

## 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, and Excell Brands, LLC (Excell Brands) with its principal place of business at 3 Independence Way, Suite 114, Princeton, NJ.

### RECITALS

1. Health and Safety Code (H&SC) section 41712 mandates the reduction of Volatile Organic Compounds (VOC) from consumer products. ARB adopted Consumer Product Regulations in phases under title 17, California Code of Regulations (CCR), section 94507, et seq., which includes the Personal Fragrance: 20% or Less Fragrance category.
2. Title 17, CCR, section 94509 (a) specifies that the Consumer Product Regulation applies to any person who sells, supplies, offers for sale, or manufactures for sale in California, any consumer product containing VOCs.
3. Title 17, CCR, section 94509 (a) sets forth in the Table of Standards the percentage by weight for Paris Man eau de toilet sold after January 1, 1999. Paris Man eau de toilet must meet the 75 percent standard.
4. Failure to comply with the Consumer Products Regulation is a violation of State Law resulting in penalties. Among other penalties, H&SC sections 42400-42403 authorize strict liability penalties up to \$10,000.00 for each day that the violation occurs.
5. ARB alleges that between July 1, 2012 and July 1, 2015, Excell Brands sold, supplied, and offered for sale in California, Paris Man eau de toilet which is subject to the VOC limit for Personal Fragrance: 20% or Less Fragrance in title 17, CCR, section 94509 (a).
6. ARB alleges that the Paris Man eau de toilet referenced in Recitals paragraph 5 contained concentrations of VOCs exceeding the 75 percent VOC limit for the Personal Fragrance: 20% or Less Fragrance category specified in title 17, CCR, section 94509 (a).
7. ARB alleges that if the allegations described in Recitals paragraphs 5 and 6 were proven, civil penalties could be imposed against Excell Brands as provided in H&SC sections 42402, et seq. for each and every unit involved in the violations.
8. Excell Brands admits the allegations described in recital paragraphs 5 and 6, but denies any liability resulting from said allegations.

9. 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 violation and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Excell Brands has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. ARB accepts this Agreement in termination and settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of ARB not filing a legal action against Excell Brands for the violations referred to above, ARB and Excell Brands agree as follows:

10. Excell Brands shall not manufacture, sell, supply, or offer for sale for use in California, any consumer products in violation of ARB consumer products regulations set forth in title 17, CCR, section 94500 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
11. Excell Brands in settlement of the above-described alleged violations of title 17, CCR, section 94509 (a) agrees to pay a penalty to ARB in the amount of twelve thousand three hundred and ninety dollars (\$12,390) payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified in the Payment Transmittal Form attached to this Agreement.
12. This Agreement shall apply to and be binding upon Excell Brands 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 settlement.
13. 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 against Excell Brands, its 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 H&SC section 42400.7(a).
14. 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.
15. This Agreement constitutes the entire agreement and understanding between ARB and Excell Brands 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 and Excell Brands concerning these claims.

16. The effective date of this Agreement shall be the date upon which it is fully executed.
17. This Agreement is deemed to have been drafted equally by ARB and Excell Brands; it will not be interpreted for or against either Party on the ground that said Party drafted it.
18. 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.
19. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
20. **Senate Bill 1402 (SB 1402) Statement.** H&SC section 39619.7 (SB 1402 - Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks with respect to the alleged violations. This Agreement includes this information, which is also 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 H&SC section 42402, et seq. because Excell Brands sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California, in violation of the Consumer Products Regulations (title 17, CCR, section 94507, et seq.). The penalty provisions of H&SC section 42402, et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of H&SC section 41712 which is in Part 4 of Division 26.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

H&SC section 42402, et seq. provides strict liability penalties of \$1,000.00 per day for violations of the Consumer Product Regulations with each day being a separate violation. In cases like this, involving unintentional violations of the Consumer Products Regulations where the violator cooperates with the investigation, ARB has obtained penalties based on the excess emissions of VOCs. Administrative penalties are also obtained in some cases.

In this case the total penalty is \$12,390 and there were 0.826 tons of excess VOC emissions attributable to the violation. The penalty in this case was reduced

because this was a strict liability first time violation and Excell Brands made diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be higher or lower on a per ton or per day basis.

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

The Consumer Product Regulations do not prohibit emissions above a specified level, but they do limit the concentration of VOCs in regulated products. In this case a quantification of the excess emissions attributable to the violations was practicable because Excell Brands made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which the Excell Brands has designated as confidential), the violations were calculated to have 0.826 tons of excess VOC emissions emitted in California.

Final penalties were 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 cost and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in quantifiable harm to the environment considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per ton basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Excell Brands 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 Excell Brands that ARB does not retain in the ordinary course of business. The penalty also reflects ARB's assessment of the relative strength of its case against Excell Brands, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Excell Brands may have secured from its actions.

21. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
22. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

By: Leather Brown FOR  
Name: Dr. Todd P. Sax  
Title: Chief  
Date: 1/6/2017

**Excell Brands, LLC**

By: Wayne Hamerling  
Name: Mr. Wayne Hamerling  
Title: President  
Date: 12-21-16