

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (ARB), with its principal office at 1001 I Street, Sacramento, California, Moeller Contract Packaging with its principal place of business at 3954 Nebraska Street, Levittown, Pennsylvania, and Walmart Stores, Inc. (Walmart) with its principal place of business at 508 SW 8th Street, Bentonville, Arkansas.

### RECITALS

1. ARB alleges that Walmart contracted with PerfectData to supply the Super Tech Brake Parts Cleaner product and the Super Tech Carburetor Cleaner product, both of which are private labels for Walmart.
2. ARB alleges that between August 2012 and December 2013, Moeller Contract Packaging, on behalf of PerfectData, shipped the products referenced in recital paragraph 1 to Walmart for sale in California.
3. ARB alleges that the Super Tech Brake Parts Cleaner was subject to the volatile organic compound (VOC) limit for Brake Cleaners, title 17, California Code of Regulations (CCR), section 94509(a) and that the Super Tech Carburetor Cleaner product was subject to the VOC limit for Carburetor or Fuel-Injection Air Intake Cleaners, title 17, CCR, section 94509(a).
4. ARB alleges that Walmart sold in California the products shipped to it by Moeller Contract Packaging referenced in recital paragraphs 1 and 2.
5. ARB alleges that the Super Tech Brake Parts Cleaner product contained concentrations of VOCs exceeding the 10 percent VOC limit for Brake Cleaners specified in title 17, CCR, section 94509(a) and that the Super Tech Carburetor Cleaner product contained concentrations of VOCs exceeding the 10 percent VOC limit for Carburetor or Fuel-Injection Air Intake Cleaners specified in title 17, CCR, section 94509(a).
6. Walmart represents that at all times relevant to this Agreement, PerfectData was contractually obligated to only supply Walmart with products that were in compliance with all applicable standards, including ARB's VOC limits for brake parts cleaners and carburetor cleaners.
7. Walmart represents that it requires its suppliers to only provide VOC-compliant product formulations for products sold, supplied, or offered for sale in California, and to notify Walmart if an item should not be sold or shipped for sale in California so that Walmart can execute its compliance procedures.
8. At all times relevant to this Agreement, because Moeller Contract Packaging shipped the alleged non-compliant products to Walmart in boxes labeled as compliant for sale in California, at the time the products were shipped, Walmart

did not know that the products, described in recital paragraphs 1 and 2, did not comply with ARB's VOC limits.

9. ARB alleges that if the allegations described in recital paragraphs 1, 2, 3, 4, and 5 were proven, civil penalties could be imposed against Moeller Contract Packaging and Walmart as provided in Health and Safety Code (HSC) section 42402(a) for the alleged non-compliant units.
10. Moeller Contract Packaging admits the allegations described in recital paragraphs 1 and 2, but denies any liability resulting from said allegations.
11. Walmart admits the allegations described in recital paragraphs 1 and 4, and denies any liability resulting from said allegations.
12. The parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation.

Therefore, the parties agree as follows:

#### **TERMS AND CONDITIONS**

1. Moeller Contract Packaging shall not supply for sale in California, and Walmart shall not sell or offer for sale in California, any consumer products in violation of ARB consumer products regulations set forth in title 17, CCR, Section 94500 et seq., however, the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
2. In settlement of the alleged violations of title 17, CCR, section 94509(a), Moeller Contract Packaging agrees to pay a penalty to ARB in the amount of \$26,400.00 to the California Air Pollution Control Fund. The first payment of six thousand six hundred dollars (\$6,600.00) was made on June 19, 2015. The second payment of six thousand six hundred dollars (\$6,600.00) was made on September 1, 2015. The third and final payment of thirteen thousand two hundred dollars (\$13,200.00) shall be made by Moeller Contract Packaging upon execution of this agreement.
3. This settlement shall apply to and be binding upon Moeller Contract Packaging and Walmart, and their respective officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described alleged violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by ARB or any successor agency against Moeller Contract Packaging, Walmart, or their respective 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 Health and Safety Code section 42400.7(a).

5. 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.
6. This Agreement constitutes the entire agreement and understanding between ARB, Moeller Contract Packaging, and Walmart, 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 ARB, Moeller Contract Packaging, and Walmart concerning these claims.
7. 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.
8. Each of the undersigned represents and warrants that he or she has full power and authority to enter into this Agreement.
9. **SB 1402 Statement.** HSC section 39619.7 (Senate Bill 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks. This Settlement Agreement includes this information, which is 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 HSC section 42402(a) because Moeller Contract Packaging supplied consumer products to Walmart for sale in California, and Walmart sold or offered for sale consumer products in California, alleged to be in violation of the Consumer Products Regulations (Title 17 California Code of Regulations (CCR) section 94509(a)). The penalty provisions of HSC section 42402(a) apply to alleged violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712, which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402(a) apply to requirements adopted pursuant to Part 4.

**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 HSC section 42403.

Under HSC section 42402(a) the penalties for strict liability violations of the Consumer Product Regulations are a maximum of \$1,000 per day of violation, with each day being a separate violation. In cases like this involving an alleged second violation of the Consumer Products Regulations, ARB has either sought and obtained penalties of approximately three times the rate for first time violations (3 times \$20,000 per ton) or \$1,000 for each day that the products attributable to the alleged violation were sold or offered for sale. In this case the total penalty is \$26,400 and there were 0.51 tons of alleged excess VOC emissions attributable to the alleged violation. This represents a penalty of approximately \$51,700 per ton of alleged excess emissions. The penalty in this case was reduced because one party, Moeller Contract Packaging, has not had previous violations, and both parties cooperated with the investigation.

**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 the excess emissions, if it is practicable to do so.**

The Consumer Product Regulations do not prohibit emissions above a specific level, but they do limit the concentration of VOCs in regulated products. In this case a quantification of the alleged excess emissions attributable to the alleged violation was practicable because Moeller Contract Packaging made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which has been designated as confidential), the alleged violations were calculated to have caused 0.51 tons of alleged excess emissions of volatile organic compounds to be emitted to the atmosphere in California.

11. Moeller Contract Packaging and Walmart acknowledge that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed and had considered and determined that while this penalty is not being assessed in accordance with a provision of law that prohibits the emission of pollutants at a specified level, it is practicable for ARB to quantify the alleged excess emissions from the alleged violations, has done so and has included this information in this Settlement Agreement.
12. The penalty was 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 costs and risk associated with litigating these particular alleged violations. The penalty reflects alleged violations extending over a number of days resulting in alleged quantifiable harm to the environment considered together with the complete circumstances of this case listed above.

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

**CALIFORNIA AIR RESOURCES BOARD**

Dated: 11/01/16

By:  Ellen M. Peter  
Chief Counsel  Todd Spivey  
Chief  
Enforcement Division

**MOELLER CONTRACT PACKAGING**

Dated: June 30, 2016

By:  Michael Moeller, President

**WALMART STORES, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ryan Peterson, Vice-  
President/Divisional Merchandise  
Manager, Automotive

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**CALIFORNIA AIR RESOURCES BOARD**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ellen M. Peter  
Chief Counsel

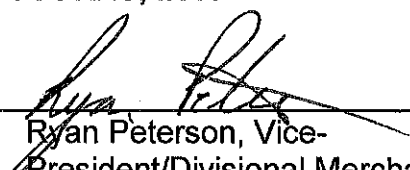
**MOELLER CONTRACT PACKAGING**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Moeller, President

**WALMART STORES, INC.**

Dated: 1/22/16

By: \_\_\_\_\_  
  
Ryan Peterson, Vice-  
President/Divisional Merchandise  
Manager, Automotive