

## **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 Furniture of America, Inc., with its principal location at 19223 East Colima Road #833, Rowland Heights, California 91748, (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that formaldehyde emissions from composite wood products is a TAC. (Health & Saf. Code §§ 39650, et seq.)
- (2) Regulation. CARB adopted the *Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products* (Composite Wood Regulation) to reduce formaldehyde emissions from composite wood in the State of California. (Cal. Code Regs., tit.17, § 93120-93120.12.)
- (3) Regulatory Provisions. All manufacturers, distributors, importers, fabricators, third-party certifiers, and retailers of composite wood products (hardwood plywood, particleboard, and medium density fiberboard) and finished goods, who sell, offer for sale, supply, use, or manufacture for sale in California must comply with and take reasonably prudent precautions to ensure composite wood products and finished products comply with formaldehyde emissions limits set out in the Composite Wood Regulation. (Cal. Code Regs., tit.17, § 93120 et seq.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations; respectively, for each day in which the violation occurs. (Cal. Code Regs., tit. 17, § 93120 et seq.; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Furniture of America, Inc. was organized under the laws of California as a Furniture of America, Inc. and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement settles Notice of Violation (NOV) CW21-03-01, which was issued on April 16, 2021. CARB alleges Furniture of America, Inc. violated the Composite Wood Regulation by distributing, importing, fabricating, selling, or offering for sale between January 25, 2018 and September 10, 2020, hardwood plywood, without taking reasonable

prudent precautions. CARB also alleges Furniture of America, Inc. did not put a statement of compliance on its customer invoices or customer bill of ladings and did not have a complete label on one its products, as outlined in NOV CW21-03-01. CARB alleges that if the allegations described in paragraphs 1 through 6 were proven, civil penalties could be imposed against Furniture of America, Inc. for each and every vessel involved in the violations and each day.

- (7) Acknowledgment. Furniture of America, Inc. 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, Furniture of America, 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 Furniture of America, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Furniture of America, Inc.'s agreement to complete all terms and conditions set forth below, CARB and Furniture of America, Inc. agree as follows:

- (9) Settlement Amount. Furniture of America, Inc. shall pay a civil penalty of eighteen thousand dollars (\$18,000.00 USD). Furniture of America, Inc. shall make the penalty amount within 30 calendar days from the date CARB notifies Furniture of America, Inc. of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Furniture of America, 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. Furniture of America, 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 Furniture of America, Inc. in accordance with Paragraph 13 (Notices).

- (11) Compliance Plan. Furniture of America, Inc. shall submit and if approved by CARB, implement a Compliance Plan, within 30 days to ensure that Furniture of America, Inc. complies with all provisions of the laws and regulations outlined in the Legal Background and where applicable, Compliance Schedule, the provisions of which are incorporated by reference herein.
- (12) Documents. Furniture of America, Inc. shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty, mitigation, and/or SEP (if applicable), a copy of the Payment Transmittal Form(s) (if applicable), and the signed and dated Compliance Plan (if applicable) to the address or email in Paragraph 13 (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  
Vehicle, Parts, and Consumer Products Enforcement Branch/  
Consumer Products Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to Furniture of America, Inc.:  
Furniture of America, Inc.  
19223 East Colima Road #833  
Rowland Heights, California 91748  
Johnsonc.nca@foagroup.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. Furniture of America, Inc. 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 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 6 pages and 32 paragraphs.

- (16) Binding Effect. This Settlement Agreement binds Furniture of America, 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.
- (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) Not Tax Deductible. For purposes of this Settlement Agreement, Furniture of America, 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.
- (23) 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.

- (24) 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.
- (25) 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.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases Furniture of America, 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.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

#### **PENALTY BASIS**

- (30) Per Unit Penalty. The per unit penalty in this case is a maximum of ten thousand dollars (\$10,000.00) per unit per day under Health and Safety Code section 39674, for violations of the Composite Wood Regulation. The penalty of \$18,000.00 over an unspecified number of days of violation is for noncompliant units. The per unit penalty in this case is approximately \$1,000 per day per noncompliant unit.

(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 based this penalty in part on confidential business information provided by Furniture of America, 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: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: 6/30/2021

**Furniture of America, Inc.**

Signature: /S/

Name: Johnson Chang

Title: Vice President / Branch Manager

Date: 6/4/2021