

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "CARB") 1001 I Street, Sacramento, California 95814, and SAN FRANCISCO DELUXE SIGHTSEEING, LLC (hereinafter "SF DELUXE"), 63 Viola Street / 209 South Maple Avenue, South San Francisco, CA 94080.

I. RECITALS

- (1) 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).
- (2) 13 CCR § 2183(c) states that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine". CARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine.
- (3) CARB has documented that SF DELUXE failed to provide evidence that their vehicles had ECLs attached to the engines of heavy-duty diesel vehicles in its fleet in violation of HSC § 44011.6, and 13 CCR § 2183, *et seq.* Civil penalties for violation of the regulation covering ECLs have been set per 13 CCR § 2185(a)(2)(B) at \$300 per vehicle per violation.
- (4) CARB has documented that SF DELUXE failed to demonstrate that installed engines of heavy-duty diesel vehicles in its fleet met emission standards at least as stringent as applicable federal emission standards for the model year of the engine in violation of 13 CCR § 2183, *et seq.* Civil penalties have been set per 13 CCR § 2185(a)(3)(A) at \$500 per vehicle per violation.
- (5) HSC §§ 39650-39675 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. On-road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.

- (6) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs., 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)."
- (7) 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.
- (8) SF DELUXE has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (9) 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. It requires that all 1994 and 1995 model year engines upgrade to a 2010 model year emissions equivalent engine by January 1, 2016, and all 1993 and older model year engines upgrade to a 2010 model year emissions equivalent engine by January 1, 2015.
- (10) CARB has documented that SF DELUXE failed to meet PM BACT requirements and upgrade all 1994 and 1995 model year engines to a 2010 model year emissions equivalent engine by January 1, 2016, and all 1993 and older model year engines by January 1, 2015.
- (11) In order to resolve these alleged violations, SF DELUXE has taken, or agreed to take, the following actions enumerated below under "TERMS AND RELEASE". Further, CARB accepts this Agreement in termination and settlement of this matter.
- (12) 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 violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, CARB and SF DELUXE agree as follows:

II. TERMS AND RELEASE

In consideration of CARB not filing a legal action against SF DELUXE for the alleged violations referred to above, and proof of SF DELUXE meeting the compliance requirements set forth in Section 1 below, or SF DELUXE's payment of the penalties set forth in Section 2 below, CARB and SF DELUXE agree as follows:

- (1) SF DELUXE shall submit proof of fleet compliance with the PSIP by December 31, 2019. In addition, SF DELUXE shall submit proof of fleet compliance with the Truck and Bus (TB) Regulation (as codified in 13CCR § 2025), and the ECL requirement of the HDVIP by July 1, 2020.
- (2) Upon execution of this Agreement, if SF DELUXE **fails to meet the terms of release, including those detailed in Section 1 above**, the sum of three thousand, eight hundred dollars (\$3,800.00) shall be paid on behalf of SF DELUXE no later than July 1, 2020, as follows:
 - \$3,800.00 payable to the **Air Pollution Control Fund**

The Parties shall exchange signed copies of this Agreement. This Agreement may be executed in counterparts. 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. **Please send the original signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:**

**Ms. Daphne Greene
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**

- (6) If the Attorney General files a civil action to enforce this settlement agreement, SF DELUXE shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.

- (7) It is further agreed that the penalties described in "Terms and Release", paragraph 2 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish SF DELUXE for 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 SF DELUXE by CARB arising from the facts described in recital paragraphs (1) through (17) 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.
- (8) SF DELUXE shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (9) SF DELUXE shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the CCDET webpage, ccdet.org. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, the ECL regulation and the HDVIP.
 - (a) SF DELUXE has already had the fleet maintenance manager (or equivalent) attend the CCDET I class. Proof of CCDET I completion has been provided to CARB. Proof of completion shall be maintained in each applicable employee's file for the term of his or her employment.
 - (b) If SF DELUXE uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, SF DELUXE shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to CARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (10) SF DELUXE shall comply with the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on the CCDET webpage, ccdet.org. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of diesel exhaust after-treatment systems (DEATS).
 - (a) SF DELUXE shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of DEATS attend the CCDET II class. Proof of CCDET II completion shall be provided to CARB by July 1, 2020,

