

# SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Davalan Sales Incorporated (hereinafter "DSI"), 1601 East Olympic Boulevard, Suite 325, Los Angeles, California 90021.

## I. RECITALS

- (1) California Health and Safety Code, sections 39650-39675 (HSC §§ 39650-39675) mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants (TAC). In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a TAC. Transport Refrigeration Units (TRU) are powered by diesel fueled engines that emit this toxic PM. TRUs are regulated under the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM) as codified in the California Code of Regulations, title 13, section 2477.1 through 2477.21 (13 CCR § 2477.1 through 2477.21).
- (2) 13 CCR § 2477.5(a) provides that no owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets in-use performance standards established in § 2477.5.
- (3) ARB Enforcement Division has documented that DSI failed to bring the TRUs it operates in California into compliance with the in-use performance standards before the deadlines set forth in the regulation.
- (4) DSI has three outstanding citations, as noted in the table below:

Citation Number	Violation Type	Issue Date
TRU100515005BOP	TRU	October 5, 2015
TRU120715005CK	TRU	December 7, 2015
TRU020817003VA	TRU	February 8, 2017

- (5) Failure to bring the TRU fleet in compliance with applicable in-use performance standards is a violation of state law resulting in penalties. HSC § 39674 authorizes civil penalties of up to ten thousand dollars (\$10,000) for each day that the violation occurs.
- (6) In order to resolve these alleged violations, DSI has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, the ARB accepts this Agreement in termination and settlement of this matter.

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- (7) 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, the ARB and DSI agree as follows:

## II. TERMS AND RELEASE

In consideration of the ARB not filing a legal action against DSI for the alleged violations referred to above, and DSI payment of the penalties set forth in Section 1 below, the ARB and DSI agree as follows:

- (1) Upon execution of this Agreement, the sum of six thousand three hundred dollars (\$6,300.00) shall be paid on behalf of DSI no later than June 30, 2017.

- \$6,300.00 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:**

**Mr. Aldo Chaney  
Air Pollution Specialist  
California Air Resources Board  
Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731**

**Please submit each payment by the applicable payment due date along with the corresponding “Settlement Agreement Payment Transmittal Form” (Attachment A) to:**

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

- (2) If the Attorney General files a civil action to enforce this settlement agreement DSI shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's costs, and costs.
- (3) 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 DSI for violations of state environmental statutes, and these penalties are payable to and for

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the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on DSI through by ARB arising from the facts described in recital paragraphs (1) through (5) 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.

- (4) DSI shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (5) DSI 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](http://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) DSI 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 ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.
  - (b) In case DSI uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, DSI 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 DSI to the ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
  - (c) In case DSI 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, DSI 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 DSI to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.

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- (6) DSI shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to the ARB within 45 days of this agreement.
- (7) DSI shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (8) DSI 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.
- (9) DSI shall not violate TRU ATCM as codified in 13 CCR § 2477.
- (10) DSI shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025 *et seq.*
- (11) DSI has three outstanding citations (TRU100515005BOP, TRU0120715005CK, and TRU020817003VA), for not meeting the requirements of the TRU program. These citations will be cleared through this agreement.
- (12) Within six months of the execution of this Agreement, DSI shall bring its fleet of TRUs operating in California in compliance with the applicable in-use performance standards as required by 13 CCR § 2477.5(a). DSI shall submit the proof of reporting in ARBER to Mr. Aldo Chaney, Air Pollution Specialist, ARB Enforcement Division, 9480 Telstar Avenue, Suite 4, El Monte 91731.
- (13) This Agreement shall apply to and be binding upon DSI, and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (14) This Agreement constitutes the entire agreement and understanding between ARB and DSI concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and DSI concerning the subject matter hereof.
- (15) 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.
- (16) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or

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(23) Now therefore, in consideration of the payment on behalf of DSI to the Air Pollution Control Fund, ARB hereby releases DSI and their principals, officers, agents, predecessors and successors from any and all claims, the ARB may have or have in the future based on the circumstances described in paragraph (1) through (5) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**California Air Resources Board**

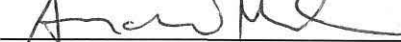
Signature: 

Print Name: Dr. Todd P. Sax

Title: Chief Enforcement Division

Date: 7/17/17

**Davalan Sales Incorporated**

Signature: 

Print Name: Andrew Miller

Title: CEO / GM

Date: 6/30/17