

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between the State of California Air Resources Board (ARB) with its principal office at 1001 "I" Street, Sacramento, California 95814, and Baja-Frige, 7525 Britannia Blvd, San Diego, California 92154.

### RECITALS

1. The Global Warming Solutions Act of 2006 authorizes ARB to adopt regulations to reduce greenhouse gas emissions (Health & Safety Code (H&SC) section 38530, et seq.).
2. Pursuant to that authority, ARB adopted the Regulation for the Management of High Global Warming (GWP) Potential Refrigerants for Stationary Sources (RMP Regulation), California Code of Regulations (CCR), title 17, section 95380, et seq., which became effective on November 19, 2010.
3. The RMP Regulation establishes registration, reporting, leak inspection, repair and recordkeeping requirements applicable to owners of stationary refrigeration systems with a full charge of greater than 50 pounds of high GWP refrigerants.
4. The RMP Regulation requires owners of stationary refrigeration systems with a full charge of greater than 200 pounds of high GWP refrigerants to register by March 1, 2014 (17 CCR § 95383).
5. The RMP Regulation requires owners of stationary refrigeration systems with a full charge of greater than 200 pounds of high GWP refrigerants to file an annual report for the previous year by March 1 each year beginning in March 1, 2014 (17 CCR § 95388).
6. Baja-Frige owns and operates one or more stationary refrigeration systems with a full charge of greater than 200 pounds of a high GWP refrigerant.
7. ARB alleges that Baja-Frige violated the RMP Regulation by failing to:
  - Submit one or more annual reports by the submittal date in accordance with the RMP Regulation, and
  - Retain required records in accordance with the RMP Regulation.
8. Baja-Frige admits to the facts in the recitals listed above.
9. The RMP Regulation provides that each day or portion thereof that any leak inspection or leak repair is not completed after the date the leak inspection or leak repair is required to be completed, or each day or portion thereof that any registration, report, or plan required by the RMP Regulation remains unsubmitted, is submitted late, or contains incomplete or inaccurate information, shall constitute a single, separate violation (17 CCR § 95395(b)).

10. Violations of the RMP Regulation are a violation of State law. H&SC § 38580 and 42400, et seq., authorize strict liability penalties not to exceed ten thousand (\$10,000) per day, for each day that the violation occurs.
11. ARB and Baja-Frige desire to resolve these violations completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, Baja-Frige agrees to take the actions enumerated below under "TERMS AND CONDITIONS."

### **TERMS AND CONDITIONS**

12. Upon execution of this Agreement, Baja-Frige agrees to pay civil penalties in the amount of TWENTY-TWO THOUSAND FIVE HUNDRED dollars (\$22,500.00). Payment of the penalty shall be handled in accordance with the instructions in Attachment A to this Agreement.
13. Effect of Untimely Payment. If any payment is late, the entire outstanding balance becomes immediately due and payable without further notice. In addition, if the Attorney General files a civil action to enforce this settlement agreement, Baja-Frige shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
14. Baja-Frige shall not violate the RMP Regulation.
15. It is further agreed that the Effective Date of this shall be the date upon which Baja-Frige executes this Agreement.
16. It is further agreed that the penalties described in this Agreement are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Baja-Frige for alleged violations of the RMP Regulation, and these penalties are payable to a governmental unit. Therefore, it is agreed that these penalties imposed on Baja-Frige by ARB arising from the facts described in recitals 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 benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.
17. This Agreement shall apply to and be binding upon Baja-Frige, and its 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 Agreement.
18. This Agreement constitutes the entire agreement and understanding between ARB and Baja-Frige concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Baja-Frige concerning the subject matter hereof.

19. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement. This Agreement shall further serve to toll any statute of limitation until six months after all terms and conditions of this Agreement have been fulfilled.
20. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement.
21. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
22. 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.
23. **The manner in which the penalty was determined.** H&SC § 39619.7 requires ARB to explain the basis for the penalties it seeks. This information is provided throughout this Agreement and is summarized here.

Penalties must be set at levels sufficient to deter violations. The penalties in this matter were determined based on all relevant circumstances, including the unique circumstances of this case, giving consideration to the eight factors specified in H&SC § 42403. Those circumstances were considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, penalties sought in other cases, and the potential costs and risk associated with litigating these particular violations. Specifically, this penalty reflects a penalty of approximately \$115 per day for 196 days of violation. Penalties in future cases might be smaller or larger. In this matter ARB concluded there were a number of mitigating factors including: the fact this was a first time violation, the fact that a recent change in ownership may have contributed to the failure to retain and/or make records available to ARB, and that Baja-Frige fully cooperated with the investigation.

**The legal provisions under which the penalty was assessed.**

The penalty is based on H&SC § 42402 and 17 CCR § 95395, the provisions intended to govern RMP Regulation violations.

**Whether the governing provisions prohibit emissions at a specified level, and, if so, a quantification of excess emissions if it is practicable to do so.**

The RMP Regulation does not prohibit emissions of high GWP refrigerants above a specified level, but H&SC § 38580(b)(2) specifies that violations of any regulation under the Global Warming Solutions Act of 2006 shall be deemed to result in an emission for purposes of the governing penalty statutes.

24. Baja-Frige acknowledges that ARB has complied with State law in investigating, prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
25. The penalty was based on confidential settlement communications between ARB and Baja-Frige. The penalty is the product of an arm's length negotiation between ARB and Baja-Frige and reflects ARB's assessment of the relative strength of its case against Baja-Frige, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Baja-Frige may have secured from its actions.
26. Now therefore, in consideration of the payment on behalf of Baja-Frige to the California Air Resources Board, ARB hereby resolves with Baja-Frige and its principals, officers, agents, predecessors and successors any and all claims for the past violations of the RMP Regulation that ARB may have based on the circumstances described in the Recitals.
27. The undersigned represent that they have the authority to enter into this Agreement.

### SIGNATURES

**California Air Resources Board**

By: \_\_\_\_\_

Name: Dr. Todd P. Sax

Title: Enforcement Division Chief

Date: 1/13/17

**Baja-Frige**

By: \_\_\_\_\_

Name: Herlinda Tan

Title: Manager

Date: 12-23-16