

SETTLEMENT AND RELEASE AGREEMENT

Plaintiff People of the State of California ex rel. the Air Resources Board (CARB) and Defendant Liberty Transport (Liberty Transport), collectively referred to as the "PARTIES," HEREBY STIPULATE as follows:

1. RECITALS

1.1 Health and Safety Code sections 39650-39675 mandate the reduction of the emissions of substances 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 California Code of Regulations, title 13, section 2025.

1.2 Failure to comply with the requirements of California Code of Regulations, title 13, section 2025 is a violation of state law resulting in penalties. Health and Safety Code section 39674, subdivisions (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 (\$1,000.00) or ten thousand dollars (\$10,000.00), respectively, for each day in which the violation occurs.

1.3 California Code of Regulations, title 13, section 2025, subdivision (e)(1)(B) states, "Starting January 1, 2012, for all vehicles with Gross Vehicle Weight Rating (GVWR) greater than 26,000 [pounds, hereinafter lbs.], excluding school buses, fleets must meet the requirements of California Code of Regulations, title 13, section 2025, subdivision (i)."

1.4 In addition, California Code of Regulations, title 13, section 2025, subdivision (g) requires owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) to meet PM Best Available Control Technology (BACT) requirements for all 2000 through 2004 model year engines by January 1, 2013.

1.5 CARB has documented that Liberty Transport failed to meet PM BACT requirements for one vehicle with a 2000 through 2004 model year engine by January 1, 2013. Failure to meet the BACT is a violation of California Code of Regulations, title 13, section 2025, subdivision (g).

1.6 California Code of Regulations, title 13, section 2025, subdivision (x)(2) provides "Any in-state or out-of-state motor carrier, California broker, or any California resident, who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of section 2025, [subdivision] (s)(4)."

1.7 CARB Enforcement Division alleges Liberty Transport is a "motor carrier" under California Code of Regulations, title 13, section 2025, subsection (d)(41). Between August 13, 2014 and July 18, 2016, Liberty Transport failed to verify whether twenty-eight vehicles hired or dispatched into California were in compliance with the Truck and Bus Regulation. This is a violation of California Code of Regulations, title 13, section 2025, subdivision (x)(2). CARB also determined fourteen of the vehicles discussed above were out of compliance with the Truck and Bus Regulation. This is also a violation of California Code of Regulations, title 13, section 2025, subdivision (x)(2).

1.8 Liberty Transport has two outstanding citations for a violation of California Code of Regulations, title 13, section 2025, subdivisions (f) & (g), non-compliant with in-use standards for failure to have a Diesel Particulate filter (DPF), as noted in the table below:

Citation Number	Violation Type	Issue Date
STB 071515 003RB	TB	07/15/2015
STB 030216 009RB	TB	03/02/2016

1.9 On or about July 3, 2018, CARB filed an action in Sacramento Superior Court against Liberty Transport, captioned *The People of the State of California ex. rel. the California Air Resources Board v. Liberty Transport, LLC*, Sacramento Superior Court Case Number 34-2018-00236143 (Enforcement Action). The Complaint in the Enforcement Action alleges violations of Health & Safety Code sections 39674, 39675, 42402.1 and 43017 and California Code of Regulations, title 13, section 2025. Based on the number and nature of the alleged violations outlined in paragraphs in Section 1 (Recitals), the complaint seeks statutory penalties against Liberty Transport) in excess of \$157,000.

1.10 The Parties now desire to fully and finally to settle the Enforcement Action, and all disputed and Released Claims (as defined below) between them pertaining to the alleged violations of the Truck and Bus Regulation, acknowledging the settlement is in the best interest of Parties.

2. DEFINITIONS

2.1 "Agreement" means this Settlement Agreement and Release.

2.2 "Court" means the Superior Court of the State of California for the County of Sacramento.

2.3 "Complaint" means the complaint CARB filed with in Enforcement Action against Liberty Transport on July 3, 2018.

2.4 The "Effective Date" of this Agreement shall be the date the Agreement has been fully executed upon the signing of the last counterpart of the signatories hereto.

2.5 "Released Claims" means any and all claims, counterclaims, cross-claims, defenses, affirmative defenses, causes of action of any type (whether common law, statutory, regulatory, administrative, in tort, contract, legal, equitable, or otherwise, and whether or not reduced to judgment, liquidated, un-liquidated, fixed, contingent, matured, un-matured, disputed, or undisputed), demands, disputes, damages, costs, losses, detriments, interest, expenses, penalties, fines, fees, attorneys' fees, actions, debts, controversies, suits and choses in action, whether known or unknown, or stated or unstated, relating to, arising out of, in connection with, based upon, or otherwise stemming from any of the facts, circumstances, acts, omissions, allegations, or purported violations of law raised in, alleged in, referred to, or described in the Enforcement Action, including the prosecution or defense of those actions.

