

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 Walmart, Inc. (Walmart), with its principal location at 702 SW 8th Street, Bentonville, Arkansas 72716 (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 where the regulations are necessary to attain state and federal ambient air quality standards and the regulations are commercially and technologically feasible and necessary. (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 unless certain exemptions or other exceptions apply. (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 unless a person can establish that the violation was caused by an act that was not the result of intentional or negligent conduct. (Cal. Code Regs., tit.17, § 94507 et seq.; Health & Saf. Code §§ 39674, 39675, 42400 et seq., and 42402 et seq.,.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Walmart was organized under the laws of Delaware as a Corporation and conducted business in California.
- (6) Allegations. This Settlement Agreement settles Notices of Violation CP18-10-05 and CP19-01-07, which were issued on November 1, 2018 and January 31, 2019.

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In those NOVs, CARB alleged Walmart violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, Equate Firm Hold Hair Spray, Equate Mega Firm Hairspray, and Equate Extra Firm Hairspray that are subject to and exceeded the VOC limit of 55 percent by weight for the Hair Finishing Spray (aerosol/pump spray) category and failed to display the date of manufacture as outlined in Notices of Violation CP18-10-05 and CP19-01-07.

This Settlement Agreement also settles Notice of Violation CP19-10-03, which was issued on October 24, 2019. CARB alleged Walmart violated the Consumer Products Regulation by selling, supplying, or offering for sale into California, RainX 2-in-1 All Season -20°F, that is subject to and exceeded the VOC limit of 1 percent by weight for the Automotive Windshield Washer Fluid (Nontype "A") category and 25 percent by weight for the Automotive Windshield Washer Fluid (Type "A") category as outlined in Notice of Violation CP19-10-03. CARB also alleged Walmart violated the Consumer Products Regulation by selling, supplying, or offering for sale into nontype "A" areas in California, Splash 0°F Original Blue and Peak Windshield Washer Fluid +20°F that are subject to and exceeded the VOC limit of 1 percent by weight for the Automotive Windshield Washer Fluid (Nontype "A") category as outlined in Notice of Violation CP19-10-03.

CARB alleges that if the allegations described in paragraph 6 were proven, civil penalties could be imposed against Walmart for each and every day the noncompliant products were offered for sale.

- (7) Acknowledgment. Walmart admits to the facts in paragraph 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, Walmart 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 Walmart for the alleged violations referred to above in Paragraph 6, and in consideration of Walmart's agreement to complete all terms and conditions set forth below, CARB and Walmart

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agree as follows:

- (9) Settlement Amount. Walmart shall pay a civil penalty of six thousand (\$6,000 USD) for NOV CP19-10-03. For NOVs CP18-10-05 and CP19-01-07, Walmart shall pay a civil penalty of two hundred, sixty-one thousand eight hundred dollars (\$261,800.00 USD), and agrees to fund a Supplemental Environmental Project entitled Side Street Projects – Woodworking Bus (SEP) in the amount of one hundred, forty-seven thousand two hundred dollars (\$147,200.00 USD), consistent with CARB’s SEP Policy, for a total settlement of four hundred nine thousand dollars (\$409,000 USD) for CP18-10-05 and CP19-01-07. Walmart shall make all payments within 30 calendar days from the date CARB notifies Walmart of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Walmart 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. Walmart 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 Walmart in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). Walmart shall fund the SEP by wire transfer, credit card, or check, payable to the SEP implementer/recipient, Side Street Projects using instructions provided separately by CARB in a Payment Transmittal Form. Walmart is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Walmart in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. Walmart has agreed that by funding the SEP entitled Side Street Projects- Woodworking Bus, Walmart will not receive any direct or indirect financial benefit, and that whenever Walmart publicizes or refers to the SEP or the results of the SEP, Walmart will state that the SEP is being undertaken as part of the settlement of two NOVs involving hairspray products manufactured by a third-party supplier. The SEP is considered complete and shall constitute payment in lieu of one hundred, forty-seven thousand two hundred dollars (\$147,200.00 USD) of otherwise applicable penalties, once the sums have been deposited in the SEP administrator account.
- (13) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP

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Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Walmart assigns any and all rights against the SEP implementer to CARB.

(14) Documents. Walmart shall promptly email or and mail the signed and dated Settlement Agreement, to the address or email in Paragraph 15 (Notices).

(15) 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:

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

As to Walmart:
Walmart, Inc.
Attn: Chief Regulatory Counsel (Matter No. 2020-001338)
702 SW 8th Street
Bentonville, Arkansas 72716
gmcomply@walmart.com

As to Walmart's Legal Representation:
Viviana Heger
707 Wilshire Boulevard 24th Floor
Los Angeles, California 90017
vheger@meyersnave.com

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.

(16) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Walmart shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.

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- (17) Repeat Violations. Walmart agrees to comply with all applicable regulatory requirements of the Consumer Products Regulations and acknowledges that repeat violations could result in increased penalties in the future.
- (18) 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 8 pages and 36 paragraphs.
- (19) Binding Effect. This Settlement Agreement binds Walmart 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.
- (20) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) Not Tax Deductible. For purposes of this Settlement Agreement, Walmart 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.

- (26) 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.
- (27) 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.
- (28) 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.
- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of the full completion of civil penalty, SEP payment, and all other undertakings above, CARB hereby releases Walmart 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.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (33) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of \$10,000 per day under Health and Safety Code section 42400 et seq., 38580 for violations of the Consumer Products Regulations. In cases like this, involving

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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 per unit penalty in this case for CP18-10-05 and CP19-01-07 is for 30.37 tons of excess VOC resulting in a penalty of \$13,467 per ton of excess VOC. The per unit penalty in this case for CP19-10-03 is for six days of violation at \$1,000 per day.

- (34) 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, for purpose of this settlement, the excess tons above the specified limits are deemed to be in excess and illegal. In this case, a quantification of the excess emissions attributable to the violations was practicable because Walmart made the sales data necessary to make this quantification available to CARB. Based upon this information (which Walmart has identified as confidential business information), the violations were calculated to have 30.54 tons of excess VOC emissions.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described in Health & Safety Code section 42403 and 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.
- (36) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Walmart 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: Richard W. Corey

Title: Executive Officer

Date: 2/23/2021 _____

Walmart, Inc.

Signature: _____ /S/ _____

Name: Richard Leahy _____

Title: Vice President – Chief Counsel for Regulatory Compliance _____

Date: 1/23/2021 _____