

## **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 Mizkan America, Inc. (Mizkan), with its principal location at 1661 Feehanville Drive, Mt. Prospect, Illinois 60056 (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates CARB to 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 eleven thousand seven hundred ten dollars (\$11,710.00 USD) for 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., 42402.1, 42402.2, 42402.3, and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Mizkan was organized under the laws of Delaware as a corporation and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement fully and finally resolves Notice of Violation (NOV) CP22-02-05, which was issued on April 18, 2022. CARB alleged Mizkan violated the Consumer Products Regulation by selling, supplying, offering for sale, or manufacturing the following products for use in California (Cal. Code Regs., tit. 17 § 94509):

- (a) Open Nature Cleaning Vinegar, Pantry Mate White Distilled Vinegar, Sprouts Organic White Vinegar, Four Monks White Distilled Vinegar, Four Monks Cleaning Vinegar Citrus Mint Scent, Smartly Cleaning Vinegar, and Lady's Choice White Distilled Vinegar that are subject to and exceeded a VOC limit of 0.5 percent by weight for the General-Purpose Cleaner (nonaerosol) category;
- (b) Good and Gather Distilled White Vinegar that is subject to and exceeded a VOC limit of 0.5 percent by weight for the General-Purpose Degreaser (nonaerosol) category; and
- (c) 365 Organic White Distilled Vinegar that is subject to and exceeded a VOC limit of 3 percent by weight for the Metal Polish or Cleanser category.

CARB also alleged in Notice of Violation CP22-02-05 that Mizkan failed to submit an annual explanation of the code representing the date of manufacture as required by the Consumer Products Regulation (Cal. Code Regs., tit. 17, § 94512). CARB alleges that if the allegations described in Paragraph 6 were proven, civil penalties could be imposed against Mizkan for each and every day the noncompliant products were sold, supplied, offered for sale or manufactured for use in California.

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

- (9) Settlement Amount. Mizkan shall pay a civil penalty of four hundred thirty-thousand five hundred dollars (\$430,500.00 USD) and agrees to fund a Supplemental Environmental Project (SEP) entitled Inland Empire Environmental Health and Education Connections in the amount of four hundred thirty-thousand five hundred dollars (\$430,500.00 USD), consistent with CARB's SEP Policy, for a

total settlement of eight hundred sixty-one thousand dollars (\$861,000.00 USD). Mizkan shall make both payments within 30 calendar days from the date CARB notifies Mizkan of the full execution of the Settlement Agreement.

- (10) Civil Penalty Payment Method. Mizkan shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to the California Air Resources Board, using instructions provided separately by CARB in a Payment Transmittal Form. Mizkan is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time of payment, Mizkan shall provide CARB with confirmation of payment, including the Payment Transmittal Form, via the email address in Paragraph 15 (Notices). 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 Mizkan in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method. Mizkan shall fund the SEP by wire transfer, credit card, or check, payable to El Sol Neighborhood Educational Center, the SEP Administrator/recipient, using instructions provided separately by CARB in a Payment Transmittal Form. Mizkan is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. At the time of SEP payment, Mizkan shall provide CARB with confirmation of the SEP Payment, including the SEP Payment Transmittal Form, via the email address in Paragraph 15 (Notices). Should payment instructions change, CARB will provide notice to Mizkan in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. Mizkan has agreed that by funding the SEP entitled Inland Empire Environmental Health and Education Connections, Mizkan will not receive any direct or indirect financial benefit, and that whenever Mizkan publicizes or refers to the SEP or the results of the SEP, Mizkan will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (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 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, Mizkan assigns any and all rights against the SEP implementer to CARB.
- (14) Documents. Mizkan shall promptly email or mail the signed and dated Settlement Agreement and SEP 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 ([Send Confirmation of Payment](#))

As to Mizkan:

Mizkan America, Inc.  
1661 Feehanville Drive  
Mt. Prospect, Illinois 60056

As to Mizkan's Legal Representation:

William F. Tarantino  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105  
WTarantino@mof.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) Repeat Violations. Mizkan agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (17) 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 35 paragraphs.
- (18) Binding Effect. The Parties stipulate that this Settlement Agreement shall be the full and final resolution of CARB's claims against Mizkan regarding the allegations in paragraph six (6) above, and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action based on the allegations in paragraph six (6) above, except to enforce the terms of this Settlement Agreement, by CARB against Mizkan, its officers, receivers, trustees, successors

and assignees, subsidiary and parent corporations. This Settlement Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action by CARB as provided in Health and Safety Code section 42400.7(a). This Settlement Agreement binds Mizkan, 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.

- (19) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.

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

### **PENALTY BASIS**

- (31) Per Unit Penalty. The strict liability per unit penalty in this case is a maximum of eleven thousand seven hundred ten dollars (\$11,710.00 USD) per violation per day under Health and Safety Code section 42402, for violations of the Consumer Products Regulation. CARB has obtained penalties based on number of days. The excess VOC penalty in this case is \$783.56 for each day of violation for 1,095 days of violation. The penalty for failing to submit the annual explanation of the date code is \$1,000.00 for each day of violation, for three days of violation.
- (32) Emissions. The provisions cited above do prohibit emissions above the following specified limits: (1) 0.5 percent by weight for General Purpose Cleaner (nonaerosol) category effective December 31, 2012; (2) 0.5 percent by weight for General Purpose Degreaser category effective December 31, 2012; and (3) 3 percent by weight limit for Metal Polish or Cleanser (nonaerosol) category effective December 31, 2012. Since CARB has alleged that the products did not meet the regulatory requirements, the emissions above the specified limit were excess and illegal.
- (33) 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 that 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.

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

(35) 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 Mizkan 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 Mizkan with respect to:
  - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - (ii) Facts that were not disclosed by Mizkan 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, Mizkan 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 Mizkan 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 Mizkan, 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. Mizkan is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Mizkan's 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 Mizkan's 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: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: June 19, 2023



**Mizkan America, Inc.**

Signature: /S/

Name: Koichi Yuki

Title: Chief Executive Officer

Date: June 7, 2023