

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 Walmart Inc., with its principal location at 702 SW 8th Street, Bentonville, Arkansas 72716, (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 §§ 38510, 38560, 38560.5, 38580, 39600, and 39601).
- (2) Regulation. CARB approved for adoption the *Small Containers of Automotive Refrigerant Regulation* (Small Container Regulation), on January 22, 2009, and last amended it on January 17, 2017, to reduce hydrofluorocarbon emissions in California from any automotive refrigerant in a small container that is used or intended for use to charge motor vehicle air conditioning systems. (Cal. Code Regs., tit.17, §§ 95360-95370.)
- (3) Regulatory Provisions. Any person who uses, sells, supplies, offers for sale, advertises, manufactures for sale, recycles, reclaims, recovers, imports, exports, or introduces into commerce in the State of California any automotive refrigerant in a small container that is used or intended for use to charge motor vehicle air conditioning systems must comply with the applicable requirements of the Small Container Regulation, except as specifically excluded. (Cal. Code Regs., tit.17, § 95360.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in civil penalties up to ten thousand three hundred dollars (\$10,300 USD) for strict liability violations, for each day in which the violation occurs. (Cal. Code Regs., tit.17, §§ 95368; Health & Saf. Code §§ 38580, 42400 et seq., 42402 et seq., 42411)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Walmart Inc. was organized under the laws of Delaware as a corporation, and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notices of Violation (NOV) EPES-2020-C00257 (August 3, 2020), 20-BT-002 (September 24, 2020), 2020-GO/HP-004 (September 28, 2020), and 2020-GO/HP-005 (October 7, 2020), CARB alleges Walmart Inc. violated the Small Container Regulation by:

- a. Selling 2,290 uncertified small containers of automotive refrigerant in California during calendar year 2018 (Cal. Code Regs., tit.17, § 95362 (a));
- b. Failing to comply with the education requirements intended for use by ultimate purchasers of automotive refrigerant in small containers at Walmart's retail store located at 10355 Wicklow Way, Jackson, California 95642, on September 24, 2020 ("Certification Procedures for Small Containers of Automotive Refrigerant," § 2.4(C) and § 2.4(D), as last amended on January 17, 2017, and incorporated in Cal. Code Regs., tit.17, § 95362(c));
- c. Failing to comply with the education requirements intended for use by ultimate purchasers of automotive refrigerant in small containers at Walmart's retail store located at 1290 East Ontario Avenue, Corona, California 92881, on September 28, 2020 ("Certification Procedures for Small Containers of Automotive Refrigerant," § 2.4(C) and § 2.4(D), as last amended on January 17, 2017, and incorporated in Cal. Code Regs., tit.17, § 95362(c)); and
- d. Failing to comply with the education requirements intended for use by ultimate purchasers of automotive refrigerant in small containers at Walmart's retail store located at 6225 Colony Street, Bakersfield, California 93307, on October 7, 2020 ("Certification Procedures for Small Containers of Automotive Refrigerant," § 2.4(C) and § 2.4(D), as last amended on January 17, 2017, and incorporated in Cal. Code Regs., tit.17, § 95362(c)).

CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Walmart Inc. for each of these listed violations on both a per unit and per day basis.

- (7) Acknowledgment. Walmart Inc. admits to the facts in paragraphs 1 through 5, but denies any liability resulting from the allegations in paragraph 6. Walmart Inc. has submitted information to CARB indicating it has corrected the allegations cited in paragraphs 6.b., 6.c., and 6.d.
- (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, Walmart Inc. 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 Walmart Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Walmart Inc.'s agreement to complete all terms and conditions set forth below, CARB and Walmart Inc. agree as follows:

- (9) Settlement Amount. Walmart Inc. shall pay a civil penalty of thirty thousand dollars (\$30,000 USD), and agrees to fund a Supplemental Environmental Project (SEP) entitled "SEI Air Quality Education Program – Contra Costa," in the amount of thirty thousand dollars (\$30,000 USD), consistent with CARB's SEP Policy, for a total settlement of sixty thousand dollars (\$60,000 USD). Walmart Inc. shall make all payments within 30 calendar days from the date CARB notifies Walmart Inc. of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Walmart Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Walmart Inc. 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 Walmart Inc. in accordance with Paragraph 15 (Notices).
- (11) SEP Payment Method(s). Walmart Inc. shall fund the SEP by wire transfer, credit card, or check, payable to the SEP recipient/implementer, Strategic Energy Innovations, Inc., using instructions provided separately by CARB in a Payment Transmittal Form. Walmart Inc. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. Should payment instructions change, CARB will provide notice to Walmart Inc. in accordance with Paragraph 15 (Notices).
- (12) Prohibition Against Financial Benefit. Walmart Inc. has agreed that by funding the SEP entitled "SEI Air Quality Education Program – Contra Costa," Walmart Inc. will not receive any direct or indirect financial benefit, and that whenever Walmart Inc. publicizes or refers to the SEP or the results of the SEP, Walmart Inc. will state that the SEP is being undertaken as part of the settlement of a CARB enforcement action.
- (13) Assignment of Rights. In the event the SEP recipient/implementer 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, Walmart Inc. assigns any and all rights against the SEP implementer to CARB.

- (14) Documents. Walmart Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the civil penalty and SEP, and a copy of each Payment Transmittal Form to the address or email in Paragraph 15 (Notices).
- (15) 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
Engine and Parts Enforcement Section
9480 Telstar Avenue, Suite 4
El Monte, California 91731
Settlement_Agreement@arb.ca.gov

As to Walmart Inc.:
Walmart Inc.
702 SW 8th Street
Bentonville, Arkansas 72716
michael.stephenson@walmart.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.

- (16) Repeat Violations. Walmart Inc. agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future. Walmart reserves all rights and defenses to any such future alleged violations.
- (17) 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 7 pages and 35 paragraphs.
- (18) Binding Effect. This Settlement Agreement binds Walmart Inc., 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.

- (19) **Effective Date.** The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (20) **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.
- (21) **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.
- (22) **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.
- (23) **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.
- (24) **Not Tax Deductible.** For purposes of this Settlement Agreement, Walmart Inc. shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (25) **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.
- (26) **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.
- (27) **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.

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

PENALTY BASIS

- (32) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand three hundred dollars (\$10,300 USD) per day under Health and Safety Code section 38580 for violations of the Small Container Regulation (Cal. Code Regs., tit.17, § 95368(a)). The penalty of \$60,000 USD is based on approximately \$25 USD per noncompliant small container of automotive refrigerant, and \$1,000 USD for each violation of the education requirements.
- (33) Emissions. The provisions cited 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 Walmart Inc. did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (34) 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.

(35) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Walmart Inc. and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: _____ /S/ _____

Name: _____ Ellen M. Peter _____

Title: _____ Chief Counsel _____

Date: _____ 3/18/2021 _____

Walmart Inc.

Signature: _____ /S/ _____

Name: _____ Rick Hays _____

Title: _____ VP, Automotive and Auto Care Centers _____

Date: _____ 2/15/2021 _____