its case against TSC, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TSC may have secured from its alleged actions.

**California Air Resources Board**

**Tractor Supply Company**

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Name: Dr. Todd P. Sax

Name: Matthew J. Holden

Title: Chief, Enforcement Division

Title: Vice President - Legal & Quality Assurance

Date: 5/7/18

Date: 4.17.18