

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "AGREEMENT") is entered into by and between the CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB"), with its principal office located at 1001 I Street, Sacramento, California 95814 and SureCan, Inc. (hereinafter "SURECAN"), with its principal place of business located at 1964 North 400 East, North Ogden, Utah, 84414 (collectively, the "PARTIES" or, individually, a "PARTY").

RECITALS

1. California Code of Regulations, title 13, section 2467(b) states, in pertinent part, that "no person shall sell, supply, offer for sale, advertise, or manufacture for sale in California a portable fuel container system or its components on or after July 1, 2007, unless said portable fuel container system or its components are covered by an Executive Order."
2. California Code of Regulations, title 13, section 2467.2(a) states, in pertinent part, that "every portable fuel container system or its components produced on or after July 1, 2007, that are manufactured for sale, advertised for sale, sold, or offered for sale in California or that are introduced, delivered, or imported into California for introduction into commerce must be certified for use and sale by the manufacturer through CARB and covered by an EO issued pursuant to California Code of Regulations, title 13, section 2467.2(b) or (c)."
3. California Code of Regulations, title 13, section 2467.2(b) states, in pertinent part, that "The criteria for obtaining certification, including all test procedures for determining compliance with the standards applicable to portable fuel container systems produced on or after July 1, 2007, and prior to April 1, 2017, that are manufactured for sale, advertised for sale, sold, or offered for sale in California, or that are introduced, delivered, or imported into California for introduction into commerce and that are subject to any of the standards prescribed in this article and documents incorporated by reference therein are set forth in "CP-501, *Certification Procedure for Portable Fuel Container Systems*," adopted July 26, 2006."
4. Health and Safety Code section 43016 provided that violations involving portable fuel containers (PFC) or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit.
5. During the timeframe between May 1, 2015, and January 1, 2017, SURECAN manufactured PFCs with an invalid CARB Executive Order (EO) number, G-15-025, for use and sale in the United States.
6. On June 8, 2015, Enforcement Division (ED) staff purchased a 2.2 gallon

SURECAN PFC (EO# G-15-025) from SURECAN's website and received it on June 13, 2015. At Lowe's Home Improvement in Jackson, California on April 23, 2016, ED staff purchased a 2.2 gallon SURECAN PFC (EO# G-15-025). ED staff documented 5 gallon SURECAN PFCs (EO# G-15-025) at Tractor Supply Co. located in Bakersfield and American Canyon, California on May 30, 2017. ED staff then documented 5 gallon SURECAN PFCs (EO# G-15-025) at Tractor Supply Co. located in Gilroy, California on June 15, 2017. (hereinafter "SUBJECT UNITS")

7. SURECAN subsequently reported four thousand four hundred sixteen (4,416) offers for sale of the SUBJECT UNITS in California.
8. Based upon the information SURECAN submitted to CARB, CARB alleges that the SUBJECT UNITS bearing the EO number G-15-025 are not legal in California because SURECAN did not obtain CARB certification approval prior to selling, supplying, offering for sale, advertising, or manufacturing for sale in California.
9. SURECAN fully cooperated with CARB in the investigation of this subject matter.
10. SURECAN is a Utah corporation doing business in interstate commerce.
11. This is SURECAN's first enforcement record with CARB.
12. CARB alleges that if the allegations described in recital paragraphs 1 through 8 were proven, civil penalties could be imposed against SURECAN as provided in Health and Safety Code section 43212.
13. SURECAN admits the facts in recital paragraphs 1 through 8, but denies any liability arising thereunder.
14. 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. SURECAN has taken or agrees to take the actions enumerated below within the Terms and Release for the purpose of settlement and resolution of this matter with CARB. CARB accepts this AGREEMENT in termination and settlement of this matter.

TERMS AND RELEASE

In settlement of any and all claims that CARB has against SURECAN for the violations alleged above, and in consideration of CARB not filing a legal action as well as the other terms set out below, CARB and SURECAN agree as follows:

1. SURECAN agrees to pay a total sum of **twenty-six thousand four hundred ninety-six dollars (\$26,496)**.
2. SURECAN shall not sell, supply, offer for sale, advertise, or manufacture for sale in California any PFC or Portable Fuel Container System that is not covered by an executive order.
3. SURECAN shall pay the sum **thirteen thousand two hundred forty-eight dollars (\$13,248)** as a penalty by check or wire transfer to the **California Air Pollution Control Fund**, as described in Attachment A-1.

If payment is by check, SURECAN's check shall be accompanied with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A-1) and sent to:

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

If payment is by wire, thereupon SURECAN's wire transfer, the attached "Settlement Agreement Payment Transmittal Form" (Attachment A-1) shall be sent to:

State of California Air Resources Board
c/o Bank of America, Inter Branch to 0148
Routing No. 0260-0959-3 Account No. 01482-80005
Notice of Transfer: Edna Murphy Fax: (916) 322-9612
Reference: CARB Case #G00005

Wire Transfer Fee: Vendor is responsible for any bank charges incurred for processing wire transfers.

