

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 Carlos Nova (A.K.A. Carlos Arias, A.K.A. Carlos Ariasnova), D.B.A. Nova Truck Repair (A.K.A. Nova Truck Parts, A.K.A. Nova Oil Change Truck Repair) (hereinafter "Carlos Nova D.B.A. Nova Truck Repair") with its principal location at 9201 Railroad Avenue Oakland, California 94603 (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). (Health & Saf. Code §§ 39002, et seq., 39650-39675.) CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. 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.) CARB adopted the *Verification Procedure, Warranty, and In-use Compliance Requirements for In-use Strategies to Control Emissions from Diesel Engines* (Verification Procedure) (Cal. Code Regs., tit.13, §§ 2700-2711) to ensure those reductions were met.
- (3) **Regulatory Provisions.** The Verification Procedures requires diesel emission control strategy be approved by a CARB Executive Order (EO) identifying the verified emission reduction level, and any conditions that must be met for the diesel emission control strategy to function properly. (Cal. Code Regs., tit.13, § 2702.) It also prohibits persons or entities from advertising, selling, leasing, supplying, offering for sale, representing, or installing any device, apparatus, mechanism, or fuel-based system as a verified diesel emission control strategy for or on any engine, vehicle, or equipment that does not meet the terms and conditions of the strategy's Executive Order. (Cal. Code Regs., tit.13, § 2706, subd. (q).) Any party that installs a diesel emission control strategy must be authorized and trained by the party that holds the verification for the diesel emission control strategy. (Cal. Code Regs., tit.13, § 2706, subd. (u)(1).) Any CARB-verified diesel emission control strategy shall be properly installed and maintained. (Cal. Code Regs., tit.13, § 2711, subd. (a).) No person shall sell, offer to sell, or introduce into commerce a CARB-verified diesel emission control strategy unless all of the conditions of the governing Executive Order and this Chapter are met. (Cal. Code Regs., tit.13, § 2711, subd. (b).) Vehicle Code section 27156, subdivision (c) states that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control

device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system. If a diesel emission control strategy or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the diesel emission control strategy is not verified for that application, rendering it an illegal, non-exempt add-on part if it is added to the vehicle. CARB regulations also prohibit installing, selling, or offering for sale any used, remanufactured, refurbished, recycled, or salvaged diesel particulate filter in California. (Cal. Code Regs., tit.13, § 2222(k)(5).)

- (4) Penalty Provisions. Failure to comply with the above regulatory requirements is a violation of State law that may result in penalties up to ten thousand dollars (\$10,000) for strict liability violations for each day in which a violation occurs. (Health & Saf. Code §§ 39674, 39675; Cal. Code Regs., tit.13, § 2025.) Health and Safety Code section 43016 provides a penalty of up to \$500 per unit for violation of the Aftermarket Parts regulation, and Health and Safety Code section 43008.6 provides for penalties of up to \$1,500 per vehicle for violations of Vehicle Code section 27156.

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Carlos Nova D.B.A. Nova Truck Repair was organized under the laws of California as a sole proprietor and conducted business in the State of California.
- (6) Allegations. This Settlement Agreement resolves Notice of Violation (NOV) HDD-2016-0163, which was issued on April 29, 2019. CARB alleges Carlos Nova D.B.A. Nova Truck Repair violated verification procedure, warranty, and in-use compliance requirements for in-use strategies to control emissions from diesel engines (Cal. Code Regs., tit. 13, § 2706(q), 2706(u)(1), 2711(a), 2711(b), Veh. Code § 27156) resulting in 18 Health & Safety Code violations, as outlined in the NOV HDD-2016-0163. CARB alleges that if the allegations described in paragraphs 1 through 6 of this Settlement Agreement were proven, civil penalties could be imposed against Carlos Nova D.B.A. Nova Truck Repair for each and every violation per vehicle.
- (7) Acknowledgment. Carlos Nova D.B.A. Nova Truck Repair admits 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. To resolve the violations

described herein, Carlos Nova D.B.A. Nova Truck Repair has taken, or agrees to take, the actions enumerated below in the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of the allegations in Paragraphs 1-6.

TERMS AND CONDITIONS

In consideration of CARB not taking further action against Carlos Nova D.B.A. Nova Truck Repair for the alleged violations in the Legal Background and Case Background above, and of Carlos Nova D.B.A. Nova Truck Repair's agreement to complete all terms and conditions set forth below, CARB and Carlos Nova D.B.A. Nova Truck Repair agree as follows:

- (9) Suspended Penalties. CARB will suspend all penalties arising out of the violations described in paragraph 6, provided Carlos Nova D.B.A. Nova Truck Repair complies with all conditions set forth in this Settlement Agreement. If Carlos Nova D.B.A. Nova Truck Repair fails to comply with every requirement set forth in this Settlement Agreement, the Parties agree that Carlos Nova D.B.A. Nova Truck Repair shall pay the suspended portion of this penalty of Twenty-Seven Thousand Dollars (\$27,000.00 USD). In the event Carlos Nova D.B.A. Nova Truck Repair does not comply with all conditions in this Settlement Agreement and needs to pay suspended penalties, CARB shall deposit the funds into the Air Pollution Control Fund for the purpose of carrying out CARB's functions and duties. Carlos Nova D.B.A. Nova Truck Repair shall make such payment within sixty (60) calendar days of the notice by CARB to Carlos Nova D.B.A. Nova Truck Repair of the Settlement Agreement violation.
- (10) Compliance Plan. Carlos Nova D.B.A. Nova Truck Repair shall comply with the following:
 - (a) Carlos Nova D.B.A. Nova Truck Repair shall not violate requirements for installers of diesel emission control strategies set forth in California Code of Regulations, title 13, section 2706, subdivision (u).
 - (b) Carlos Nova D.B.A. Nova Truck Repair shall not advertise, sell, lease, or offer for sale or lease any used verified diesel emission control strategy, pursuant to California Code of Regulations, title 13, section 2706, subdivision (q).
 - (c) Carlos Nova D.B.A. Nova Truck Repair shall not sell, lease, supply, offer for sale, represent, or install any device, apparatus, mechanism, or fuel-based system as a verified diesel emission control strategy for or on any engine, vehicle, or equipment that does not meet the terms and conditions of the strategy's

