## 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, and Yoshimura Research & Development of America, Inc. (hereinafter "YOSHIMURA") with its principal place of business at 5420 Daniels Street, Chino, California, 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. 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."

4. 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."

5. California Code of Regulations (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."

6. 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."

7. 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."

8. 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."

9. 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."

10. 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.

11. Health and Safety Code (HSC) section 43016 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."

12. ARB alleges that Yoshimura sold, offered for sale, and/or advertised an aftermarket part identified as the "Cherry Bomb" (hereinafter "subject part") that was designed and intended for use on off-road vehicles in California.

13. ARB alleges that the subject part was not exempted by ARB pursuant to CCR, title 13, sections 2470 *et seq.*

14. ARB alleges that the subject part 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.

15. ARB alleges that the advertisements, offers for sale, sales, and installations of the subject part were unlawful and in violation of VC section 27156(c), VC section 38391, and CCR, title 13, section 2470 *et seq*.

16. ARB alleges that if the facts described in recital paragraphs 1-15 were proven, civil penalties could be imposed against Yoshimura as provided in Health and Safety Code section 43016 for each and every violation alleged.

17. Yoshimura fully cooperated with ARB in its investigation of the subject part.

18. Yoshimura informed ARB that it discontinued producing the subject part in 2012.

19. Yoshimura admits the facts described in recital paragraphs 1-15 but denies the allegations and any liability resulting from the allegations therein.

20. Yoshimura 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 Yoshimura for the violations alleged above, and in consideration of the other terms set out below, ARB and Yoshimura agree as follows:

1. Yoshimura shall pay the total sum of ninety thousand dollars ($90,000.00) to the **California Air Pollution Control Fund** no later than five (5) business days after this Agreement is fully executed. This payment shall be mailed to the following address along with the enclosed Settlement Agreement Payment Transmittal Form:

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

2. Yoshimura shall not install, sell, offer for sale, or advertise in California any aftermarket parts for use on off-road vehicles, engines, or equipment, in violation of title 13, CCR, sections 2472 or 2474, or Vehicle Code sections 27156 or 38391.

3. This Agreement shall apply to and be binding upon Yoshimura 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.

4. Now, therefore, in consideration of the payment by Yoshimura in the amount of $90,000.00 to the California Air Pollution Control Fund, ARB hereby releases Yoshimura 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 1-20, above.

5. This Agreement constitutes the entire agreement and understanding between ARB and Yoshimura 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 Yoshimura 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. 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.

8. 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.

9. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) 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 $500 per unit per strict liability violation. The penalty obtained in this case is, on average, approximately $250 per unit for approximately 360 units. Yoshimura is a first time violator, was fully cooperative with the investigation, and obtained the design and the specifications for the subject part from another entity.

**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 is this case, Health and Safety Code section 43016, is appropriate because Yoshimura allegedly sold, offered for sale, and/or advertised the subject non-California certified aftermarket parts for 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 uncertified critical emission control parts. However, since the aftermarket parts were not certified for sale in California, 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.

10. Yoshimura 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.

11. 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 negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty was discounted in this matter based on based on the factors listed above. Penalties in future cases might be smaller or larger on a per unit basis.

12. The penalty in this case was based in part on confidential business information provided by Yoshimura 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 Yoshimura 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 Yoshimura, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Yoshimura may have secured from its alleged actions.

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

**California Air Resources Board**

By: _____

Name: Ellen Peter

Title: Chief Counsel

Date: 11/17/2014

**Yoshimura Research and Development of America, Inc.**

By: _____

Name: DON SAKAKURA

Title: SR. VICE PRESIDENT

Date: 11/4/14