

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 Capay, Inc. with its principal location at 3880 Seaport Boulevard, West Sacramento California 95691 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code §§ 38560, 38562, and 38580). CARB is also mandated to reduce hydrofluorocarbon emissions by 40% below 2013 levels by 2030. (Health & Saf. Code § 39730.5.)
- (2) Regulation. CARB adopted the regulation, *Management of High-Global Warming Potential Refrigerants for Stationary Sources* (RMP Regulation) to reduce hydrofluorocarbon emissions from stationary, non-residential refrigeration equipment and from the installation and servicing of stationary refrigeration and air-conditioning appliances using high global warming potential (high-GWP) refrigerants. (Cal. Code Regs., tit.17, §§ 95380-95398.)
- (3) Regulatory Provisions. Any person who owns or operates a stationary refrigeration system; or installs, repairs, maintains, services, replaces, recycles, or disposes of stationary refrigeration or air-conditioning appliances; or distributes or reclaims refrigerants with high-GWP, must comply with the applicable requirements of the RMP Regulation. (Cal. Code Regs., tit.17, § 95381.)
- (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 for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 95380 et seq.; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Capay, Inc. was organized under the laws of California and conducted business in the State of California. At all relevant times, Capay, Inc. owned the facility located at 3880 Seaport Boulevard, West Sacramento California 95691.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) RMP-2019_MAR2018-6, which was issued on June 2, 2021. CARB alleges Capay, Inc. violated the RMP Regulation by owning or operating a stationary refrigeration system after January 1, 2011, as defined by the RMP Regulation with a full charge

of greater than 200 pounds; and failing to calibrate an automatic leak detection system operating in conjunction with a medium refrigeration system in 2018 and 2020, as outlined in Notice of Violation RMP-2019_MAR2018-6. (Cal. Code Regs., tit.17, § 95380 et seq.) CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Capay, Inc. for each and every unit involved in the violations for each day.

- (7) Acknowledgment. Capay, Inc. admits to the facts in paragraphs 1 through 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, Capay, Inc. 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 Capay, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Capay' agreement to complete all terms and conditions set forth below, CARB and Capay, Inc. agree as follows:

- (9) Settlement Amount. Capay, Inc. shall pay a civil penalty of three thousand dollars (\$3,000.00 USD). Capay, Inc. shall make all payments within 30 calendar days from the date CARB notifies Capay, Inc. of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Capay, Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the Air Pollution Control Fund, using instructions provided separately by CARB in a Payment Transmittal Form. Capay, Inc. 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 Capay, Inc. in accordance with Paragraph (12) (Notices).

- (11) Documents. Capay, Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, a copy of the Payment Transmittal Form(s) (if applicable) to the address or 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:

As to CARB:
California Air Resources Board
Enforcement Division / Settlement Agreements
Field Operations Branch
Short Lived Climate Pollutant Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Capay, Inc.:
Capay, Inc.
3880 Seaport Boulevard
West Sacramento, California 95691

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) Repeat Violations. Capay, Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (14) 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 32 paragraphs.
- (15) Binding Effect. This Settlement Agreement binds Capay, Inc., and any principals, officers, receivers, trustees, successors and assignees, subsidiaries and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement. This agreement does not bind any indirect parent companies.

- (16) **Effective Date.** The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (17) **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.
- (18) **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.
- (19) **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.
- (20) **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.
- (21) **Not Tax Deductible.** For purposes of this Settlement Agreement, Capay, Inc. 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.
- (22) **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.
- (23) **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.
- (24) **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.

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

PENALTY BASIS

- (29) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per violation under Health and Safety Code section 38580 for violations of the RMP Regulation (Cal. Code Regs., tit.17, § 95380 et seq.). The penalty of \$3,000.00 is set at \$1,500.00 for two missed annual automatic leak detection calibrations in years 2018 and 2020.
- (30) Emissions. The provisions cited above do not prohibit emissions above a specified level. Without more information, it is not practicable to quantify the excess emissions. However, since CARB has alleged that Capay, Inc. did not meet the regulatory requirements at the facility, CARB is unable to determine if any excess or illegal emissions occurred.
- (31) 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. Capay, Inc. came into compliance quickly, put into place policies and procedures to prevent similar issues in the future, and fully cooperated with the investigation. 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.

(32) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Capay, Inc., 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: Todd P. Sax, D.Env.
Title: Chief, Enforcement Division
Date: 8/16/2021

Capay, Inc.

Signature: /S/
Name: Jeff Foreman
Title: Chief Financial Officer
Date: 8/12/2021