3. TERMS AND CONDITIONS

3.1 The recitals in Section 1 and 2, and all subparagraphs therein, are fully incorporated herein.

3.2 Liberty Transport shall pay CARB the sum of sixty thousand (\$60,000), due within two weeks of execution of this agreement by submitting the full settlement amount along with the corresponding Settlement Agreement Payment Transmittal Form (Attachment A) to:

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

3.3 Effect of Untimely Payment. If Liberty Transport fails to make the entire settlement payment within **fourteen** days of the execution of this settlement agreement, the entire balance owed, plus a penalty of five percent per annum on the entire remaining balance from the date initially due, shall become immediately due and payable without notice or demand.

3.4 Liberty Transport shall not violate the Truck and Bus Regulation as codified in California Code of Regulations, title 13, section 2025. Within forty-five days of the Effective Date of the Agreement, Liberty Transport shall submit: 1) a compliance plan to demonstrate Liberty Transport's verification process of hiring vehicles subject to the Truck and Bus Regulation pursuant to California Code of Regulations, title 13, section 2025, subdivision (x)(2); and 2) evidence of Liberty Transport's verification of compliance of its 2018 hired vehicles, and 2019 hired vehicles to date, to Mr. Ryman Simangan, Air Pollution Specialist, CARB Enforcement Division, P.O. Box 2815, Sacramento, California 95812. The compliance plan and evidence of verification shall be subject to CARB approval. This term shall not be deemed satisfied until CARB has approved the submissions by Liberty Transport, said approval shall not be unreasonably withheld. The compliance plan shall include the following information:

- (a) Dates by which annual verifications of compliance will take place beginning in 2019;
- (b) For purposes of compliance with this Section, Liberty Transport shall not operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without obtaining a completed form entitled Notice of Requirement for Carriers to Comply with California Air Resources Board's Truck and Bus Regulation, California Code of Regulations, title 13, section 2025 (Notice) for each such vehicle hired or dispatched. A copy of the Notice is attached hereto as Attachment B. The Notice may be subject to change as required by law or by mutual agreement of the parties; and
- (c) The actions Liberty Transport shall take if compliance cannot be verified.

3.5 Liberty Transport has two outstanding citations (citation numbers STB 071515 003RB issued 07/15/2015 and STB 030216 009RB issued 03/02/2016), for not meeting the requirements of the Truck and Bus Regulation. These citations will be resolved through this Agreement and CARB will not pursue any remedy or penalty concerning these two citations.

3.6 The sixty thousand-dollar payment (\$60,000.00) payment described above is made pursuant to the provisions of Health & Safety Code sections 39674, 39675 and 43016, making the payment a penalty to and for the benefit of a governmental unit; the payment is not compensation for actual pecuniary loss. It is further agreed the penalty described in "Terms and Conditions," paragraph 3.2 is punitive in nature, rather than compensatory, and as such, it is intended to deter and punish Liberty Transport for violations of state environmental statutes. The penalty is payable to a fund for the potential appropriation for CARB, a governmental unit.

4. MUTUAL RELEASES

4.1 In consideration of the settlement of this action and CARB's agreement to clear the two citations referenced in paragraph 3.5, and in consideration of the covenants, promises, terms, and conditions, Liberty Transport releases, discharges, and covenants not to sue CARB and its agents, employees, contractors, and attorneys, and any person or entity who engaged in the investigation and the imposition of civil penalties arising from the same events, including the review of the imposition of the penalties, for any and all claims or causes of action, of every kind and nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, that may exist arising out of the Enforcement Action and the imposition of civil penalties issues.

4.2 CARB, in consideration of the settlement amount Liberty Transport is agreeing to pay and in consideration of the covenants, promises, terms and conditions herein, releases, discharges and covenants not to sue Liberty Transport or its insurers, agents, receivers, trustees, employees, contractors, consultants, attorneys, predecessors, successors-in-interest, and assignees, for any and all claims or causes of action, of every kind and nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, that were or could have been made relating to the Enforcement Action or issues arising therefrom.

4.3 This release and covenant not to sue shall not act as a release from liability of any person or entity other than those referred to herein.

4.4 Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to preclude the Attorney General, or any other federal, state, or local agency, board, department, office, commission, or entity from exercising its authority under any law, statute, regulation, or ordinance. CARB represents it is not aware of any other agency with any claims against Liberty Transport arising from the events described in Recital Paragraphs 1.1 through 1.10.

