

## 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 PJH Brands with its principal place of business at 8747 East Via De Commercio, Scottsdale, Arizona.

### RECITALS

1. ARB alleges that between January 1, 2014, and December 2014, PJH Brands, supplied and offered for sale in California, PJ1 Black Label Chain Lube and PJ1 Blue Label Chain Lube subject to the volatile organic compound (VOC) limits in, California Code of Regulations (CCR), title 17, section 94509 (17 CCR § 94509) (a) for aerosol gear, chain, or wire lubricant.
2. ARB alleges that the products referenced in Recital 1 contained concentrations of VOCs exceeding the 25 percent VOC limit for aerosol gear, chain, or wire lubricant specified in 17 CCR § 94509 (a).
3. ARB alleges that if the allegations described in Recitals 1 and 2 were proven, civil penalties could be imposed against PJH Brands as provided in Health and Safety Code (H&SC) sections 42402 (H&SC § 42402) et seq. for each and every unit involved in the violations.
4. PJH Brands admits the allegations described in Recitals 1 and 2, but denies any liability resulting from said allegations.
5. 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. PJH Brands 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 CCR, title 17, 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. PJH Brands in settlement of the above-described violation of 17 CCR § 94509 (a) agrees to pay a penalty to ARB in the amount of twenty- four thousand dollars (\$24,000.00) paid in four payments to the California Air Pollution Control Fund. The first payment of \$6,000.00 will be concurrent with the execution of this Agreement. Three additional payments of \$6,000.00 each shall be made on November 2, 2015,

February 1, 2016, and May 2, 2016. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable.

3. This settlement shall apply to and be binding upon PJH 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.
4. The parties stipulate that this Agreement shall be the final resolution of ARB claims regarding the above-described violation and shall have the same res judicata effect as a judgment in terms of acting as bar to any civil action by ARB against PJH 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).
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 PJH 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 PJH Brands 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 H&SC 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 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 § 42402, et seq. because PJH Brands sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations, 17 CCR § 94507 et seq. The penalty provisions of H&SC § 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 of the H&SC. The penalty provisions of H&SC § 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 H&SC section 42403 (H&SC § 42403).

Under H&SC § 42402, et seq. the penalties for strict liability violations of the Consumer Product Regulations are a maximum of \$1,000.00 per day of violation, with each day being a separate violation. In cases like this involving an unintentional violation of the Consumer Products Regulations where the violator cooperates with the investigation, ARB has sought and obtained penalties of approximately \$20,000.00 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 this case the total penalty is \$24,000.00 for the 1.60 tons of excess VOC attributable to the violation. This represents a penalty of approximately \$15,000.00 per ton of excess emissions.

**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 excess emissions attributable to the violations was practicable because PJH Brands provided the necessary sales data to make this quantification available to ARB. Based upon this information, which PJH Brands has designated as confidential, the violations were calculated to have caused the 1.60 tons of excess emissions of VOCs to be emitted to the atmosphere in California.

10. PJH Brands acknowledges that ARB has complied with SB1402 in investigating 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 amount is being assessed, and had considered and determined that while this penalty is not being assessed 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 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 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 listed above. The penalty was discounted in this matter based on the fact that this was an unintentional violation and PJH Brands made diligent efforts to comply and to cooperate with the investigation. Penalties in future cases might be smaller or larger on a per ton basis.

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

**California Air Resources Board**

By: Ellen M. Peter

Name: Ellen M. Peter

Title: Chief Counsel

Date: 9/30/2015

**PJH Brands**

By: PJ HROWE

Name: PJ HROWE

Title: CHAIRMAN

Date: SEP 9, 2015