

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into by and between the People of the State of California *ex rel.* the California Air Resources Board (hereinafter "ARB"), on the one hand, and Marten Transport Logistics, LLC (hereinafter "Marten Logistics"), Marten Transport Services, Ltd. (hereinafter "Marten Services"), and Marten Transport, Ltd. (hereinafter "Marten Transport"), on the other hand.

1. RECITALS

1.1 WHEREAS, Health and Safety Code sections 39650-39675 mandate the reduction of the emission of substances that have been determined to be toxic air contaminants ("TAC"). In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter ("PM") from diesel-fueled engines as a TAC. Trucks and buses generally are powered by diesel-fueled engines that emit toxic PM. Trucks and bus diesel particulate matter emissions are regulated under the California Code of Regulations, title 13, section 2025 (Cal. Code Regs., tit.13, § 2025, hereinafter "Truck and Bus Regulation"); and

1.2 WHEREAS, the purpose of the Truck and Bus Regulation is to reduce emissions of diesel PM, oxides of nitrogen, and other criteria pollutants from in-use diesel-fueled vehicles; and

1.3 WHEREAS, on or about December 29, 2016, ARB filed an action in the Los Angeles County Superior Court against Marten Logistics, Marten Services, and Marten Transport, captioned *The People of the State of California ex rel. the California Air Resources Board v. Marten Transport Logistics, LLC, Marten Transport Services, Ltd., and Marten Transport, Ltd., and Does 1-50, Inclusive*, Los Angeles County Superior Court Case Number BC645288 (hereinafter "Enforcement Action"). The Complaint in the Enforcement Action alleges violations of California Health and Safety Code sections 39674 and 42402.1, and California Code of Regulations, title 13, section 2025(x)(2), and seeks statutory penalties against Marten Logistics, Marten Services, and Marten Transport in connection with the alleged failure to verify that each diesel-fueled vehicle hired or dispatched to California was in compliance with the Truck and Bus Regulation; and

1.4 WHEREAS, if the allegations described in the Enforcement Action were proven, then civil penalties could be imposed against Marten Logistics, Marten Services, and Marten Transport; and

1.5 WHEREAS, Marten Logistics, Marten Services, and Marten Transport deny the material allegations asserted against them in the Enforcement Action and therefore, on March 24, 2017, Marten Logistics filed a Motion to Quash Service of Summons and Complaint and to Dismiss, which motion was taken off calendar given settlement; and

1.6 **WHEREAS**, the Parties now desire fully and finally to settle the Enforcement Action, and all disputes and Released Claims (as defined below) between them pertaining to the alleged violations of the Truck and Bus Regulation, acknowledging that settlement is in the best interests of the Parties,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

2. DEFINITIONS

2.1 **"Agreement"** means this Settlement Agreement and Release.

2.2 **"ARB"** means the People of the State of California *ex rel.* the California Air Resources Board and the California Air Resources Board.

2.3 **"Marten Logistics"** means Marten Transport Logistics, LLC, whose corporate headquarters are located at 129 Marten Street, Mondovi, Wisconsin.

2.4 **"Marten Services"** means Marten Transport Services, Ltd., whose corporate headquarters are located at 129 Marten Street, Mondovi, Wisconsin.

2.5 **"Marten Transport"** means Marten Transport, Ltd., whose corporate headquarters are located at 129 Marten Street, Mondovi, Wisconsin.

2.6 **"Complaint"** means the complaint that ARB filed with the Court against Marten Logistics, Marten Services, and Marten Transport, and Does 1-50, inclusive, on or about December 29, 2016.

2.7 **"Court"** means the Superior Court of the State of California for the County of Los Angeles.

2.8 **"Enforcement Action"** means the lawsuit captioned *The People of the State of California ex rel. the California Air Resources Board v. Marten Transport Logistics, LLC, Marten Transport Services, Ltd., and Marten Transport, Ltd., and Does 1-50, inclusive*, Los Angeles County Superior Court Case Number BC645288.

2.9 **"Party"** means ARB, Marten Logistics, Marten Services, or Marten Transport, individually.

2.10 **"Parties"** means ARB, Marten Logistics, Marten Services, and Marten Transport, and each of them, collectively.

2.11 **"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, unliquidated, fixed, contingent, matured, unmatured, disputed, or undisputed), demands, disputes, damages, costs,

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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, CONDITIONS, AND RELEASE

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

3.2 **Binding Effect of Agreement.** This Agreement shall apply to and be binding upon Marten Logistics, Marten Services, and Marten Transport, and their principals, officers, directors, agents, dealers, 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.

