

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 Shippers Choice Transportation, LLC (Shippers Choice), with its principal location at 2390 Highway 100, Regan, Tennessee 38368 (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) Glider Kits. Health and Safety Code section 43024.1 provides in relevant part that a "glider kit" means a new vehicle that is incomplete because it lacks an engine, transmission, or axle, or a new motor vehicle produced from a glider kit or otherwise produced as a new motor vehicle with a used or remanufactured engine.
- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to forty-five thousand five hundred sixty-three dollars (\$45,563.00 USD) per vehicle per year. Furthermore, operating a noncompliant glider vehicle is subject to a minimum penalty of twenty-five thousand dollars (\$25,000.00 USD) per violation. (Cal. Code Regs., tit. 13, § 2025; Health & Saf. Code §§ 43016, 43024.1.)

CASE BACKGROUND

- (5) Corporate Entity. At all relevant times, Shippers Choice was organized under the laws of Tennessee as a limited liability company and conducted business in the State of California.
- (6) Allegations. CARB alleges that Shippers Choice violated Truck and Bus Regulation as well as the prohibition on glider vehicles with noncompliant engines (Cal. Code Regs., tit. 13, § 2025; Health & Saf. Code § 43024.1), resulting in 1 day of violation, as outlined in NOV STB-111522003-VA. CARB alleges that if paragraphs 1 through 6 were proven, civil penalties could be

imposed against Shippers Choice for each, and every vehicle involved in the violations and each day.

- (7) Acknowledgment. Shippers Choice 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. In order to resolve the violations described herein, Shippers Choice 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 not filing a legal action against Shippers Choice for the alleged violations referred to above in the Legal Background and Case Background, and Shippers Choice's agreement to complete all terms and conditions set forth below, CARB and Shippers Choice agree as follows:

- (9) Stipulated Suspended Settlement Amount. The Parties agree to a penalty of twenty-five thousand dollars (\$25,000.00 USD) for these violations. Of that, Shippers Choice shall pay a civil penalty of five thousand dollars (\$5,000.00 USD) with twenty thousand (\$20,000.00 USD) being suspended. The twenty-thousand dollars (\$20,000.00 USD) suspended portion only becomes payable if Shippers Choice violates the Settlement Agreement terms and conditions. Shippers Choice shall make all payments within 30 calendar days from the date CARB notifies Shippers Choice of the full execution of the Settlement Agreement.
- (10) Civil Penalty Payment Method. Shippers Choice shall pay the civil penalty of five thousand dollars (\$5,000.00 USD) by check, credit card, wire transfer, or portal, payable to the California Air Resources Board, using instructions provided separately by CARB in a Payment Transmittal Form. Shippers Choice is responsible for all payment processing fees. The Payment Transmittal Form shall accompany payments to ensure proper application. At the time payment is made, Shippers Choice shall email proof of payment with a copy of the Payment Transmittal Form to the email address for CARB provided in Paragraph 13 (Notices). CARB shall deposit the civil penalty amount into CARB's 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 Shippers Choice in accordance with Paragraph 13 (Notices).

- (11) Non-operation. Shippers Choice shall not operate the noncompliant glider vehicle that is the subject of NOV STB-111522003-VA in the State of California unless and until the vehicle is brought into compliance with all California laws and regulations. Shippers Choice will otherwise comply with all California laws and regulations in all operations that it conducts in the State of California.
- (12) Documents. Shippers Choice shall promptly email or mail the signed and dated Settlement Agreement, to the address or 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
Statewide Truck and Bus Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Shippers Choice:

Shippers Choice Transportation, LLC
2390 Highway 100
Regan, Tennessee 38368
kevin@myshipperschoice.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.

- (14) Recovery of Costs. If the Attorney General files a civil action to enforce this Settlement Agreement, Shippers Choice shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorneys' fees, and costs.
- (15) Repeat Violations. Shippers Choice agrees 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.

- (17) Binding Effect. This Settlement Agreement binds Shippers Choice, and any 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) 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.
- (24) 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.
- (25) 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.

- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Shippers Choice and its 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.
- (29) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (30) Per Unit Penalty. The per unit penalty in this case is a minimum of twenty-five thousand dollars (\$25,000.00 USD), of which, twenty thousand dollars (\$20,000.00 USD) is suspended.
- (31) 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 the emissions from it were excess and illegal.
- (32) 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.

- (33) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Shippers Choice or confidential settlement communications.
- (34) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the violations alleged in this Settlement Agreement.
 - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Shippers Choice with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against Shippers Choice with respect to:
 - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Shippers Choice to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any criminal liability.
 - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
 - (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, Shippers Choice shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.

- (d) This Settlement Agreement does not limit or affect the rights of Shippers Choice or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against Shippers Choice, except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Shippers Choice is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; Shippers Choice's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Shippers Choice's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

California Air Resources Board

Signature: /S/
Name: Ellen M. Peter
Title: Chief Counsel
Date: August 9, 2023

Shippers Choice Transportation, LLC

Signature: /S/
Name: Kevin King
Title: Office Manager
Date: July 19, 2023