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 Spirit Halloween Superstores LLC (Spirit) with its principal place of business at 6826 Black Horse Pike Egg Harbor Township, New Jersey.

RECITALS

1. ARB alleges that between January 2011 and January 2012, Spirit sold, supplied, and offered for sale in California **"Color Effects Temporary Hair Color"** subject to the volatile organic compound (VOC) limit for Temporary Hair Color: aerosol category in Title 17, California Code of Regulations (CCR), section 94509(a).

2. ARB alleges that the **"Color Effects Temporary Hair Color"** referenced in recital paragraph 1 contained concentration of VOCs exceeding the 55 percent VOC limit for Temporary Hair Color: aerosol specified in Title 17, CCR, section 94509(a).

3. ARB alleges the temporary hair color product referenced in recital paragraph 1 did not display on each consumer product container or package, the day, month, and year on which the product was manufactured, nor a code indicating such a date as specified in title 17, CCR, section 94512(b).

4. ARB alleges that if the allegations described in recital paragraphs 1, 2 and 3 were proven, civil penalties could be imposed against Spirit as provided in Health and Safety Code (HSC) sections 42402 et seq. for each and every unit involved in the violations.

5. Spirit admits the allegations described in recital paragraphs 1, 2 and 3, but denies any liability resulting from said allegations.

6. 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. Spirit shall not 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.; however, the terms and conditions set forth in this agreement will remain valid and enforceable notwithstanding any future violations that may occur.

2. Spirit in settlement of the above-described violations of Title17, CCR, section 94509(a) agrees to pay a penalty to ARB in the amount of $15,500, payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement.

3. This settlement shall apply to, and be binding upon, Spirit 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.

4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against Spirit, 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 HSC 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 and Spirit 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 Spirit 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**. California 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 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 is this case is HSC section 42402, et seq. because Spirit 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 HSC section 42402, et seq. apply to violations of the Consumer Products Regulations because these regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the HSC.

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 the penalty in this case, including the eight factors specified in HSC section 42403.

Under HSC section 42402, et seq. 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 one involving unintentional first time violations of the Consumer Products Regulations where the violator cooperates with the investigation, ARB has sought and obtained penalties of approximately $17,000 per ton of excess emissions of VOCs attributable to the violation. This represents an average cost to retire a ton of VOC emission credits and reformulate a product to comply with the Consumer Product Regulations. In addition, the ARB has in other similar cases sought and obtained further penalties for procedural violations and for investigative costs. In this case the total penalty is $15,500.00 and there were 0.9 tons of excess VOC emissions attributable to the violation. The final penalty amounted to $12,750 per ton of excess emissions plus additional penalties for the product dating procedural violations and investigation costs. The penalty was reduced because Spirit cooperated fully with the investigation, voluntarily disposed of the non-complying product and had complied with the state standard by the effective date. Penalties in future cases might be smaller or larger on a per ton 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 Spirit made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which the Spirit has designated as confidential), the violations were calculated to have caused 0.9 tons of excess emissions of volatile organic chemicals to be emitted to the atmosphere in California.

10. Spirit acknowledges that ARB has complied with SB1402 in investigating, prosecuting and settling this case. Specifically, ARB has considered all

relevant facts, including those listed at HSC sections 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 while this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level, it is practicable for ARB to quantify the excess emissions from the alleged violations, has done so and has included this information in this Settlement Agreement.

11. 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 costs 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. The penalty was discounted in this matter based on the fact that this was a first time violation and the violator made unusually diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per ton or per unit basis.

12. The final penalty in this case was based in part on confidential financial information or confidential business information provided by Spirit 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 Spirit Nature 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 Spirit, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Spirit may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 6/12/13

By: _____
Ellen M. Peter
Chief Counsel

SPIRIT HALLOWEEN SUPERSTORES LLC

Dated: 6/6/13

By: _____
Kevin Mahoney
Vice President