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 Wal-Mart Stores, Inc. (Wal-Mart) with its principal place of business at: 702 SW 8th Street, Bentonville, Arkansas.

RECITALS

1. ARB alleges that from November 2013 to October 2014, Wal-Mart sold and offered for sale in California Rain·X All Season 2-in-1 Windshield Washer Fluid -20 °F in 1 gallon size that was subject to the volatile organic compound (VOC) limit for "Automotive Windshield Washer Fluid" category in Title 17, California Code of Regulations (CCR), section 94509(a).

2. ARB alleges that the Rain·X All Season 2-in-1 Windshield Washer Fluid -20 °F product referenced in recital paragraph 1, contained concentrations of VOCs exceeding the 1 percent State standard for "Automotive Windshield Washer Fluid" category in the Pre-Mixed non-type "A" Areas as well as the 25 percent State standard for "Automotive Windshield Washer Fluid" category in the Pre-Mixed type "A" areas specified in Title17, CCR, section 94509(a).

3. ARB alleges that the Rain·X All Season 2-in-1 Windshield Washer Fluid -20 °F product referenced in recital paragraph 1 was manufactured by South Win, Ltd. and South Win had area restrictions on the product label, "Not for sale...including...all of California". The product label as well as the SDS of the product further indicated that the product's VOC content was 32 percent by weight.

4. Wal-Mart represented that "omit traits" had been applied for this product to prevent the product from being shipped to its retail stores in California. Wal-Mart further represented that a register block sales restriction was in place for this product to all but 9 California Wal-Mart stores.

5. ARB alleges that if the allegations described in recital paragraphs 1, 2, and 3 were proven, civil penalties could be imposed against Wal-Mart as provided in Health and Safety Code Sections 42402(a) for the alleged non-compliant units.

6. Wal-Mart admits the allegations described in recital paragraphs 1, 2 and 3, but denies any liabilities resulting from said allegations.

7. 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. Wal-Mart shall not sell or offer for sale 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. Wal-Mart, in settlement of the above-described violations of Title17, CCR, section 94509(a), agrees to pay a penalty in the amount of $50,000.00 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 Wal-Mart 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 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 Wal-Mart, 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 Health and Safety Code 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 Wal-Mart 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 Wal-Mart 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 Health and Safety Code (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 Wal-Mart sold or offered for sale consumer products in California alleged to be in violation of the Consumer Products Regulations (Title 17 California Code of Regulations (CCR) section 94507, et seq.). The penalty provisions of HSC section 42402, et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of HSC section 41712 which is in Part 4 of Division 26 of the Health and Safety Code. The penalty provisions of HSC section 42402, et seq. apply to requirements adopted pursuant to Part 4.

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 penalties, including the eight factors specified in HSC section 42403. HSC section 42402, et seq. provides for strict liability penalties of $1,000 per day of violation for violations of the Consumer Product Regulations. In this case the total penalty of $50,000 reflects a penalty of approximately $660 per day for 73 days the alleged noncompliant products were reportedly sold.

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

The Consumer Product Regulations do not prohibit emissions above a specific level, but they do limit the concentration of VOCs in regulated products. In this case a quantification of the alleged excess emissions attributable to the alleged violations was practicable because Wal-Mart provided sales data (which was designated as confidential) and product formulation data was obtained from the website of the manufacturer, South Win, Ltd. Based upon this information, the alleged violations were calculated to have caused 0.10 tons of alleged excess emissions of volatile organic compounds to be emitted to the atmosphere in California.

10. Wal-Mart acknowledges that ARB has complied with SB1402 in investigating and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC section 42403, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty amount is being assessed and had 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 alleged violations. The penalty reflects alleged violations extending over a number of days resulting in alleged quantifiable harm to the environment considered together with the complete circumstances of this case listed above. The penalty was discounted in this matter based on the factors described. Penalties in future cases might be smaller or larger.

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

CALIFORNIA AIR RESOURCES BOARD

Dated: 4/15/2016

By: _____
Ellen M. Peter
Chief Counsel

WAL-MART STORES, INC.

Dated: 3/14/16

By: _____
Ryan Peterson
Vice-President, Automotive