

## **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 Save Mart Supermarkets LLC ("Save Mart"), with its principal location at 1800 Standiford Avenue, Modesto, California 95350 (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 & Saf. Code §§ 38560, 38562, and 38580). CARB is also mandated to reduce hydrofluorocarbon emissions by 40% below 2013 levels by 2030. (Health & Saf. Code § 39730.5.)
- (2) Regulation.
  - 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 Regulation* (HFC Regulation) to reduce hydrofluorocarbon (HFC) emissions by adopting specific prohibitions for certain HFC's in refrigeration, air conditioning, chillers, ice rinks, cold storage, aerosol propellants, and foam end-uses in California. (Cal Code Regs., tit. 17, §§ 953710-95379.)
- (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 Table 1 through 4, section 95374(a-d) of the HFC Regulation, must comply with the

applicable requirements of the HFC Regulation. (Cal. Code Regs., tit. 17, § 953710.)

- (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., 42411, and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Save Mart was organized under the laws of California, doing business as Save Mart, Lucky, FoodMaxx and MaxxValue, and conducted business in the State of California.
- (6) Allegations. CARB alleges that Save Mart violated the RMP Regulation by owning or operating multiple stationary refrigeration systems after January 1, 2011, as defined by the RMP Regulation, with a full charge of greater than 200 pounds but less than 2,000 pounds, and greater than 2,000 pounds by (a) failing to submit leak inspection records reflecting leak detection and monitoring once every three months using a refrigerant leak detection device, bubble test, or observation of oil residue, where applicable (Cal. Code Regs., tit. 17, § 95385); (b) failing to submit annual reports on time (Cal. Code Regs., tit. 17, § 95388); and (c) failing to submit annual audit and calibration records on time on automatic leak detection systems (Cal. Code Regs., tit. 17, § 95384); resulting in violations, as outlined in Notice of Violation RMP-2018-1507 (Cal. Code Regs., tit. 17, § 95380 et seq.). CARB also alleges that Save Mart violated the HFC Regulation by (i) 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 NOV HFC-2023-01 (Cal. Code Regs., tit. 17, § 95371 et seq.). CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Save Mart for each and every facility involved in the violations and each day.
- (7) Acknowledgment. Save Mart 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, Save Mart 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 Save Mart for the alleged violations referred to above in the Legal Background and Case Background, and Save Mart agreement to complete all terms and conditions set forth below, CARB and Save Mart agree as follows:

- (9) Settlement Amount. Save Mart shall pay a civil penalty of seven hundred ninety-six thousand two hundred fifty dollars (\$796,250.00 USD), and agrees to fund two Supplemental Environmental Projects (SEP) entitled "To Reduce Contaminated Waste and Emissions Throughout Bay View Hunters Point Community" in the amount of fifty-eight thousand six hundred forty dollars (\$58,640.00 USD), and "Residential Air Filtration Program" in the amount of seven hundred thirty-seven thousand six hundred ten dollars (\$737,610.00 USD), consistent with CARB's SEP Policy, for a total settlement of one million five hundred ninety-two thousand five hundred dollars (\$1,592,500.00 USD). Save Mart shall make all payments within thirty (30) calendar days from the Notification Date in accordance with the payment schedule in Paragraph 11 (Civil Penalty Payment Method).
- (10) Notification Date. The date upon which CARB notifies Save Mart, according to Paragraph 17 (Notices), that the Settlement Agreement is fully executed, or when CARB sends the fully executed Settlement Agreement to Save Mart.
- (11) Civil Penalty Payment Method. Save Mart 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. Save Mart 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 Save Mart in accordance with Paragraph 17 (Notices).
- (12) SEP Payment Method(s). As restitution and remediation for the facts admitted herein, Save Mart shall fund the SEP entitled, "To Reduce Contaminated Waste and Emissions Throughout Bay View Hunters Point Community" with payment by wire transfer, credit card, or check, as offered in the SEP Transmittal Form, payable to the SEP implementer/recipient "First Generation Environmental Health and Economic Development." Save Mart shall also fund the SEP

entitled "Residential Air Filtration Program" with payment by check only, as offered in the SEP Transmittal Form, payable to the SEP implementer/recipient "San Joaquin Valley Air Pollution Control District." Save Mart is responsible for all payment processing fees. SEP Payments shall be accompanied by their respective Payment Transmittal Forms to ensure proper application. Should payment instructions change, CARB will provide notice to Save Mart in accordance with Paragraph 17 (Notices).

