

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Western Express Transporters, Inc., and Western Express, Inc., with their principal locations at 4324 E. Ashlan Ave. Fresno, California, 93726, (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39002, et seq., 39650-39675.) In-use on-road diesel vehicles are powered by diesel fueled engines that emit toxic PM.
- (2) Regulation. CARB adopted the *Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles* (Truck and Bus Regulation) to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2025.)
- (3) Regulatory Provisions. Any person, business, federal government agency, school district or school transportation provider, or broker, that owns, operates, leases, rents or sells vehicles in California that operate on diesel fuel, dual-fuel, or alternative diesel fuel, that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road engines or yard trucks with off-road engines used for agricultural operations, both engines of two-engine sweepers, school buses, and have a manufacturer's gross vehicle weight rating (GVWR) of 14,000 pounds or greater with 1996-1999, 2000-2004, 2005-2006 model year engines must comply with the PM Best Alternative Control Technology (BACT) requirements by January 1, 2012. (Cal. Code Regs., tit. 13, § 2025.)
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties of up to ten thousand dollars (\$10,000) for strict liability violations for each day in which the violation occurs. (Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410; Cal. Code Regs., tit.13, § 2025.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, Western Express Transporters, Inc. and Western Express, Inc. were organized under the laws of California as corporations and conducted business in the State of California.

- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) NV-129963, which was issued on July 26, 2019. CARB alleges Western Express Transporters, Inc. and Western Express, Inc. violated the Truck and Bus Regulation by failing to comply with the compliance schedule (Cal. Code Regs., tit. 13, § 2025(e), (f), (g), (h), (k), (l), (m), (n), (o)), as outlined in Notice of Violation NV-129963. CARB alleges that if the allegations described in paragraphs 1 through 7 were proven, civil penalties could be imposed against Western Express Transporters, Inc. and Western Express, Inc. for each and every vehicle involved in the violations.
- (7) Acknowledgment. Western Express Transporters, Inc. and Western Express, Inc. admit to the facts in paragraphs 1 through 6, but denies any liability resulting from said allegations.
- (8) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Western Express Transporters, Inc. and Western Express, Inc. has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

## TERMS AND CONDITIONS

In consideration of CARB dismissing without prejudice its legal action against Western Express Transporters, Inc. and Western Express, Inc. for the alleged violations referred to above in the Legal Background and Case Background, and Western Express Transporters, Inc. and Western Express, Inc.'s agreement to complete all terms and conditions set forth below, CARB, Western Express Transporters, Inc., and Western Express, Inc. agree as follows:

- (9) Settlement Amount. Western Express Transporters, Inc. and Western Express, Inc. shall pay a civil penalty and discovery sanctions, as ordered by the Office of Administrative Hearings (OAH), of thirty five thousand dollars (\$35,000.00 USD) to CARB pursuant to this Settlement Agreement by November 10, 2020.
- (10) Injunctive Relief. Western Express Transporters, Inc. and Western Express, Inc. also agree as part of this Settlement Agreement to only bring vehicles compliant with the Truck and Bus Regulation into the State in the future until the Truck and Bus Regulation is no longer in effect.
- (11) Civil Penalty Payment Method. Western Express Transporters, Inc. and Western

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Express, Inc. shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Western Express Transporters, Inc. is responsible for all payment processing fees. The Payment Transmittal Form shall be sent at the same time payments are made to ensure proper application. CARB shall deposit the civil penalty amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to Western Express Transporters, Inc. and/or Western Express, Inc. in accordance with Paragraph 13 (Notices).

- (12) Documents. Western Express Transporters, Inc. and Western Express, Inc. shall promptly email the signed and dated Settlement Agreement to Alexandra Kamel, CARB's attorney for this matter, at [Alexandra.Kamel@arb.ca.gov](mailto:Alexandra.Kamel@arb.ca.gov). No later than November 10, 2020, Western Express Transporters, Inc. and Western Express, Inc. shall mail and email a copy of proof of payment of the penalty and a copy of the Payment Transmittal Form to the address and email in Paragraph 13 (Notices).
- (13) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Diesel Programs Enforcement Branch  
Statewide Truck and Bus Enforcement Section  
P.O. Box 2815  
Sacramento, CA 95812-2815  
[Settlement\\_Agreement@arb.ca.gov](mailto:Settlement_Agreement@arb.ca.gov)

As to Western Express Transporters, Inc.:

Western Express Transporters, Inc.  
Shaen Magan  
4324 E. Ashlan Ave.  
Fresno, CA 93726

As to Western Express, Inc.:

Western Express, Inc.  
Shaen Magan  
4324 E. Ashlan Ave.  
Fresno, CA 93726

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Any Party may, by written notice to the other Parties (by email to CARB), change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (14) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Western Express Transporters, Inc. and/or Western Express, Inc., as applicable, shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Western Express Transporters, Inc. and Western Express, Inc. agree to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 7 pages and 34 paragraphs. This Settlement Agreement does not replace any OAH Order issued in the matter giving rise to this Settlement Agreement, OAH Matter No. 2019120102.
- (17) Binding Effect. This Settlement Agreement binds Western Express Transporters, Inc., and Western Express, Inc., and any of their principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (21) Choice of Law. This Settlement 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.

- (22) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (23) Not Tax Deductible. For purposes of this Settlement Agreement, Western Express Transporters, Inc. and Western Express, Inc. shall not deduct any monies spent to comply with any provision of this Settlement Agreement in calculating and submitting its federal, state, or local income tax.
- (24) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (25) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.
- (26) Intent to be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (27) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (28) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (29) Release. In consideration of the full completion of civil penalty, and all other undertakings above, CARB hereby releases Western Express Transporters, Inc. and Western Express, Inc. and their principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have

based on the circumstances described in all paragraphs contained in the Case Background above.

- (30) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (31) Per Unit Penalty. The per unit or per vehicle penalty in this case is a maximum of ten thousand dollars (\$10,000) per day under Health and Safety Code section 39674, for violations of the Truck and Bus Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of thirty five thousand dollars (\$35,000.00) over an unspecified number of days of violation is for 20 noncompliant vehicles(s) with 1996-1999, 2000-2004, and/or 2005-2006 model year engines and a GVWR 14,000 pounds or greater.
- (32) Emissions. The provisions cited above do prohibit emissions above a specified level. Without information on engine usage and emission rates, it is not practicable to quantify the excess emissions. However, since CARB has alleged that the vehicles(s) did not meet the regulatory requirements, all of the emissions from it were excess and illegal.
- (33) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described by CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (34) Confidential Business Information. CARB based this penalty in part on confidential business information provided by Western Express Transporters Inc. and confidential settlement communications, neither of which are retained by CARB in the ordinary course of business.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Ellen M. Peter

Title: Chief Counsel

Date: 9/13/2020 \_\_\_\_\_

**Western Express Transporters, Inc.**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Shaen Magan

Title: Secretary \_\_\_\_\_

Date: 8/29/2020 \_\_\_\_\_

**Western Express, Inc.**

Signature: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Shaen Magan

Title: Secretary \_\_\_\_\_

Date: 8/29/2020 \_\_\_\_\_