

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD ("CARB") 1001 I Street, Sacramento, California 95814, and The Complete Logistics Company, LLC ("CLC"), 13831 Slover Avenue, Fontana, California 92337.

I. RECITALS

- (1) The Health and Safety Code (HSC) sections 39650 through 39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, CARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM. Emissions of PM from in-use on-road diesel vehicles are subject to the requirements at California Code of Regulations (CCR), title 13, section 2025 (13 CCR § 2025), commonly referred to as the Truck and Bus Regulation.
- (2) 13 CCR § 2025 (e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 pounds, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (3) 13 CCR § 2025 (g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) meet PM Best Available Control Technology (BACT) requirements for all 1996 through 1999 model year engines by January 1, 2012, all 2000 through 2004 model year engines by January 1, 2013, and all 2005 and 2006 model year engines by January 1, 2014, and 2007 or newer, if not OEM equipped by January 1, 2014. It also requires upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, all 1994 and 1995 model year engines by January 1, 2016, all 1996 through 1999 model year engines by January 1, 2020, all 2000 through 2004 model year engines by January 1, 2021, all 2005 through 2006 model year engines by January 1, 2022, and 2007 or newer by January 1, 2023.
- (4) 13 CCR § 2025(i) specifies a phase-in option for fleets, with credit options for heavier vehicles in the fleet, from January 1, 2012 to January 1, 2020. To become eligible, and remain eligible for this options, fleet owners must comply with the reporting and record keeping requirements of 13 CCR § 2025(r) and (s).
- (5) 13 CCR § 2025(j)(1) states that until January 1, 2018, a fleet that has fewer heavier vehicles in operation in a compliance year than the 2006 baseline fleet, may claim a credit towards compliance with the phase-in option of 13 CCR § 2025(i). The percent requirement in Table 3 of 13 CCR § 2025(i) can be reduced by the same percentage that the fleet was downsized.

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- (6) 13 CCR § 2025(j)(1) specifies a vehicle may be used for the downsizing credit only if the vehicle is not driven for the entire compliance year and (a) either a certificate of non-operation has been issued by the DMV or a request for non-operation certificate has been filed with DMV prior the beginning of the compliance year; or (b) an equivalent certificate has been issued by another state or a request for such a certificate has been filed with another state prior to the beginning of the compliance year; or (c) the vehicle is not operated for any purpose during the compliance year except to demonstrate functionality of the vehicle to potential buyers, to move the vehicle short distances for maintenance, or to a storage facility while awaiting sale. The fleet utilizing this provision must meet all reporting requirements of 13 CCR § 2025(r).
- (7) 13 CCR § 2025(j)(2)(C) specifies the same owner, excess PM VDECS credits granted in the off-road regulation (13 CCR § 2449) may be used in the Truck and Bus regulation and excess PM VDECS credits granted in the Truck and Bus regulation may be used in the Off-road regulation until January 1, 2017.
- (8) 13 CCR § 2025(w), Disclosure of Regulation Applicability, requires that any person residing in California selling a vehicle with an engine subject to this regulation provide the specified disclosure in writing to the buyer on the bill of sale, sales contract addendum, or invoice.
- (9) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 39674(a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.
- (10) 13 CCR § 2025(e) specifies that where public funds contributed to the purchase of a vehicle, repower of the engine, or retrofit of the engine, the vehicle cannot be counted when determining compliance with the PM requirement, unless allowed by the funding program guidelines.
- (11) CLC elected to utilize the phase-in option at 13 CCR § 2025(i) through setting up an account for reporting all vehicles in the Truck Regulation Upload, Compliance, and Reporting System (TRUCRS) in 2012.
- (12) Between 2012 and 2014, CLC reported, into TRUCRS, vehicles as retired to claim downsizing credits to report the fleet as meeting the phase-in requirements for each of those years.
- (13) In 2014, CARB contends CLC also reported into TRUCRS a credit of 56.10% for excess PM VDECS granted ("Off-Road Credit") in the In-Use Off-Road Diesel-

Fueled Fleets Regulation at 13 CCR § 2449 to report the fleet as meeting the phase-in requirement for 2014.

