

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 Whole Foods Market California, Inc. and Mrs. Gooch's Natural Food Markets, Inc. *dba* Whole Foods Market (collectively, Whole Foods Market), with its principal locations at 6401 Hollis Street, Suite 150, Emeryville, California 94608 and 207 Goode Avenue, 7th Floor, Glendale, California 91203, respectively (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. 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.)
- (3) Regulatory Provisions. 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.)
- (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., and 42410.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Whole Foods Market was organized under the laws of California as a stock corporation doing business as Whole Foods Market and conducted business in the State of California.
- (6) Allegations. CARB alleges that Whole Foods Market violated the RMP Regulation by owning or operating stationary refrigeration systems after January 1, 2011, as defined by the RMP Regulation, failing to ensure that all detected refrigerant

leaks are repaired within fourteen (14) days of its detection by a certified technician (Cal. Code Regs., tit. 17, § 95386(a)), and failing to submit complete or accurate annual reports (Cal. Code Regs., tit. 17, § 95388) resulting in an unspecified number of days of violations, as outlined in Notice of Violation 2022-WHOLE-304/393-001. (Cal. Code Regs., tit. 17, § 95380 et seq.) CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be imposed against Whole Foods Market for each and every unit involved in the violations and each day.

- (7) Acknowledgment. Whole Foods Market neither admits nor denies the facts alleged in paragraphs 1 through 6, and 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, Whole Foods Market 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 Whole Foods Market for the alleged violations referred to above in the Legal Background and Case Background, and Whole Foods Market's agreement to complete all terms and conditions set forth below, CARB and Whole Foods Market agree as follows:

- (9) Settlement Amount. Whole Foods Market shall pay a civil penalty of two hundred three thousand five hundred and twenty-seven dollars (\$203,527.00 USD). Whole Foods Market shall make all payments within forty-five (45) calendar days from the Notification Date.
- (10) Notification Date. The Notification Date is the date upon which CARB notifies Whole Foods Market according to Paragraph 14 (Notices) that the Settlement Agreement is fully executed, or when CARB sends the fully executed Settlement Agreement to Whole Foods Market.
- (11) Civil Penalty Payment Method. Whole Foods Market 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. Whole Foods Market 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 Whole Foods Market in accordance with Paragraph 14 (Notices).

- (12) Documents. Whole Foods Market shall promptly email or mail the signed and dated Settlement Agreement to CARB's email or mailing address listed in Paragraph 14 (Notices).
- (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
Short-Lived Climate Pollutant Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Whole Foods Market:

John H. Hempfling II, Esq.,
Whole Foods Market Services, Inc.
828 W 6th Street, Suite 100
Austin, Texas 78703
John.Hempfling@wholefoods.com

With copy to:

Jennifer Hartman King, Esq.
Hartman King PC
2150 River Plaza Drive, Suite 320
Sacramento, California 95833
JHartmanKing@HartmanKingLaw.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. Whole Foods Market 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 matters addressed herein and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the matters addressed herein. This Settlement Agreement consists of eight 8 pages and thirty-four 33 numbered paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Whole Foods Market, and any principals, officers, receivers, trustees, successors and assignees, and subsidiary and parent corporations over which California courts have jurisdiction to enforce this Settlement Agreement and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement. This Settlement Agreement does not bind any indirect parent companies, including but not limited to Amazon.com, Inc.
- (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) 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.
- (23) 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.
- (24) 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.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty and all other undertakings above, CARB hereby releases Whole Foods Market and its principals, officers, receivers, trustees, successors and assignees, subsidiary and Whole Foods Market's direct parent company, Whole Foods Market, Inc. from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above and based on facts Whole Foods Market disclosed to CARB through its Voluntary Disclosures on: May 31, 2022 pertaining to its store located at 3682 Bel Aire Plaza, Napa; June 1, 2022 pertaining to its store located at 270 Palladio Parkway, Folsom; August 25, 2022 pertaining to its store located at 450 Rhode Island Street, San Francisco; and January 17, 2024 pertaining to its store located at 1690 S. Bascom Avenue, Campbell; and all facts available to CARB through Whole Foods Market's RMP Regulation annual reports submitted to CARB. This Settlement Agreement does

not release any indirect parent companies, including but not limited to Amazon.com, Inc.

- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (29) 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 two hundred three thousand five hundred and twenty-seven dollars (\$203,527.00 USD), over an unspecified number of days of violation is approximately \$450.00 per day for failing to ensure that all detected refrigerant leaks are repaired within fourteen (14) days of its detection by a certified technician; \$1,000.00 per day for failing to ensure that all detected refrigerant leaks are repaired within fourteen (14) days of its detection by a certified technician and failing to meet the requirements of the refrigerant leak repair 45-day allowance; \$250.00 per day for failing to submit an accurate annual report; and \$2,927.00 for one unit of failing to submit an accurate annual report.
- (30) 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.
- (31) 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.

- (32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Whole Foods Market or confidential settlement communications.
- (33) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves all claims that CARB has brought or could have brought related to the facts and violations alleged in this Settlement Agreement and shall bar any further actions against Whole Foods Market related to the matters addressed herein.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Whole Foods Market 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 Whole Foods Market with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Whole Foods Market to CARB or otherwise available to CARB through Whole Foods Market's RMP Regulation annual reports submitted 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 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, and subject to Paragraphs 27 (Release) and 33(a) and (b) (Effect of Settlement/Reservation of Rights), Whole Foods Market 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 Whole Foods Market 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 Whole Foods Market, 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. Whole Foods Market is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Whole Foods Market'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 Whole Foods Market'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: July 1, 2024

Whole Foods Market California, Inc. and Mrs. Gooch's Natural Food Markets, Inc. *dba* Whole Foods Market

Signature: /S/

Name: John H Hempfling

Title: Vice President, Associate General Counsel, Litigation

Date: June 19, 2024