

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 La Plaza Market LLC, with its principal location at 3225 N. Tracy Blvd., Tracy, California 95376 (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 & Safety Code §§ 38560, 38562, and 38580). Hydrofluorocarbons are a fluorinated gas known to cause global warming. (Health & Safety Code § 39734.) CARB is therefore mandated to reduce hydrofluorocarbon emissions by 40% below 2013 levels by 2030. (Health & Safety Code § 39730.5.)
- (2) Regulations.
 - a. 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).
 - b. CARB adopted the regulation, *Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Stationary Air-conditioning, and Other End-Uses* (HFC Regulation) to reduce hydrofluorocarbon (HFC) emissions by adopting specific prohibitions for certain substances in refrigeration, air-conditioning, chillers, ice rinks, cold storage, aerosols-propellants, and foam end-uses to support California's greenhouse gas emission reduction goals (Cal. Code Regs., tit. 17, §§ 95371-95379.).
- (3) Regulatory Provisions.
 - a. 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.)
 - b. Any person who sells, leases, rents, installs, uses, or otherwise enters into commerce, in the State of California, any product, equipment,

material, or substance in end-uses listed in Tables 1 through 4 (sections 95374 (a)-(d)) of the HFC regulation, must comply with the applicable requirements of the HFC Regulation. (Cal. Code Regs., tit. 17 § 95372.)

- (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 strict liability violations, respectively, 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., 42410, and 42411.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, La Plaza Market LLC was organized under the laws of California as a limited liability company and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) 2020-LAPLA-3023, which was issued on July 13, 2023.
- a. CARB alleges that La Plaza Market LLC violated the RMP Regulation by owning or operating stationary refrigeration systems after January 1, 2011, as defined by the RMP Regulation with a full charge of greater than 50 pounds while failing to report refrigeration systems accurately (Cal. Code Regs., tit. 17, § 95383(c)), failing to pay the annual implementation fee on time (Cal. Code Regs., tit. 17, § 95384(b)), and failing to submit the annual report on time (Cal. Code Regs., tit. 17, § 95388), resulting in an unspecified number of days of violations, as outlined in Notice of Violation 2020-LAPLA-3023. (Cal. Code Regs., tit. 17, § 95380 et seq.)
 - b. CARB alleges that La Plaza Market LLC violated the HFC Regulation by entering into commerce, in the State of California, equipment, in end-uses listed in Table 1, section 95374(a) and Table 4, section 95374(d) of the HFC Regulation; and failing to submit the annual report on time (Cal. Code Regs., tit. 17, § 95375(d)(6)), resulting in an unspecified number of days of violations, as outlined in Notice of Violation 2020-LAPLA-3023. (Cal. Code Regs., tit. 17, § 95371 et seq.)

CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against La Plaza Market LLC for each and every unit involved in the violations and each day.

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

- (9) Settlement Amount. La Plaza Market LLC shall pay a civil penalty of six thousand dollars (\$6,000.00 USD). La Plaza Market LLC shall make the payment in full within thirty (30) calendar days from the date CARB notifies La Plaza Market LLC of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. La Plaza Market LLC 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. La Plaza Market LLC 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 La Plaza Market LLC in accordance with Paragraph 13 (Notices).
- (11) Documents. La Plaza Market LLC shall promptly email or mail the signed and dated Settlement Agreement to the CARB email or mailing address listed in Paragraph 13 (Notices).
- (12) Other Relief. For purposes of this paragraph, a "Responsible RMP Employee" means any La Plaza Market LLC employee who is either currently responsible or becomes responsible within two months from the date of this Settlement Agreement for any part of La Plaza Market LLC's reporting obligations under the RMP Regulation. All Responsible RMP Employees shall complete Course CR 106, "How to Comply with the Refrigerant Management Program," within three (3) months from the date this Settlement Agreement is fully executed. CR 106 is available through CARB's Learning Management System webpage:

www.arb.ca.gov/training. After registering, search for CR 106 or RMP from the list of courses. Information regarding the HFC Regulation is available on the Stationary HFC Reduction Measures webpage: <https://ww2.arb.ca.gov/our-work/programs/stationary-hydrofluorocarbon-reduction-measures>.

- (13) 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
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to La Plaza Market LLC:

La Plaza Market LLC
3225 N. Tracy Blvd.
Tracy, California 95376
juvenal.chavez@laplazasupermarket.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.

- (14) Repeat Violations. La Plaza Market LLC 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 nine [9] pages and thirty-four [34] paragraphs.
- (16) Binding Effect. This Settlement Agreement binds La Plaza Market LLC, 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, La Plaza Market LLC 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 full payment of the civil penalty, and all other undertakings above, CARB hereby releases La Plaza Market LLC 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 per unit penalty in this case is a maximum of eleven thousand seven hundred ten dollars (\$11,710.00 USD) per day under Health and Safety Code section 38580 for violations of the RMP Regulation (Cal. Code Regs., tit. 17, § 95380 et seq.) This penalty of six thousand dollars (\$6,000.00 USD) represents a per unit penalty of one thousand five hundred dollars (\$1,500.00 USD) per violation under the RMP and HFC Regulations.
- (31) Emissions. The provisions cited in Paragraph 6 (Allegations) 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 La Plaza Market LLC did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (32) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors of Health & Safety Code section 43024 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.

(33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by La Plaza Market LLC or confidential settlement communications.

(34) 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 La Plaza Market LLC 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 La Plaza Market LLC with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by La Plaza Market LLC 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, La Plaza Market LLC 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 La Plaza Market LLC 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 La Plaza Market LLC, 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. La Plaza Market LLC is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; La Plaza Market LLC'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 La Plaza Market LLC'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: Ellen M. Peter

Title: Chief Counsel

Date: November 30, 2023

La Plaza Market LLC

Signature: /S/

Name: Juvenal Chavez

Title: Manager

Date: November 2, 2023