

## **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 Smart & Final LLC (Smart & Final) with its principal location at 600 Citadel Drive, Commerce, California 90040 (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 four hundred and seventy dollars (\$10,470) for strict liability violations, for each day in which the violation occurs. (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, Smart & Final was organized under the laws of Delaware as a limited liability company and conducted business in California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CP20-10-02, which was issued on March 3, 2021. CARB alleged Smart & Final violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing for use in California, First Street Glass Cleaner and First Street Stainless Steel Cleaner that are subject to and exceeded a VOC, limit of 0.5 percent by weight for the General Purpose Cleaner: nonaerosol category with the

latter product failing to display the date of manufacture as outlined in Notice of Violation CP20-10-02. CARB alleges that if the allegations described in Paragraph 6 were proven, civil penalties could be imposed against Smart & Final for each and every day the noncompliant product was sold, supplied, offered for sale or manufactured for use in California.

- (7) Acknowledgment. Smart & Final 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, Smart & Final 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 Smart & Final for the alleged violations referred to above in Paragraph 6, and in consideration of Smart & Final's agreement to complete all terms and conditions set forth below, CARB and Smart & Final agree as follows:

- (9) Settlement Amount. Smart & Final shall pay a civil penalty of forty-three thousand one-hundred and fifty (\$43,150.00 USD). Smart & Final shall make all payments within 30 calendar days from the date CARB notifies Smart & Final of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Smart & Final 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. Smart & Final 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 Smart & Final in accordance with Paragraph 12 (Notices).
- (11) Documents. Smart & Final shall promptly email or mail the signed and dated Settlement Agreement, mitigation, SEP (if applicable), and the signed and dated Compliance Plan (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  
Consumer Products Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Smart & Final:

Smart & Final LLC  
600 Citadel Drive  
Commerce, California 90040  
Nicole.Zajack@smartandfinal.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.

- (13) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Smart & Final shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (14) Repeat Violations. Smart & Final 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 Smart & Final, 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, Smart & Final 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 and all other undertakings above, CARB hereby releases Smart & Final 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 \$10,470 per violation per day under Health and Safety Code section 42400 et seq., 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 excess emissions. The penalty in this case is for 2.86 tons of excess VOC resulting in a penalty of \$15,087 per ton of excess VOC. Additionally, in cases like this, involving unintentional violations of the Consumer Products Regulations where there is a date code labeling violation and the violator cooperates with the investigation, CARB has obtained penalties based on at least three days of violation. The per unit penalty in this case is for three days resulting in a penalty of \$1,000 per day of violation.

- (31) Emissions. The provisions cited above prohibit VOC and/or toxic compound emissions above a specified percentage for the specified product category. Since CARB has alleged that the product did not meet the regulatory requirements, the emissions above the specified percentage were in excess and illegal.

(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 Smart & Final 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: 10/15/2021

Smart & Final LLC

Signature: /S/

Name: Leland P. Smith

Title: Senior Vice President, Secretary

Date: 9/6/2021