- (13) Prohibition Against Financial Benefit. Save Mart has agreed that by funding the SEPs entitled To Reduce Contaminated Waste and Emissions Throughout Bay View Hunters Point Community, and the Residential Air Filtration Program, Save Mart will not receive any direct or indirect financial benefit, and that whenever Save Mart publicizes or refers to the SEP or the results of the SEP, Save Mart will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (14) Assignment of Rights. In the event the SEP Recipient/Administrator does not fully implement or complete the SEP in accordance with the terms of the SEP Agreement, CARB shall be entitled to recover the full amount of the SEP from the SEP implementer, less any amount expended on the timely and successful completion of any previously agreed upon interim milestone(s). CARB will deposit any such recovery into the Air Pollution Control Fund. Accordingly, Save Mart assigns any and all rights against the SEP implementer to CARB.
- (15) Other Relief. For purposes of this paragraph, a "Responsible RMP Employee" means any employees of Save Mart who are either currently responsible or become responsible within two months from the date of this Settlement Agreement for any part of Save Mart reporting obligations under the RMP Regulation. All Responsible RMP Employee(s) shall complete Course CR 106, "How to Comply with the Refrigerant Management Program," within three months from the date of this Settlement Agreement is fully executed. Course CR 106 is available through CARB's Learning Management System webpage: [www.arb.ca.gov/training](http://www.arb.ca.gov/training). After registering, search for CR 106 or RMP from the list of courses.
- (16) Documents. Save Mart shall promptly email or mail the signed and dated Settlement Agreement to CARB, at the email or mailing address for CARB provided in Paragraph 17 (Notices) below. CARB will email the fully executed Settlement Agreement and the Payment Transmittal Forms that Save Mart shall use for payment to the email address for Legal Representation of Save Mart provided in Paragraph 17 (Notices) below. Within thirty (30) days from the Notification Date, or when CARB emails Save Mart the fully executed Settlement Agreement and the Payment Transmittal Forms, Save Mart will pay the civil penalty and SEP amounts, and email CARB proof of payment of the civil penalty

and SEP amounts with copies of the Payment Transmittal Forms to the email address for CARB in Paragraph 17 (Notices).

- (17) 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  
Short-Lived Climate Pollutant Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Save Mart:

Save Mart Supermarkets LLC  
1800 Standiford Avenue  
Modesto, California 95350

As to Save Mart Legal Representation:

Stephanie Wu, General Counsel and Vice President, Legal  
1800 Standiford Avenue  
Modesto, California 95350  
Stephanie.Wu@SaveMart.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.

- (18) Repeat Violations. Save Mart agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (19) 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 ten pages and thirty-seven numbered paragraphs.
- (20) Binding Effect. This Settlement Agreement binds Save Mart, 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.

- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) 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.
- (27) 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.
- (28) 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.

- (29) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Save Mart 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 Paragraph 6 (Allegations) above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (33) 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.). The penalty of \$1,592,500 over an unspecified number of days of violation is approximately \$5,000 per emissions violation per facility and \$1,750 per reporting violation.
- (34) 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 Save Mart did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors 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.

(36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Save Mart or confidential settlement communications.

(37) 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 Save Mart 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 Save Mart with respect to:

(i) Noncompliance with or enforcement of any provision of this Settlement Agreement.

(ii) Facts that were not disclosed by Save Mart 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, Save Mart 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 Save Mart 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 Save Mart, 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. Save Mart is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Save Mart'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 Save Mart'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: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: May 14, 2024

**Save Mart Supermarkets LLC**

Signature: /S/

Name: Stephanie Wu

Title: Vice President Legal, General Counsel

Date: April 23, 2024