SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and Walmart Incorporated (Walmart) with its principal place of business at 508 South West 8th Street, Bentonville, Arkansas.

RECITALS

1. The Consumer Products Regulation, title 17, California Code of Regulations, section 94507 et seq. (17 CCR section 94507 et seq.) applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in California.

2. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed volatile organic compounds (VOC) for the General Purpose Cleaner category manufactured after December 31, 2012. General Purpose Cleaner category must meet the 0.5 percent standard for VOC.

3. A manufacturer of a consumer product subject to 17 CCR section 94509 is required to display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date as set forth in 17 CCR section 94512(b).

4. Failure to comply with the Consumer Products Regulation is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400-42403 authorize strict liability penalties up to $10,000 for each day that the violation occurs.

5. CARB alleges that Walmart sold, supplied, and offered for sale in California, Auto Drive Auto Glass Cleaner that is subject to a VOC limit for the General Purpose Cleaner category specified in 17 CCR section 94509(a).

6. CARB alleges that the Auto Drive Auto Glass Cleaner product referenced in Recital paragraph 5 contained concentrations of VOCs exceeding the .05 percent VOC limit for the General Purpose Cleaner category specified in 17 CCR section 94509(a).

7. CARB alleges that the Auto Drive Auto Glass Cleaner product referenced in Recital paragraph 5 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 17 CCR section 94512(b).
shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).

15. 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.

16. This Agreement constitutes the entire agreement and understanding between CARB and Walmart concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Walmart concerning these claims.

17. The Effective Date of this Agreement shall be the date upon which it is fully executed.

18. This Agreement is deemed to have been drafted equally by CARB and Walmart; it will not be interpreted for or against either Party on the ground that said Party drafted it.

19. 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.

20. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.

21. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).

22. **Penalty Determination**

H&SC section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. 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 Walmart sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (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 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 Walmart made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which Walmart has designated as confidential), the violations were calculated to have 0.44 tons of excess VOC emissions emitted in California.

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.

23. The parties shall exchange signed copies of this Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement.

24. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board
By: 
Name: Dr. Todd P Sax
Title: Chief, Enforcement Division
Date: 3/12/19

Walmart Incorporated
By: Beth Schommer
Name: Beth Schommer
Title: VP, Regulatory Compliance
Date: 2/8/19