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 Delta Brands, Inc. with its principal place of business at 1890 Palmer Avenue, Larchmont, New York 10538.

RECITALS

1. ARB alleges that between January 2009 and September 2012, Delta Brands sold, supplied, and offered for sale in California "Lucky For Men Deodorant Body Spray" subject to the high volatility organic compound (HVOC) limit for the aerosol deodorant category in title 17, California Code of Regulations (CCR), Section 94501 of the Antiperspirants and Deodorants Regulation.

2. ARB alleges that the "Lucky For Men Deodorant Body Spray" referenced in recital paragraph 1 contained concentrations of HVOC exceeding the zero percent HVOC limit for the aerosol deodorant category specified in title 17, CCR, Section 94502(a)(2).

3. ARB alleges that Delta Brands failed to report an explanation of their date code in advance of the code's use by the manufacturer, as specified in title 17 CCR, Section 94504(a)(1).

4. ARB alleges that between January 2009 and January 2012, Delta Brands sold, supplied, and offered for sale in California "Home Select Fresh Home Fragrance Sprays" subject to the volatile organic compound (VOC) limit for the aerosol double phase air freshener category in title 17, CCR, Section 94509(a) of the California Consumer Products Regulation.

5. ARB alleges that initial testing of the "Home Select Fresh Home Fragrance Spray" referenced in recital paragraph 3 showed the concentrations of VOC exceeding the 25 percent VOC limit for the aerosol double phase air freshener category specified in title 17, CCR, Section 94509(a) and Delta Brands did not provide formulation. Therefore the initial test results were used to establish an alleged violation. After the issuance of a Notice of Violation, Delta Brands provided formulation information that showed that the "Home Select Fresh Home Fragrance Spray" was within the method tolerance of the VOC limit for double phase air fresheners.

6. ARB alleges that Delta Brands failed to report sales information within 90 days concerning the products listed in recital paragraph 3 after written request from the Executive Officer at ARB as specified in Title 17 CCR, Section 94513(a).

7. ARB alleges that if the allegations described in recital paragraphs 1, 2, 3, and 6 were proven, civil penalties could be imposed against Delta Brands as

provided in Health and Safety Code Sections 42402 et seq. for each and every unit involved in the violations.

8. Delta Brands admits the allegations described in recital paragraphs 1, 2, 3 and 6, but denies any liability resulting from said allegations.

9. 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. Delta 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 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. Delta Brands in settlement of the above-described violations of title17, CCR, Section 94509(a) agrees to pay a penalty to ARB in the amount of $77,000.00 payable to the California Air Pollution Control Fund, in accordance with the following payment plan:
    a. $19,800 upon your execution of this Agreement;
    b. $5,200 by December 15, 2012;
    c. $5,200 by January 15, 2013;
    d. $5,200 by February 15, 2013;
    e. $5,200 by March 15, 2013;
    f. $5,200 by April 15, 2013;
    g. $5,200 by May 15, 2013;
    h. $5,200 by June 15, 2013
    i. $5,200 by July 15, 2013;
    j. $5,200 by August 15, 2013;
    k. $5,200 by September 15, 2013;
    l. $5,200 by October 15, 2013.
    m. If any payment is more than 15 days date, the entire balance becomes due and payable.

3. This settlement shall apply to and be binding upon Delta 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 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 Delta 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 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 Delta 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 the ARB and Delta 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 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 Delta 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 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 these regulations were adopted under authority of HSC Section 41712 which is in Part 4 of Division 26 of the Health and Safety Code.

   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 Antiperspirant and Deodorant Regulation and 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, involving unintentional first time violations of the Antiperspirant and Deodorant Regulation and the Consumer Products Regulations, the ARB has sought and obtained penalties of approximately $17,000 per ton of excess emissions of VOC attributable to the violation. This represents an average cost to retire a ton of volatile organic compound emission credits and reformulate a product to comply with the Consumer Product Regulations. However, in similar Antiperspirant and Deodorant Regulation settlements, penalties have been obtained based upon one third of the retail value of the product and have resulted in penalties of approximately $12,000 per ton of HVOC. In this case the penalty for this portion of the settlement was $72,000 for the 7.57 tons of excess high volatility organic compound (HVOC) emissions attributable to the violation which represents approximately $9,500 per ton of excess emissions after a reduction due to the demonstrated financial burden to the company.

In addition, ARB has sought and obtained penalties of $10,000 per violation for the failure to provide records. In this case, an additional penalty of $5,000 was attributable to the procedural violation for failing to provide records. This portion of the penalty was reduced due to the determination that the product was within method tolerance of the VOC limit after records were finally produced. 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 Delta Brands made the product formulation and sales data necessary to make this quantification available to ARB. Based upon this information (which Delta Brands has designated as confidential), the violations were calculated to have caused 7.57 tons of excess HVOC to be emitted to the atmosphere in California.

10. Delta Brands 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. Penalties in future cases might be smaller or larger on a per ton basis.

12. The penalty in this case was based on confidential settlement communications between ARB and Delta 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 Delta Brands, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Delta Brands may have secured from its actions.

CALIFORNIA AIR RESOURCES BOARD

Dated: 11/26/2012

By: _____
Ellen M. Peter
Chief Counsel

DELTA BRANDS, INC.

Dated: 11/19/2012

By: _____

Name: EROL BENJENK
Title: EXECUTIVE V.P.