- and this proof shall be maintained in each applicable employee's file for the term of his or her employment.
- (b) In case SF DELUXE uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, SF DELUXE shall obtain proof that the contractor's staff maintaining the DEATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by SF DELUXE to CARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (c) In case SF DELUXE is unable to find a CCDET II certified contractor within a radius of 25 miles from its yard for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, SF DELUXE shall contract only with the authorized verified diesel emission control strategy installer(s) or original equipment manufacturer distributor(s) for the maintenance of DEATS. The proof of the CCDET II completion for the fleet maintenance manager (or equivalent) shall be provided by SF DELUXE to CARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (11) SF DELUXE shall submit copies of all current PSIP compliance records to CARB by December 31, 2019. **Copies shall be addressed to the attention of Ms. Daphne Greene at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- In addition, as is typically required, SF DELUXE shall submit copies of all PSIP compliance records for the years 2020 and 2021 to CARB by January 31 of the following year. **Copies shall be addressed to the attention of Ms. Daphne Greene at the California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.** CARB reserves the right to visit any SF DELUXE fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable CARB program.
- (12) SF DELUXE shall comply with the ECL regulation as codified in 13 CCR § 2183. By July 1, 2020, SF DELUXE shall **submit the proof of compliance to Ms. Daphne Greene, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (13) SF DELUXE shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.
- (14) SF DELUXE shall not violate the TB Regulation as codified in 13 CCR § 2025.

- (15) SF DELUXE shall submit proof of compliance with the TB Regulation (as codified in 13 CCR § 2025), by July 1, 2020 following the execution of this Agreement, to **Ms. Daphne Greene, Air Pollution Specialist, California Air Resources Board, Enforcement Division, P.O. Box 2815, Sacramento, California 95812.**
- (16) This Agreement shall apply to and be binding upon SF DELUXE, 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.
- (17) This Agreement constitutes the entire agreement and understanding between CARB and SF DELUXE concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between CARB and SF DELUXE concerning the subject matter hereof.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.

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 failure to meet the requirements of the Engine Model Year Compliance Schedule for heavier vehicles is \$3,000.00 per year of violation for one (1) vehicle.

The penalty was discounted based on the fact the violator made diligent efforts to cooperate with the investigation.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of \$300.00 per vehicle per violation. The penalty obtained for the violations involved in this case is \$300.00 for one vehicle, or \$300.00 per vehicle.

The per vehicle penalty for operating a heavy-duty vehicle with an installed engine that does not meet emission standards at least as stringent as applicable federal emission standards for the model year of the engine is a maximum of \$500 per vehicle per violation. The penalty obtained for the violations involved in this case is \$500 for one vehicle, or \$500 per vehicle.

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

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 and because SF DELUXE failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g).

ECL Violations

The penalty provision being applied to the ECL requirements is 13 CCR § 2185(a)(2) because SF DELUXE failed to provide evidence that three of their vehicles have ECL labels attached as required.

The penalty provision being applied to the engine emission standards requirements is 13 CCR § 2185(a)(3) because SF DELUXE failed to provide evidence that one of their engines met emission standards at least as stringent as applicable federal emission standards for the model year of the engine.

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.

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.

ECL Violations

The penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

- (23) SF DELUXE acknowledges that CARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, 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.
- (24) 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 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.
- (25) The penalty was based on confidential settlement communications between CARB and SF DELUXE that CARB does not retain in the ordinary course of business. The penalty is the product of an arms' length negotiation between CARB and SF DELUXE and reflects CARB's assessment of the relative strength of its case against SF DELUXE, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that SF DELUXE may have secured from its actions.

(26) Now therefore, in consideration of the payment on behalf of SF DELUXE to the Air Pollution Control Fund, or the compliance provision in lieu of payment, CARB hereby releases SF DELUXE and their principals, officers, agents, predecessors and successors from any and all claims, CARB may have or have in the future based on the circumstances described in paragraphs (1) through (17) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

San Francisco Deluxe Sightseeing LLC

Signature: /S/

Signature: /S/

Print Name: Todd P. Sax, D.Env.

Print Name: Santokh Sohal

Title: Chief, Enforcement Division

Title: CEO

Date: 1/31/2020

Date: 1/17/2020