4. SURECAN agrees to fund a Supplemental Environmental Project (SEP), as described in Attachment B, to offset a portion of the settlement amount, consistent with CARB's SEP Policy. SURECAN agrees that by funding the SEP described in Attachment B, SURECAN will not receive a financial benefit.
5. SURECAN shall pay the sum of **thirteen thousand two hundred forty-eight dollars (\$13,248)** as a penalty by check or wire transfer to the SEP Recipient, **Placer County Air Pollution Control District**, as described Attachment A-2. For payment to the SEP Recipient, SURECAN will send the payment to:

AJ Nunez
Placer County Air Pollution Control District
110 Maple Street
Auburn, CA 95603

6. SURECAN shall send the original signed and dated AGREEMENT, copies of payments, the Payment Transmittal Forms (Attachment A-1, Attachment A-2, Attachment B), and any future mailings or documents required per the terms of this AGREEMENT to:

Allen Pham
Air Resources Engineer
California Air Resources Board
Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, California 91731

7. The PARTIES agree that this AGREEMENT may be executed by facsimile and in counterparts by the PARTIES and their representatives, and the counterparts shall collectively constitute a single, original document, notwithstanding the fact that the signatures may not appear on the same page.
8. SURECAN represents that it understands the legal requirements applicable to PFCs in California. SURECAN agrees that it will not sell, supply, offer for sale, advertise, or manufacture for sale in California a portable fuel container system or its components, unless said portable fuel container system or its components are covered by an Executive Order.
9. It is agreed that the penalty described in Terms and Release paragraph 1 is not compensatory in nature. Furthermore, the penalty is intended to deter violations of state environmental statutes, and this penalty is payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that this penalty imposed on SURECAN by CARB arising from the facts described in recital paragraphs 1-8 are nondischargeable under 11 U.S.C § 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
10. This AGREEMENT shall apply to and be binding upon SURECAN and its principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, predecessors, and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this AGREEMENT.
11. Now, therefore, in consideration of the payment by SURECAN to the California Air

Pollution Control Fund in the amount specified above, CARB hereby releases SURECAN and its shareholders, principals, officers, directors, agents, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and predecessors from any and all claims that CARB may have relating to the SUBJECT UNITS and based on the allegations described in recital paragraphs 1-8.

12. This AGREEMENT constitutes the entire agreement and understanding between CARB and SURECAN concerning the claims and settlement in this AGREEMENT, and this AGREEMENT fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CARB and SURECAN concerning these claims.
13. The effective date of this AGREEMENT shall be the date upon which it is fully executed.
14. 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.
15. Each PARTY to this AGREEMENT has reviewed the AGREEMENT independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this AGREEMENT, and has not relied in any way on any inducement, representation, or advice of any other PARTY in deciding to enter into this AGREEMENT.
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. Each provision of this AGREEMENT is severable, and in the event that any provision of this AGREEMENT is held to be invalid or unenforceable in any jurisdiction, the remainder of this AGREEMENT remains in full force and effect.
18. This AGREEMENT is deemed to have been drafted equally by the PARTIES; it will not be interpreted for or against either PARTY on the ground that said PARTY drafted it.
19. The failure of any PARTY to enforce any provision of this 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 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 AGREEMENT or otherwise provided by law.

20. This AGREEMENT shall further serve to toll any statute of limitations until all terms and conditions of this AGREEMENT have been fulfilled.

21. Penalty Determination

Below is the basis for the assessed penalties (Health & Saf. Code § 39619.7.), which is also provided throughout this AGREEMENTH&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 manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit basis for the penalty.

The per unit penalty for SURECAN in this case is six dollars (\$6.00) per unit for four thousand four hundred sixteen (4,416) SUBJECT UNITS. The penalties in this matter reflects the fact that SURECAN fully cooperated with the investigation, there were no emission impacts in excess of any applicable law or regulation, and the violation was corrected in a timely manner.

The penalties in this matter were determined in consideration of all relevant circumstances, including the eight statutory factors, (Health & Saf. Code § 42403), including 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 case negotiation, and CARB's assessment of the relative strength of its case against SURECAN, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SURECAN may have secured from its alleged actions. Penalties in other cases may be smaller or larger depending on the unique circumstances of the case.

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

The penalty provisions being applied in this case are Health and Safety Code sections 43016, because SURECAN did not obtain CARB certification approval prior to selling, supplying, offering for sale, advertising, or manufacturing for sale in California. SURECAN violated California Code of Regulations, title 13, sections 2467(b) and 2467.2(a).

Whether the penalty is 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 provisions cited above prohibit the emission of pollution at a specified level.

However, it is not practicable to quantify the emissions attributable to the affected PFCs, because the information necessary to do so, such as emission rates and time of use, is not available.

22. SURECAN acknowledges that CARB has complied with Health and Safety Code section 39619.7, and considered the relevant factors in Health and Safety Code sections 42403 and 43024.

23. The penalty in this case was based in part on confidential business information provided by SURECAN 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 SURECAN that CARB does not retain in the ordinary course of business either.

24. Each of the undersigned represents that he or she has full power and authority to enter this AGREEMENT.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

SureCan, Inc.

By: _____ /S/

By: _____ /S/

Name: Todd P. Sax, D.Env.

Name: E. Jex Heaton

Title: Chief, Enforcement Division

Title: Compliance

Date: 10/24/19

Date: 9/19/19