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Executive Order, pursuant to California Code of Regulations, title 13, section 2706, subdivision (q).

(d) Carlos Nova D.B.A. Nova Truck Repair shall not represent a device as being a CARB-verified diesel emission control strategy unless it has received verification, as required by California Code of Regulations, title 13, section 2711, subdivision (d).

(e) Carlos Nova D.B.A. Nova Truck Repair shall not violate Aftermarket parts exemption procedures established in California Code of Regulations, title 13, sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207, and 2220-2225.

(f) Carlos Nova D.B.A. Nova Truck Repair shall not violate Vehicle Code section 27156.

(g) Carlos Nova D.B.A. Nova Truck Repair shall not violate the Verification Procedure in California Code of Regulations, title 13, sections 2700-2711 or any Executive Order issued by CARB.

(h) Carlos Nova D.B.A. Nova Truck Repair shall not violate the terms of this Settlement Agreement or Health and Safety Code section 43012 by preventing CARB inspectors, allowing or causing CARB inspectors to be prevented, from inspecting Carlos Nova D.B.A. Nova Truck Repair's premises; from auditing any of Carlos Nova D.B.A. Nova Truck Repair's business records, including, but not limited to, invoices; or from conducting a physical inspection of Carlos Nova D.B.A. Nova Truck Repair to determine whether Carlos Nova D.B.A. Nova Truck Repair has taken any of the actions prohibited above.

(i) Carlos Nova D.B.A. Nova Truck Repair shall not install, sell, or offer for sale any used, remanufactured, refurbished, recycled, or salvaged diesel particulate filter in California, pursuant to California Code of Regulations, title 13, section 2222, subsection (k)(5).

(j) Carlos Nova D.B.A. Nova Truck Repair shall not install any Verified Diesel Emission Control Device without first obtaining written approval from CARB.

- (11) Documents. Carlos Nova D.B.A. Nova Truck Repair shall return the signed and dated Settlement Agreement to CARB. If the suspended penalty payment is triggered, Carlos Nova D.B.A. Nova Truck Repair shall promptly email or mail a copy of proof of payment of the penalty and a copy of the Payment Transmittal Form CARB provides to Carlos Nova D.B.A. Nova Truck Repair to the address or email in Paragraph 12 (Notices).

- (12) 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/ Diesel Equipment Enforcement Section
P.O. Box 2815
Sacramento, California, 95812-2815
Settlement_Agreement@arb.ca.gov

As to Carlos Nova D.B.A. Nova Truck Repair:

Carlos Nova
9201 Railroad Avenue
Oakland, California, 94603
novatruckrepair@gmail.com

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

- (13) Repeat Violations. Carlos Nova D.B.A. Nova Truck Repair agrees to comply with all CARB regulatory requirements and acknowledges that repeat violations of CARB regulations could result in increased penalties in the future.
- (14) 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. This Settlement Agreement consists of 8 pages and 31 paragraphs.
- (15) Binding Effect. This Settlement Agreement binds Carlos Nova D.B.A. Nova Truck Repair, and any and all of its principals, officers, receivers, trustees, successors and assignees, and 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.
- (16) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (17) 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.

- (18) Severability. Each provision of this Settlement Agreement is severable. In the event 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor shall it 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.
- (23) 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.
- (24) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (25) Counterparts and Electronic Signatures. This Settlement Agreement may be

executed in counterparts. Electronic, facsimile, and photocopied signatures shall be considered valid signatures.

- (26) Release. In consideration of the full completion of the civil penalty and all other undertakings above, CARB hereby releases Carlos Nova D.B.A. Nova Truck Repair and its principals, officers, receivers, trustees, successors and assignees, and subsidiary and parent corporations from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (27) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (28) 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 Verification Regulation. (Cal. Code Regs., tit.13, § 2700 et seq.)
- (29) Emissions. The provisions cited above do not 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.
- (30) Aggravating and Mitigating Factors. The penalties in this matter were determined by considering all relevant circumstances, including statutory factors, as described in CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to the public health, safety, and welfare; the nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; the innovative nature and 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 in consideration of 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.
- (31) Confidential Business Information. CARB based this penalty, in part, on confidential business information provided by Carlos Nova D.B.A. Nova Truck Repair and confidential settlement communications.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/

Name: Todd P. Sax, D.Env.

Title: Chief, Enforcement Division

Date: July 7, 2022

Carlos Nova D.B.A. Nova Truck Repair

Signature: /S/

Name: Carlos Nova

Title: Owner

Date: June 20, 2022