

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Momar, Incorporated (Momar) with its principal location at 1830 Ellsworth Industrial Drive, Atlanta, Georgia 30318 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates CARB adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOCs) by consumer products. (Health & Saf. Code § 41712.)
- (2) Regulation. CARB adopted the *Regulation for Reducing Emissions from Consumer Products* (Consumer Products Regulation) to reduce VOCs. (Cal. Code Regs., tit.17, §§ 94507 et seq.)
- (3) Regulatory Provisions. Any person who sells, supplies, offers for sale, or manufactures any consumer product for use in California shall comply with the standards set forth in the Consumer Products Regulation, including the VOC limit, ingredient prohibitions, labeling, reporting, displaying the date of manufacture, and other administrative requirements. (Cal. Code Regs., tit.17, §§ 94509-94515.) If anywhere on the container of any consumer product, the manufacturer represents that the product may be used or is suitable for a specific use in which a lower limit applies, the lowest applicable limit shall apply. (Cal. Code Regs., tit.17, § 94512(a).)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations. (Cal. Code Regs., tit.17, § 94507 et seq.; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Momar was organized under the laws of Georgia as a corporation and conducted business in California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CP19-11-02, which was issued on August 19, 2020. CARB alleged Momar violated the Consumer Products Regulation by selling, supplying, offering for sale or manufacturing for use in California, a product known as Superco Graff-X that is subject to a VOC limit of three percent by weight for the Multi-purpose Solvent category as outlined in Notice of Violation CP19-11-02. CARB alleges that if the

allegations described in Paragraph 6 were proven, civil penalties could be imposed against Momar for each and every day the noncompliant products were offered for sale.

- (7) Acknowledgment. Momar admits to the facts in Paragraphs 5 and 6, but denies any liability resulting from said allegations.
- (8) Consideration. 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 Settlement Agreement. In order to resolve the violations described herein, Momar has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Momar for the alleged violations referred to above in Paragraph 6, and in consideration of Momar's agreement to complete all terms and conditions set forth below, CARB and Momar agree as follows:

- (9) Settlement Amount. Momar shall pay a civil penalty of seventy-two thousand dollars (\$72,000.00 USD). Momar shall make the payment within 30 calendar days from the date CARB notifies Momar of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Momar shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Momar is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Momar in accordance with Paragraph 12 (Notices).
- (11) Documents. Momar shall promptly email and mail the signed and dated Settlement Agreement to CARB's address and email in Paragraph 12 (Notices).
- (12) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

Momar Settlement Agreement  
Notice of Violation CP19-11-02

As to CARB:  
California Air Resources Board  
Enforcement Division / Settlement Agreements  
Consumer Products Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to Momar  
Momar, Incorporated  
1830 Ellsworth Industrial Drive,  
Atlanta, Georgia 30318

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Momar shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Momar agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 6 pages and 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Momar and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion

thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.

- (19) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (20) Choice of Law. This Settlement 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.
- (21) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (22) Not Tax Deductible. For purposes of this Settlement Agreement, Momar shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (25) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.

- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of civil penalty, SEP payment, and all other undertakings above, CARB hereby releases Momar and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (30) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of \$10,000 per day per violation under Health and Safety Code section 42400 et seq. and 38580 for violations of the Consumer Products Regulation. In cases like this, involving unintentional violations of the Consumer Products Regulations where the violator cooperates with the investigation, CARB has obtained penalties based on the excess emissions. Penalties based on days of violation are also obtained in some cases.

The penalty in this case is for 3.6 tons of excess VOC, resulting in a penalty of \$20,000 per ton of excess VOC.

- (31) Emissions. The provisions cited above prohibit VOC content above a specified percentage for the specified product categories. Since CARB has alleged that the products did not meet the regulatory requirements, the excess tons above the specified limits were in excess and illegal. In this case, a quantification of the excess emissions attributable to the violations was practicable because Momar made the sales data necessary to make this quantification available to CARB. Based upon this information (which Momar has identified as confidential business information), the violations were calculated to have 3.6 tons of excess VOC emissions.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. CARB considered whether the violator

came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; voluntary disclosure and any other relevant circumstances. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.

(33) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Momar and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Ellen M. Peter

Title: Chief Counsel

Date: 11/17/2020 \_\_\_\_\_

**Momar, Incorporated**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: T. West Gary IV \_\_\_\_\_

Title: Chief Technical Officer, SVP \_\_\_\_\_

Date: 11/4/2020 \_\_\_\_\_