- (14) CARB contends that some of CLC's vehicles reported as retired in 2012-2014, and reported to claim downsizing credits and meet the phase-in option, held current DMV registrations.
- (15) CARB contends 10 trucks reported as retired for the downsizing credit were listed in the US Department of Transportation Federal Motor Carrier Safety Administration, Safety and Fitness Electronic Records (SAFER) System roadside inspection reports.
- (16) CARB sent audit letters to CLC on June 18, 2014, and again on August 28, 2014 requesting records specified at 13 CCR § 2025(s)(7) to support the reporting of retired trucks and claim of the downsizing credits at 13 CCR § 2025(j)(1) to meet the phase-in option.
- (17) CARB contends it did not receive the requested records within the five days as required by 13 CCR § 2025(s)(1) and continued to contact CLC several times in 2015 and again in 2016, and still did not receive any records to support CLC's claim that up to 21 vehicles reported in TRUCRS were actually retired and not operated in California from 2012-2014 as required to claim a downsizing credit under 13 CCR § 2025(j)(1) to meet the phase-option. Without these records demonstrating the vehicles reported were not in operation in the years reported, CARB contends CLC does not meet the requirements for the downsizing credits and the phase-in option.
- (18) In December 2015, CARB withdrew the 56.10% Off-Road credit reported in TRUCRS by CLC in 2014 when CARB discovered that CLC did not have an account in the reporting tool (DOORS) developed for the Off-Road Regulation, and therefore, could not have generated a credit for excess PM VDECS.
- (19) CARB contends that it did not receive records supporting the downsizing credits and Off-Road credit, and that CLC did not qualify for the phase-in option for 2012-2015 and is subject to the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (20) Based on the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g), CARB contends CLC failed to meet PM BACT requirements.
- (21) CARB contends that CLC failed to include the Disclosure of Regulation Applicability on the bill of sales, contract addendums, or invoices, in violation of 13 CCR § 2025(w).

- (22) California Health and Safety Code section 44011.6 (HSC § 44011.6) established the Heavy-Duty Vehicle Inspection Program (HDVIP). It authorizes CARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed CARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the regulations of the HDVIP, chapter 3.5, California Code of Regulations, title 13, sections 2180-2188 (13 CCR §§ 2180-2188).
- (23) HSC § 43701 provides that CARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive smoke emissions.
- (24) 13 CCR § 2190 *et seq.* were adopted under the authority of HSC § 43701 and, with limited exceptions, which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California.
- (25) 13 CCR § 2190 *et seq.* authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy-duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles equipped with engines that are four years old or older.
- (26) 13 CCR § 2192(a) requires inter alia that the owner of the vehicle “[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193(a), (b), and (c)”, “[m]easure the smoke emissions for each test...”, “[r]ecord the smoke test opacity levels and other required test information as specified in section 2194...” and “[k]eep the records specified in section 2194 for two years after the date of inspection.”
- (27) HSC § 43016 states, “Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500.00) per vehicle.”
- (28) CARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.

- (29) CARB contends CLC failed to test, measure, record, and maintain records of smoke emissions for its fleet of heavy-duty diesel vehicles for years 2015 and 2016 in violation of 13 CCR § 2190 *et seq.*
- (30) Proposition 1B authorized the Legislature to appropriate \$1 billion in bond funding to CARB to reduce air pollution emissions and health risks from freight movement along California's priority trade corridors. The State Fiscal Year (FY) 2007-08 budget included implementing legislation, via Senate Bill 88 (SB 88) (Chapter 181, Statutes of 2007), that created the Goods Movement Emission Reduction Program. Assembly Bill 201 (AB 201) (Chapter 187, Statutes of 2007) included a minor clarification. These bills are codified in the Health and Safety Code, section 39625 *et seq.* SB 88 required CARB to adopt Guidelines to ensure the Program achieves the statutory objectives.
- (31) Proposition 1B requires CARB establish grant criteria and guidelines for the Goods Movement Emission Reduction Program.
- (32) CLC signed four Proposition 1B applications.
- (33) Based on those applications, CLC entered into four agreements to receive California Proposition 1B grants for a total of 57 trucks between 2010 and 2015 totaling \$2,850,000.
- (34) CARB contends CLC violated the terms of the Proposition 1B Agreement and the guidelines for the program by failing to be in compliance with the Truck and Bus and PSIP regulations when grants were applied for in 2013, and when funding for two million two hundred thousand (\$2,200,000) was received in 2014 and 2015.
- (35) In order to resolve the alleged violations in recitals (1) through (29), CLC has taken, or agreed to take, the actions enumerated below under "TERMS AND RELEASE."
- (36) Further, CARB accepts this Agreement in termination and settlement of the violations of 13 CCR § 2025 and 13 CCR § 2192 described above in recitals (1) through (29).
- (37) This Agreement does not limit any remedy available to CARB to enforce the terms of the four Proposition 1B Agreements entered into by CLC.
- (38) In consideration of the foregoing, and of the promises and facts set forth, CARB and CLC desire to settle and resolve the above-listed Health and Safety Code violations in recitals (1) through (29), and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and CLC agree as follows:

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against CLC for the alleged violations referred to above in recitals (1) through (29), and CLC's payment of the penalties set forth in Section 1 below, CARB and CLC agree as follows:

- (1) Upon execution of this Agreement, the sum of six hundred thousand three hundred seventy-five dollars (\$600,375.00) shall be paid on behalf of CLC for civil penalties. Payments of the civil penalties shall be made in check form as described below.
- (2) Upon execution of this Agreement, CLC shall make a payment in check form as described below, by **January 26, 2018**.