3.3 **Incorporation of Recitals and Definitions.** The recitals and definitions stated above are incorporated into this Agreement and made a part of this Agreement as if fully set forth herein. Capitalized terms shall have the meaning given unless undefined.

3.4 **Section Headings.** The section headings have been inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

3.5 **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, then that period is extended to the next business day. "Holiday" means all holidays specified in Code of Civil Procedure section 135, and to the extent provided in Code of Civil Procedure section 12b, all days that by terms of section 12b are required to be considered as holidays.

3.6 **Air Pollution Control Fund Payment.** Pursuant to the provisions of California Health and Safety Code section 39674, Marten Logistics, Marten Services, or Marten Transport, on behalf of those three companies collectively, shall pay to the Air Pollution Control Fund of the State of California the sum of seventy-five thousand dollars and zero cents (\$75,000.00). Payment shall be made within thirty (30) calendar days of the Effective Date of this Agreement. The payment, in the form of a check made payable to the "Air Pollution Control Fund of the State of California," along with a completed Payment Transmittal Form, a copy of which is attached hereto as **Attachment A**, shall be delivered to the following address:

California Air Resources Board
Accounting Office
P.O. Box 1436

Sacramento, California 95812-1436

3.7 Supplemental Environmental Project Payment. Pursuant to the provisions of California Health and Safety Code section 39674 and Public Resources Code section 71118, Marten Logistics, Marten Services, or Marten Transport, on behalf of those three companies collectively, shall enter into the Supplemental Environmental Project Agreement attached hereto as **Attachment B** and pay to the Prescott Joseph Center for Community Enhancement" the sum of twenty-five thousand dollars and zero cents (\$25,000.00) to fund the Northern California BreathMobile Supplemental Environmental Project. Payment shall be made within thirty (30) calendar days of the Effective Date of this Agreement. The payment, in the form of a check made payable to the Prescott Joseph Center for Community Enhancement, along with a completed Payment Transmittal Form, a copy of which is attached hereto as **Attachment A**, shall be delivered to the following address:

The Prescott Joseph Center for Community Enhancement
ATTN: Dr. Washington Burns, Executive Director
920 Peralta Street
Oakland, CA 94607

3.7.1 Marten Logistics, Marten Services, or Marten Transport, on behalf of those three companies collectively, shall provide ARB with proof of the payment to the Prescott Joseph Center for Community Enhancement by delivering a copy of the check, along with a completed Payment Transmittal Form, a copy of which is attached hereto as **Attachment A**, to the following address:

Air Resources Board
ATTN: Victoria Villa
9480 Telstar Avenue, No. 4
El Monte, CA 91731

3.8 Compliance with the Truck and Bus Regulation. Marten Logistics, Marten Services, and Marten Transport shall not operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without verifying that each such hired or dispatched vehicle is in compliance with the Truck and Bus Regulation.

In addition, Marten Logistics, Marten Services, and Marten Transport shall not to operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without complying with the record-keeping requirements of the Truck and Bus Regulation (specifically, Cal. Code Regs., tit. 13, § 2025, subs. (s)(4) and (x)(2)) for each such vehicle hired or dispatched.

For purposes of compliance with this Section 3.8, Marten Logistics 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, "Title 13, California Code of Regulations, Section 2025" (Notice) for each such vehicle hired or dispatched. A copy

of the Notice is attached hereto as **Attachment C**. The Notice may be subject to change as required by law or by mutual agreement of the parties.

3.9 Effect of Untimely Payment. If Marten Logistics, Marten Services, or Marten Transport, on behalf of those three companies collectively, fails to make a payment within ten (10) business days of the dates specified above without first obtaining written permission from ARB, then the entire balance owed, plus a penalty interest rate of 10% per annum on the entire remaining balance from the date initially due shall become immediately due and payable without notice or demand.

3.10 Effect of Insolvency. The payments described above are made pursuant to the provisions of California Health and Safety Code section 39674, so the payments are non-dischargeable under 11 U.S.C § 523 (a)(7), which provides an exception from discharge for any debt to the extent that 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.

3.11 Notice of Conditional Settlement. Within ten (10) calendar days of the Effective Date of this Agreement, ARB shall file a Notice of Conditional Settlement in the Enforcement Action.

