

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and Molekule, Incorporated (Molekule) with its principal place of business at 1184 Harrison St., San Francisco, California.

### RECITALS

1. The Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices, title 17, California Code of Regulations, section 94800 et seq. (17 CCR section 94800 et seq.) applies to any person who sells, supplies, offers for sale, or manufactures indoor air cleaners for use in California.
2. 17 CCR section 94802 states that no person shall manufacture, sell, supply, offer for sale, or introduce into commerce, any indoor air cleaning device for use in California unless the device is certified by CARB to produce an ozone emission concentration not exceeding 0.050 ppm, as specified in section 94804.
3. 17 CCR section 94806(e) states that any indoor air cleaning device for non-industrial use that is advertised or sold via the Internet or by catalog but that has not been certified according to section 94804 must display the following advisory in a prominent place on the primary web pages, catalog pages, and related materials where such device is advertised or displayed for sale: "Does not meet California requirements; cannot be shipped to California."
4. Failure to comply with the Indoor Air Cleaner Regulation is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400-42403 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
5. CARB alleges that Molekule sold, supplied, and offered for sale in California the uncertified Molekule Home One indoor air cleaner model which is a violation of 17 CCR section 94802.
6. CARB alleges that Molekule advertised for sale on the internet the uncertified Molekule Home One indoor air cleaner without displaying the required advisory "Does not meet California requirements; cannot be shipped to California" which is a violation of 17 CCR section 94806(e).
7. CARB alleges that if the allegations described in Recitals paragraphs 5 and 6 were proven, civil penalties could be imposed against Molekule as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
8. Molekule admits the allegations described in Recitals paragraphs 5 and 6, but denies any liability resulting from said allegations.

9. 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 Agreement, without the need for formal litigation. Molekule has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

## **TERMS AND CONDITIONS**

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

10. Molekule shall not manufacture, sell, supply, or offer for sale in California, any indoor air cleaning devices in violation of the California Indoor Air Cleaner Regulation, set forth in 17 CCR section 94800 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
11. Molekule, in settlement of the above-described violations of 17 CCR section 94800 et seq., agrees to pay a penalty to CARB in the total sum of \$149,000, as set forth in this paragraph and paragraph 13. Within 30 days following notice from CARB that the Agreement has been signed by all parties, Molekule shall pay \$74,500 to the California Air Pollution Control Fund,. Payment and the signed Agreement shall be mailed to:

Air Resources Board, Accounting Office  
P.O. Box 1436  
Sacramento, CA 95812-1436

as specified on Attachment A, Payment Transmittal Form, enclosed with this Agreement.

12. Molekule agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, SEP Proposal Summary, to offset a portion of the settlement amount, consistent with CARB's SEP policy. Molekule agrees that by funding the SEP described in Attachment B, Molekule will not receive a financial benefit.

13. Within 30 days following notice from CARB that the Agreement has been signed by all parties, Molekule shall pay \$74,500 to the SEP implementer at the following address:

Brian Sheridan, Development Director  
Coalition for Clean Air  
660 S. Figueroa Street, Suite 1140  
Los Angeles, California 90017

14. The signed settlement agreement and any future mailings or documents per the terms of this settlement agreement shall be mailed to:

Air Resources Board  
Consumer Products Enforcement  
Attention: Darrell Hawkins  
8340 Ferguson Ave.  
Sacramento, CA 95828

15. This Agreement shall apply to and be binding upon Molekule and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
16. The parties stipulate that this Agreement shall be the final resolution of CARB 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 CARB against Molekule, 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).
17. 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.
18. This Agreement constitutes the entire agreement and understanding between CARB and Molekule concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Molekule concerning these claims.
19. The Effective Date of this Agreement shall be the date upon which it is fully executed.
20. This Agreement is deemed to have been drafted equally by CARB and Molekule; it will not be interpreted for or against either Party on the ground that said Party drafted it.

21. 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.
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).

### **Penalty Determination**

H&SC section 39619.7 requires CARB 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 42402 et seq. because Molekule sold, supplied, offered for sale, or manufactured for sale in California uncertified indoor air cleaning devices in violation of the Indoor Air Cleaner Regulation (17 CCR section 94800 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Indoor Air Cleaner Regulation because the regulation was adopted under authority of H&SC section 41985, which is in Part 4 of Division 26.

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

Penalties must be set at levels sufficient to discourage violations. ARB considered all relevant circumstances in determining penalties, including the eight factors specified in H&SC section 42403.

Under H&SC section 42402, et seq. the penalties for strict liability violations of the Indoor Air Cleaner Regulation are a maximum of \$10,000 per day of violation, with each day being a separate violation. In cases like this involving unintentional first time violations that resulted in unquantifiable excess emissions of ozone, CARB sets penalties based on the retail sales of the non-compliant units. In addition, CARB has sought additional penalties for the procedural violation for the failure to display the required consumer notification language via the company's website.

The \$149,000 penalty obtained in this case was reduced because this was a strict liability first-time violation and Molekule made diligent efforts to comply and to cooperate with the investigation. Molekule immediately ceased sales of the air cleaner until the device was certified by CARB to produce an ozone emission concentration not exceeding 0.050 ppm.

Final penalties were 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 is based on 192 days that Molekule offered and sold uncertified air cleaners considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Molekule that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and Molekule that CARB does not retain in the ordinary course of business. The penalty reflects CARB's assessment of the relative strength of its case against Molekule, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Molekule may have secured from its actions.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The Indoor Air Cleaner Regulation prohibits emissions of ozone pollution above a specific level. However, it is not practicable to quantify the amount of excess emissions because the number of hours that the uncertified units involved were in use is unknown. However, since the air cleaners were not certified for sale in California, CARB asserts that all emissions from them are excess and illegal.

24. 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.
25. The parties shall exchange signed copies of this Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

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

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

**Molekule, Incorporated**

By: \_\_\_\_\_ /S/  
Name: Richard W. Corey  
Title: Executive Officer  
Date: 8/29/2019

By: \_\_\_\_\_ /S/  
Name: Dilip Goswami  
Title: CEO  
Date: 8/5/2019