

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California, and Factory Direct Floor. (Factory Direct) with its principal place of business at 1960 Williams Street, San Leandro, California.

RECITALS

1. Pursuant to its authority in Health and Safety Code (H&SC) section 39666, in 2008 ARB adopted the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (ATCM). California Code of Regulations, title 17 (17 CCR), section 93120 et seq. that all manufacturers, distributors, importers, fabricators, and retailers of composite wood products and finished goods that contain composite wood products.
2. 17 CCR sections 93120.5 through 93120.8 require reasonable prudent precautions to be taken to ensure composite wood products and composite wood products contained in finished goods comply with the emission standards specified in 17 CCR section 93120.2.
3. 17 CCR sections 93210.3 through 93120.7 require that all manufacturers, distributors, importers, and fabricators of composite wood products and finished goods that contain composite wood products, must state on the bill of lading or invoice, that the composite wood products or composite wood products contained in finished goods comply with the applicable Phase 1 or Phase 2 emission standard specified in section 93120.2(a).
4. Failure to comply with the ATCM is a violation of state law subject to penalties up to \$10,000 for each day that the violation occurs, pursuant to H&SC section 39674.
5. ARB alleges that Factory Direct imported, distributed, and/or offered for sale in California products made of composite wood, which are subject to the ATCM.
6. ARB alleges Factory Direct failed to take reasonable prudent precautions to ensure that the composite wood products Factory Direct obtained complied with the ATCM.
7. ARB alleges Factory Direct failed to put a statement of compliance on their customer invoices or bill of ladings which is required by the ATCM.
8. ARB alleges that if the allegations described in Recitals paragraphs 5, through 7 were proven, civil penalties could be imposed against Factory Direct as provided in H&SC section 39674 for each day in which each unit was offered for sale.

9. Factory Direct admits the allegations described in Recitals paragraphs 5 through 7, but denies any liability resulting from said allegations.
10. 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 violation and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Factory Direct has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. ARB accepts this Agreement in termination and settlement of this matter.

TERMS AND RELEASE

In consideration of ARB not filing a legal action against Factory Direct for the violations referred to above, ARB and Factory Direct agree as follows:

11. Factory Direct shall not manufacture, distribute, import, fabricate or sell, or offer for sale for use in California, any composite wood products in violation of the ATCM set forth in 17 CCR section 93120, et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
12. Factory Direct in settlement of the above-described violations of 17 CCR section 93120 et seq., agrees to pay a penalty to ARB in the amount of seven thousand five hundred dollars (\$7,500) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
13. Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable.
14. This Agreement shall apply to and be binding upon Factory Direct and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
15. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by ARB against Factory Direct, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).

16. This 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.
17. This Agreement constitutes the entire agreement and understanding between ARB and Factory Direct concerning the claims and settlement in this Agreement. This Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between ARB and Factory Direct concerning these claims.
18. The effective date of this Agreement shall be the date upon which this Agreement is fully executed.
19. This Agreement is deemed to have been drafted equally by ARB and Factory Direct; it will not be interpreted for or against either Party on the ground that said Party drafted it.
20. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
21. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
22. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
23. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
24. **Penalty Determination**

H&SC section 39619.7 requires ARB to provide information on the basis for the penalties it seeks. This Agreement includes this information, which is also summarized here.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is H&SC section 39674 and it is appropriate because Factory Direct imported, distributed, and offered for sale composite wood products for commerce in California and did not use reasonable prudent precautions to ensure that the subject products complied with the ATCM, in violation of the ATCM adopted in (17 CCR section 93120 et seq.).

The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.

ARB determined the settlement amount in consideration of all relevant circumstances, including the eight factors specified in the H&SC section 42403.

The per unit penalty in this case is \$1,000 per day pursuant to H&SC section 39674. Factory Direct was in violation for 10 days. The penalty in this case was reduced because this was a first time violation and Factory Direct cooperated with the investigation. In addition, Factory Direct implemented new procedures when purchasing and receiving products to prevent non-compliant products being sold. Penalties in future cases might be higher or lower on a daily basis based on relevant circumstances.


25. Factory Direct acknowledges that ARB has complied with H&SC section 39619.7 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403 and 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that does not prohibit the emission of pollutants at a specified level.
26. The final penalty in this case was determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential cost and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in harm to the environment considered together with the complete circumstances of this case.
27. The final penalty in this case was based in part on confidential financial information or confidential business information provided by Factory Direct that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Factory Direct that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against Factory Direct, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Factory Direct may have secured from its actions.
28. Now therefore, in consideration of the payments from Factory Direct to the Air Pollution Control Fund, ARB hereby releases Factory Direct and their principals, officers, agents, predecessors and successors from claims for violations of the

ATCM set forth in 17 CCR section 93120, et seq., alleged in paragraphs 5 through 7 of the Recitals.

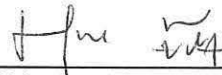
- 29. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

By: 
Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 10/31/18

Factory Direct Floor

By: 
Name: Wesley Li
Title: President
Date: Oct 13, 2018

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