

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (Agreement) is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (CARB), 1001 I Street, Sacramento, California, and Musket Corporation (Musket), 2929 Allen Parkway, Suite 4100, Houston, Texas 77019.

### RECITALS

- (1) The Global Warming Solutions Act of 2006 (Health & Safety Code (HSC), § 38500 et seq.) authorized CARB to adopt regulations to reduce greenhouse gas (GHG) emissions. Pursuant to that authority, CARB adopted the Low Carbon Fuel Standard (LCFS)<sup>1</sup>, California Code of Regulations (CCR), title 17, section 95480 et seq.
- (2) The LCFS is crucial to incentivizing innovative fuels that will reduce GHG emissions. The regulation provides that fuel producers and importers generate deficits by supplying petroleum-based fuels, which have a carbon intensity higher than a stated annual carbon intensity standard. On the other hand, low-carbon fuel producers and importers can generate credits by supplying transportation fuels with a carbon intensity below the stated standard. The regulation requires all in-state fuel producers and out-of-state opt-in parties that hold title to the fuel when it enters the California fuel pool to report the volume of fuel they supply and its corresponding carbon intensity. The volume and carbon intensity determine the number of credits or deficits the fuel will generate when reported to CARB.
- (3) Section 95491(a)(2) requires reporting parties to submit quarterly and annual reports, each of which must contain a statement attesting to accuracy. For the fuels transactions in a quarterly report, the reporting party includes volume, fuel type, pathway code, and whether the corresponding credits or deficits were transferred with the fuel.
- (4) LCFS section 95494(b) provides that each day that a required report remains unsubmitted, incomplete or inaccurate constitutes a separate violation.
- (5) Musket imports, purchases, and supplies transportation fuels above the rack in California. As alleged in Notice of Violation # F060216-MSKT-RPT, Musket submitted five quarterly reports containing errors involving underreported petroleum fuels. Those errors resulted in Musket's failure to reconcile reported transactions with other parties.
- (6) California HSC sections 38580 and 43027(c) provide that a person who violates any LCFS provision is strictly liable for daily penalties of up to \$35,000 per day.

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<sup>1</sup> Regulatory citations are to the LCFS regulation effective January 1, 2016.

- (7) To resolve these violations, Musket has taken, or agreed to take, the actions enumerated below. Further, CARB accepts this Agreement in termination and settlement of this matter.

#### TERMS

In consideration of CARB not filing a legal action against Musket for the alleged violations referred to above, and in consideration of the terms set out below, CARB and Musket agree as follows:

- (8) Musket has agreed to undertake a Supplemental Environmental Project (SEP) as described in Attachment B to offset a portion of the settlement amount, consistent with CARB's SEP Policy.
- (9) Within 15 business days after CARB provides notice that it has signed this Agreement, Musket shall pay the civil penalty and fund the SEP described below, in the total amount of fifty thousand dollars (\$50,000.00). Musket shall pay \$25,000.00 by check made out to the "Air Pollution Control Fund" and the remaining \$25,000.00 to the SEP.
- (10) For payment to the Air Pollution Control Fund (APCF), after both parties have executed this Agreement, Musket shall send (1) one copy of this Agreement, (2) payment, and (3) the payment transmittal form (Attachment A) to:

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

and send a copy of the same documents to:

Anna Malubay  
Air Resources Engineer  
Enforcement Division  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

- (11) For payment to the SEP recipient, please send the payment along with the attached "Supplemental Environmental Project Payment Transmittal Form" (Attachment A-2) to

Tree Fresno  
For Fresno TREES SEP  
ATTN: Lee Ayres  
3150 E. Barstow Ave.  
Fresno, CA 93740

In addition, a copy of the payment check made to the SEP Recipient shall be mailed to:

Anna Malubay  
Air Resources Engineer  
Enforcement Division  
California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