4.5 Waiver of Section 1542

With respect to the facts and circumstances arising out of the Enforcement Action and all matters set forth in the prior paragraphs above, the Parties acknowledge they understand the meaning of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Parties expressly waive and relinquish any right or benefit they now have, or may in the future have, under section 1542 of the California Civil Code. In connection with such waiver and relinquishment, the Parties acknowledge they are aware that if claims or facts in addition to or different from those which the Parties now know or believe to exist with respect to such matters are discovered as set forth in the recitals section of this Agreement, it remains the parties' intention to hereby fully, finally and forever settle and release all of the released matters, disputes and differences, known or unknown, suspected or unsuspected which do exist, or may exist, or heretofore have existed between each of the Parties arising out of such matters. In furtherance of such intention, the releases herein given shall be and remain in effect as full and

complete releases notwithstanding the discovery or existence of any such additional or different claims or facts.

5. FINAL TERMS

5.1 **Binding Effect of Agreement.** This Agreement shall apply to and be binding upon Liberty Transport, 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.

5.2 **Entirety.** This Agreement contains all of the terms and conditions agreed upon by the Parties relating to the matters covered by this Agreement, and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the parties, whether oral or written, respecting the matters covered by this Agreement.

5.3 **Modification.** 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.

5.4 **Severability.** Each provision of this Agreement is severable, and in the event any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

5.5 **Governing Law.** The laws of the State of California shall govern and control the enforcement and interpretation of this Agreement.

5.6 **No Construction Against Drafter.** This Agreement is the product of negotiation between the Parties, each of whom has been represented by counsel, and is deemed to have been drafted equally by the Parties; any rule of construction causing a document to be construed against the Party who drafted an agreement shall not be applicable to this Agreement.

5.7 **Settlement Intent.** The penalty was based on confidential settlement communications between CARB and Liberty Transport that CARB does not retain in the ordinary course of business. The penalty is the product of an arms-length negotiation between CARB and Liberty Transport and reflects CARB's assessment of the relative strength of its case against Liberty Transport, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Liberty Transport may have secured from its actions.

5.8 **Knowing, Voluntary Agreement.** Each Party to this Agreement acknowledges it has been represented by legal counsel, and each party has reviewed and has had the benefit of legal counsel's advice, concerning all of the terms and conditions of this Agreement.

5.9 **Warranty of Capacity to Execute Agreement.** Each party to this Agreement represents and warrants the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and to bind that party to the terms and conditions of this Agreement.

5.10 **No Third-Party Benefits.** This Agreement is made for the sole benefit of CARB and Liberty Transport, and no other person or entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise expressly provided for herein.

5.11. Mailing Address. Send any future mailings or documents required per the terms of this Stipulated Judgment for Settlement and Release to:

Mr. RYMAN SIMANGAN
Air Pollution Specialist
California Air Resources Board
Enforcement Division
P.O. Box 2815
Sacramento, California 95812

5.12 Computation of Time. If the last day for the performance of any act provided or required by this Agreement falls on a weekend or holiday, that period is extended to the next business day. "Holidays" are defined consistent with the Code of Civil Procedure section 12, subdivision (b).


5.13 Costs and Fees. Each Party shall bear its own costs and fees, including, without limitation, all attorney's fees, associated with the Enforcement Action and the drafting of this Agreement.

5.14 Waiver. The failure of any Party to enforce any provision of this 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 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 Agreement or otherwise provided by law.

5.15 Signature. This agreement can be signed in counterparts. The Effective Date of this Agreement is the day it is signed by the last signatory.

5.16 Execution in Counterparts/Fax or Scanned Signatures. This Agreement may be executed in duplicate originals and/or in counterparts, but it is agreed there is only one Agreement. The parties agree all genuine copies of this Agreement, such as photocopies and scanned copies, may be used as though originals in the absence of a bona fide original in response to a challenge to the authenticity of the copy. Also, the parties agree to accept fax and scanned signatures.

Dated: January 30, 2019



ELLEN M. PETER
Chief Counsel
California ex rel. the Air Resources Board

Dated: January __, 2019

FARIS SUKKAR
Managing Member
Liberty Transport, LLC

[Signatures continue on next page]

5.11. Mailing Address. Send any future mailings or documents required per the terms of this Stipulated Judgment for Settlement and Release to:

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Enforcement Division
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Sacramento, California 95812

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Dated: January __, 2019

ELLEN M. PETER
Chief Counsel
California ex rel. the Air Resources Board

Dated: January 29, 2019




FARIS SUKKAR
Managing Member
Liberty Transport, LLC


[Signatures continue on next page]

APPROVED AS TO FORM AND CONTENT:

Dated: January 30, 2019


KATHRYN M. MEGLI
Deputy Attorney General
*Attorneys for People of the State of
California ex rel. the Air Resources
Board et al.*

Dated: January 28, 2019


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