

## **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 Headwaters Inc. (Headwaters), with its principal location at 134 Pleasant Street, Marblehead, Massachusetts 01948 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates CARB adopt regulations to protect public health from ozone emitted by indoor air cleaning devices, including medical and nonmedical devices used in occupied spaces. (Health & Saf. Code § 41986.)
- (2) Regulation. CARB adopted the *Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices* (Indoor ACD Regulation) to create standards for indoor air cleaning devices. (Cal. Code Regs., tit.17, §§ 94800 et seq.)
- (3) Regulatory Provisions. Any person who manufactures for use in California, sells, supplies, offers for sale, or introduces into commerce in California, any indoor air cleaning device shall comply with the standards set forth in the Indoor ACD Regulation, including the ozone emission concentration standards; certification requirements; test methods; labeling and safety mark; notice; recordkeeping; or other administrative requirements. (Cal. Code Regs., tit.17, §§ 94800-94809.)
- (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 nine hundred ten dollars (\$10,910.00 USD) for strict liability violations; respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.17, § 94800 et seq.; Health & Saf. Code §§ 42402 et seq.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Headwaters was organized under the laws of Massachusetts as a Corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) #AC21-07-02, which was issued on August 4, 2021. CARB alleges Headwaters violated the Indoor ACD Regulation because Headwaters manufactured for use in California, sold, supplied, offered for sale, and entered into commerce in California "Personal Air Purifiers, Models A302, A310, A315, and A320" that were not certified at the time of sale, as outlined in Notice of Violation #AC21-07-02. CARB alleges that if

paragraphs 1 through 6 were proven, civil penalties could be imposed against Headwaters for each and every indoor air cleaning device involved in the violations and each day.

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

- (9) Settlement Amount. Headwaters shall pay a civil penalty of sixty-eight thousand eight hundred dollars (\$68,800.00 USD). Headwaters shall make all payments within thirty (30) calendar days from the date CARB notifies Headwaters of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Headwaters 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. Headwaters 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 Headwaters in accordance with Paragraph 12 (Notices).
- (11) Documents. Headwaters shall promptly email or mail the signed and dated Settlement Agreement 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  
Vehicle, Parts, and Consumer Product Enforcement Branch  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Headwaters:

Headwaters Inc.  
134 Pleasant Street  
Marblehead, Massachusetts 01948  
troy@airtamer.com

As to Headwaters Legal Representation:

Julie Cress  
Baker Botts L.L.P.  
101 California Street, Suite 3600  
San Francisco, California 94111  
julie.cress@bakerbotts.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) Repeat Violations. Headwaters 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 7 pages and 32 paragraphs.
- (15) Binding Effect. This Settlement Agreement binds Headwaters, 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.
- (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) 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.
- (22) 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.
- (23) 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.
- (24) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.

- (25) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (26) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Headwaters 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.
- (27) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (28) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand nine hundred ten dollars (\$10,910.00 USD) per unit per day under Health and Safety Code section(s) 42400 et seq., for violations of the Indoor ACD Regulation. The penalty of \$68,800 over an unspecified number of days of violation is for noncompliant units.
- (29) Emissions. The provisions cited above in paragraph (6) do prohibit emissions above a specified level. The ozone emission limit for indoor air cleaning devices is 0.050 ppm. CARB recognizes that said noncompliant units met this ozone emission requirement.
- (30) 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; and voluntary disclosure. 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.

(31) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Headwaters or confidential settlement communications.

(32) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Headwaters with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Headwaters with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Headwaters to CARB.
  - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
  - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Headwaters shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of Headwaters or of CARB against any third parties not covered by this Settlement

Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Headwaters, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Headwaters is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Headwaters compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Headwaters' compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: June 28, 2022

**Headwaters Inc.**

Signature: /S/

Name: Troy Anderson

Title: President

Date: June 21, 2022