3.12 Dismissal. Within twenty (20) business days of payment to the Air Pollution Control Fund and proof of payment to the Prescott Joseph Center for Community Enhancement (calculated from the date of the later payment if the initial payments are not made simultaneously), ARB shall file with the Court a Request for Dismissal with Prejudice of the entire Enforcement Action.

3.13 Release of Claims. In consideration for the promises and payments set forth in this Agreement, ARB hereby releases and forever discharges Marten Logistics, Marten Services, and Marten Transport, and each of them, from any and all Released Claims.

3.14 Scope of Agreement. This Agreement settles all violations of those provisions of the Health and Safety Code and California Code of Regulations that are the subject of the Complaint. Nothing in this Agreement, however, shall constitute or be construed as a satisfaction or release from liability for any violations of law other than those that are the subject of the Complaint.

3.15 Costs/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.

3.16 Non-Admission. This Agreement does not constitute an admission of liability or a consent to the personal jurisdiction of the California courts over Marten Logistics by any of the Parties.

3.17 Advice of Counsel. Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult with counsel, is fully

Informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.

3.18 Entire Agreement. This Agreement contains the entire understanding between the Parties and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No express or implied warranties, covenants or representations have been made concerning the subject matter of this Agreement unless expressly stated herein. Any prior written or oral negotiations and drafts not contained in this Agreement have no force or effect whatsoever. The Parties each acknowledge that in executing this Agreement, the Parties have not and do not rely on any statements, inducements, promises, or representations made by any other Party or their agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement, except those specifically set forth in this Agreement.

3.19 Severability. If any non-material provision of this Agreement is held to be illegal or invalid by any court of competent jurisdiction, then such provision shall be severed and deleted, and neither such provision nor its severance and deletion shall affect the validity of the remaining provisions.

3.20 Amendment/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.

3.21 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.

3.22 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.

3.23 Counterparts. This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. This Agreement may be executed by PDF or facsimile signatures and such signatures shall be deemed to bind each Party as if they were original signatures.

3.24 Authority. Each of the signatories to this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement on behalf of the

person or entity for which they execute the Agreement, and has obtained all of the necessary approvals and authorities to do so.

3.25 **Effective Date.** This Agreement shall be deemed duly executed, effective, and binding, upon the signing of the last counterpart by the signatories hereto.

THE UNDERSIGNED HAVE READ THE TERMS OF THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE, AND FULLY UNDERSTAND AND AGREE TO ALL OF THE TERMS.

Marten Transport Logistics, LLC

By: David Parrott

Title: VP Logistics
Marten Transport Logistics, LLC

Date: 7/14/17

Marten Transport Services, Ltd.

By: [Signature]

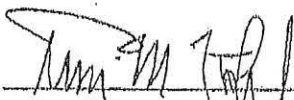
Title: CFO
Marten Transport Services, Ltd.

Date: 7/14/17

Approved at to Form: [Signature] See page 9 of 9 [Signature]

By: [Signature]
Date: _____

Marten Transport, Ltd.

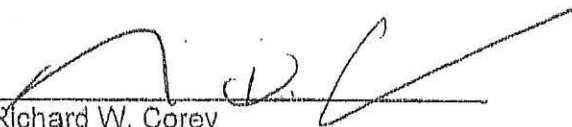
By:  _____

Title: President

Marten Transport, Ltd.

Date: 7/14/17

California Air Resources Board

By:  _____

Title: Executive Officer
California Air Resources Board

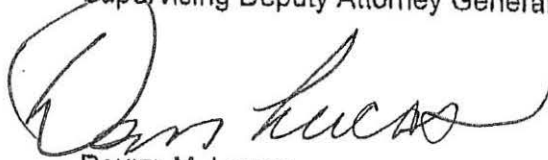
Date: 8/15/2017

APPROVED AS TO FORM.

Dated:

~~June~~ ^{AUGUST 15}, 2017

XAVIER BECERRA
Attorney General of California
GARY E. TAVETIAN
Supervising Deputy Attorney General



DANIEL M. LUCAS
Deputy Attorney General
*Attorneys for the People of the State of
California ex rel. the California Air
Resources Board*

Dated:

~~June~~ ^{JULY 21}, 2017

MUSICK, PEELER & GARRETT LLP



WILLIAM W. CARTER
*Attorneys for Marten Transport
Logistics, LLC, Marten Transport
Services, Ltd., and Marten Transport,
Ltd.*