The civil penalties shall be paid as follows:

- **\$600,375.00** payable to the **Air Pollution Control Fund**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Ann M. Stacy
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812**

Please send the payment along with the attached "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436**

- (3) Upon execution of this agreement and CARB's receipt of the payment described in the terms and release paragraph 1, CARB shall immediately release all vehicle registration holds with the California Department of Motor Vehicles for CLC's vehicles currently subject to such holds.
- (4) It is further agreed that the penalties described in "Terms and Release" paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish CLC for alleged violations of state

environmental statutes, and these penalties are payable to and for the benefit of CARB, a governmental unit. Therefore, it is agreed that these penalties imposed on CLC by CARB arising from the facts described in recital paragraphs (1) through (29) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

- (5) CLC shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) CLC shall submit copies of all PSIP compliance records for the years 2018 and 2019 to CARB by January 31 of the following year. CLC shall submit the compliance records to **Ann M. Stacy, Air Pollution Specialist, CARB Enforcement Division, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**

CARB reserves the right to visit any CLC fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable CARB program.

- (7) CLC shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to CARB within 45 days of this agreement.
- (8) CLC shall comply with the Truck and Bus regulation as codified in 13 CCR § 2025. Within 45 days of the execution of this Agreement, CLC shall submit the proof of compliance to **Ann M. Stacy, Air Pollution Specialist, CARB Enforcement Division, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (9) This Agreement shall apply to and be binding upon CLC, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (10) This Agreement constitutes the entire agreement and understanding between CARB and CLC concerning the subject matter hereof for the recital paragraphs (1) through (29), and supersedes and replaces all prior negotiations and agreements between CARB and CLC concerning the subject matter hereof.

- (11) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (12) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (13) 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.
- (14) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (15) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires CARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC §§ 42403 and 43024.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500.00 per vehicle per violation per year. The penalty obtained for the PSIP violations involved in this case is \$45,375.00 for 121 alleged violations involving 65 vehicles, or \$375.00 per vehicle per violation. The penalty was determined by CARB's review of the specific facts of this case including the number of violations and the period of time that CARB contends CLC was not cooperative during the course of the investigation.

Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations.

The penalty obtained for the Truck and Bus violations involved in this case for CLC's alleged failure to meet the requirements of the Engine Model Year

Compliance Schedule and for its alleged failure to report all required information for heavier vehicles is \$555,000.00 or approximately \$6,852.00 per truck for 81 vehicles in violation with the Engine Model Year Compliance Schedule. The penalty was determined by CARB's review of the specific facts of this case including CARB's contentions concerning the number of violations; the scope of misreporting; the extent of harm to the public health, safety, and welfare caused by CLC's non-compliance with the Engine Model Year Compliance Schedule; and the period of time that CLC was not cooperative during the course of the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

PSIP Violations

The penalty provision being applied to the PSIP violations is HSC § 43016 because CARB contends CLC failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy-duty diesel vehicles for the years 2015 and 2016 in violation of the PSIP regulation in 13 CCR § 2190 *et seq.*, for 65 vehicles. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the HSC and since there is no specific penalty or fine provided for PSIP violations in Part 5, HSC § 43016 is the applicable penalty provision.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 *et seq.*, 39650-39675, because CARB contends (i) CLC failed to bring its diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g), and (ii) CLC failed to report all required information for all vehicles in the fleet for which it elected to utilize compliance options/credits/provisions as required in 13 CCR § 2025(r).

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.

PSIP Violations

The PSIP provisions cited above do prohibit emissions above a specified opacity or level of g/hp-hr. However, since the hours of operation of the allegedly

noncompliant units involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

Truck and Bus Violations

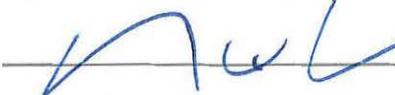
The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (16) CLC acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, while CLC disagrees with CARB's contentions, CLC acknowledges that CARB has considered all relevant facts, including those listed at HSC § 43024, 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 this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (17) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from the alleged noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
- (18) The penalty was based on confidential settlement communications between CARB and CLC that CARB does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between CARB and CLC and reflects CARB's assessment of the relative strength of its case against CLC, CLC's denial of CARB's contentions, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any alleged unfair advantage that CLC may have secured from its actions.
- (19) Execution of this Agreement does not constitute evidence of, and shall not be construed to be an admission of, liability and/or wrongdoing by CLC. Rather, this Agreement is a settlement of disputed claims, and CLC expressly denies any liability to any person. CARB and CLC acknowledge and agree that this Agreement is entered into in good faith and has no purpose other than to compromise, settle, and extinguish claims based on the circumstances described in paragraphs (1) through (29) of the Recitals.

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(20) Now therefore, in consideration of the payment on behalf of CLC to the Air Pollution Control Fund, CARB hereby releases CLC and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the Health and Safety Code violations described in recitals (1) through (29), except as provided in paragraph (37). The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: 

Print Name: Richard W. Corey

Title: Executive Officer

Date: 2/7/2018

Complete Logistics Company

Signature: 

Print Name: Bob Raines *RICHARD WHEELER*

Title: Owner *President*

Date: 1-22-18