- (12) Musket has agreed that by funding the SEP listed above, Musket will not receive any direct or indirect financial benefit and that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.
- (13) Upon agreeing to the terms set forth in the SEP Agreement, and funding the Fresno TREES SEP, Musket is released of all liabilities as they relate to the Fresno TREES SEP as reflected in this underlying Settlement Agreement.
- (14) In the event the SEP is not fully implemented in accordance with the terms of the SEP Agreement, CARB (as the third party beneficiary) shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount waived based on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the APCF. Accordingly, Musket assigns any and all rights against the SEP implementer to CARB.
- (15) The parties further agree that the payments described in paragraph 9 are punitive in nature and are non-dischargeable under 11 United States Code § 523 (a)(7).
- (16) This Agreement shall apply to and be binding upon Musket and its officers, directors, receivers, trustees, successors and assignees, and affiliates, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (17) This Agreement constitutes the entire agreement and understanding between CARB and Musket concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements, whether made orally or in writing, between CARB and Musket concerning the subject matter hereof.
- (18) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties.

- (19) Each provision of this Agreement is severable, and in the event that a court holds that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (20) 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.
- (21) This Agreement was negotiated and drafted by the parties; it should not be interpreted for or against either party on the ground that said party drafted it.
- (22) In consideration of the payment from Musket to the APCF and the funding of the SEP set forth in paragraphs 8 and 9, and other good and valuable consideration, CARB hereby releases and forever discharges Musket and its principals, officers, directors, agents, predecessors, successors and assignees from claims that CARB has or may have based on the allegations in paragraph 5.

#### **PENALTY BASIS**

- (23) HSC section 39619.7 requires CARB to explain the manner in which the penalty was determined, the law on which it is based, and whether that law prohibits emissions at a specified level. CARB has considered all relevant facts, including those listed at HSC section 43031, has explained the manner in which the penalty amount was calculated, and has identified the provision of law under which the penalty is being assessed. We summarize that information here:

#### **The manner in which the penalty was determined, including any per unit penalty.**

The maximum strict liability penalty established by statute is \$35,000 per violation per day. The violations resulted in a penalty of \$10,000 for each quarterly misreported volume pertaining to a given fuel pathway code. The reduced penalty rate reflects Musket's genuine efforts to comply, Musket's forthcoming cooperation with CARB's investigation, the volume of fuel involved, and the violation's overall impact on the program's goals. Penalties in future cases might be smaller or larger.

#### **The governing legal provisions.**

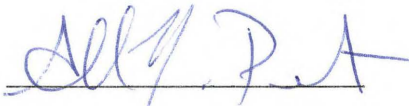
The penalty is based on HSC section 43027(c) and CCR, title 17, section 95494, the provisions intended to govern violations of the LCFS.

#### **Whether the governing provisions prohibit emissions at a specified level.**

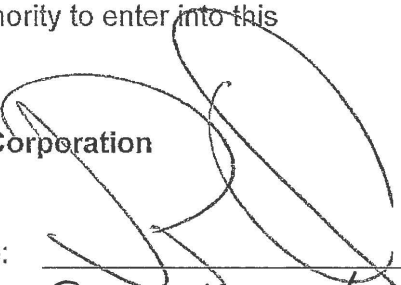
HSC section 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission of an air contaminant for purposes of the governing penalty statutes.

- (24) The penalty reflects confidential settlement communications between CARB and Musket. The penalty is the product of an arms-length negotiation between CARB and Musket and reflects CARB's assessment of the relative strength of its case against Musket, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Musket may have secured from its actions.
- (25) In consideration of the penalty payment specified herein, CARB hereby releases Musket and its successors and assignees, and affiliates from any claims that CARB may have based on the circumstances described in paragraph five, above.
- (26) The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

Signature:   
Print Name: Ellen Peter  
Title: Chief Counsel  
Date: 10/12/2018

**Musket Corporation**

Signature:   
Print Name: Joan P. Field-Hansen  
Title: VICE PRESIDENT - Musket Corporation  
Date: 8.24.18