

SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Los Angeles Superior Court Case No. BC628573 for alleged violations of cargo handling equipment regulations described below (Agreement) is entered into between the plaintiff People of the State of California ex rel. State of California Air Resources Board (CARB), and SSA Containers, Inc. a Washington corporation with its headquarters in Seattle, Washington and certain of its affiliated companies (“SSA”). SSA operates shipping terminals at, among other places, the Port of Oakland and the Port of Long Beach. CARB and SSA shall be referenced herein collectively as the Parties. The Parties agree to the following.

I. RECITALS

- (1) Health and Safety Code sections 39650-39675 mandate reduction of the emission of substances that have been determined to be toxic air contaminants (TAC). In 1998, the CARB identified particulate matter (PM) from diesel-fueled engines as a TAC. Some mobile cargo handling equipment is powered by diesel-fueled engines that emit toxic PM. Cargo handling equipment diesel particulate matter emissions are regulated under chapter 9, division 3, California Code of Regulations, title 13, section 2479 (Cal. Code Regs., tit.13, § 2479; hereinafter CHE Regulation).
- (2) The purpose of the CHE Regulation is to reduce diesel PM and criteria pollutant emissions from diesel powered (i.e., compression ignition (CI)) mobile cargo handling equipment that operates at ports and intermodal rail yards in the State of California.
- (3) The CHE Regulation applies to any person who conducts business in California, who sells, offers for sale, leases, rents, purchases, owns, or operates any CI mobile cargo handling equipment at any California port or intermodal rail yard.
- (4) Any CI mobile cargo handling equipment operating at any California port or intermodal rail yard must meet performance requirements stated in the CHE Regulation.
- (5) Failure to comply with the requirements of the CHE Regulation is a violation of state law that may result in penalties. Health and Safety Code sections 39674, 39675, 42400 et seq., 42402 et seq., and 42410 authorize civil penalties not to exceed one thousand dollars (\$1,000.00) or not to exceed ten thousand dollars (\$10,000.00), respectively, per engine or piece of CHE for each day in which a violation occurs. Health and Safety Code sections 42402.1 authorizes civil penalties not to exceed \$25,000 per day per violation for negligently emitting air contaminants in violation of rules, regulations, permits, or orders of CARB and other entities. Health and Safety Code sections 42402.2 and 42402.3 impose more significant penalties for knowing or willful illegal

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emissions of air contaminants.

- (6) CARB Enforcement Division staff alleged SSA leased, rented, purchased, owned, or operated CI mobile cargo handling equipment at California port facilities, including terminals in the Port of Long Beach, California and the Port of Oakland, California, with both yard trucks and non-yard trucks that did not comply with the requirements of the CHE Regulation.
- (7) There is now pending a complaint filed by CARB against SSA in the Superior Court of Los Angeles County, styled "People of the State of California *ex rel.* The California Air Resources Board," Los Angeles Superior Court Case No. BC628573, filed July 28, 2016. By that complaint, CARB alleges that SSA violated the CHE Regulation. This complaint shall be referred to as the "Action."
- (8) In its response to that complaint, SSA denies that it violated the CHE Regulations and alleges that it relied on advice from CARB staff regarding the compliance issues that are the subject of the Action.
- (9) CARB alleges that if the allegations described in the Action were proven, civil penalties could be imposed against SSA as provided in Health and Safety Code sections 39674, 39675, 42400 et seq., and 42402 et seq. for each and every piece of equipment involved in the violations and each day. CARB would also be entitled to injunctive relief pursuant to Health and Safety Code section 43017.
- (10) In reaching this settlement, CARB considered a variety of circumstances including the factors enumerated under Health and Safety Code section 43024. After consideration of these circumstances and factors, CARB determined there are a number of mitigating factors, including, without limitation, SSA's cooperation with CARB's investigation, supporting this settlement.
- (11) SSA concedes the facts alleged in paragraphs (1) through (10), but denies any liability resulting from said allegations as set forth in paragraph (8). SSA has fully cooperated in CARB's investigation of the allegations described herein.
- (12) 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 Agreement. In order to resolve the violations described herein, SSA has taken, or agrees to take, the actions enumerated below within the Terms and Conditions.

- (13) SSA's agreement to pay the penalties set forth herein is made solely for the purpose of a compromise and amicable settlement and is not to be construed as an admission of liability for any of the violations alleged in the Complaint; SSA entered into this Agreement solely for the purpose of resolving all issues and avoiding the expense, burden and uncertainty of litigation.

II. TERMS AND CONDITIONS

CARB and SSA agree to the following:

- (1) The Parties shall exchange signed copies of this Agreement by November 27, 2017. This Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement. SSA shall send the original signed Agreement and any future mailings or documents required per the terms of this Agreement to:

Mr. H. Cuauhtémoc Pelayo
Air Pollution Specialist
Enforcement Division
Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, California 91731

- (2) Upon execution of this Agreement, SSA and its affiliated companies, as set forth in Schedule 1, shall pay the sum of two million, four hundred fifty thousand dollars (**\$2,450,000.00**), as follows:

- a) **\$1,225,000.00** to the California Air Pollution Control Fund. SSA will send the penalty payment to the Air Pollution Control Fund by November 27, 2017 to:

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

- b) **\$728,059.70** to the "School Filtration Project Supplemental Environmental Project ("School Filtration Project")," a supplemental environmental project (SEP) which CARB has approved for mitigation for past violations. Pursuant to this Agreement, SSA shall, within 30 calendar days of executing this agreement, comply with the SEP Agreement attached hereto regarding the School Filtration Project; and shall send a check to: "South Coast Air Quality Management District School Filtration Project," which shall include the

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entire SEP and all handling, service, or other administrative fees. SSA agrees that by funding the School Filtration Project, it will not receive any direct or indirect benefit.

Upon agreeing to the terms set forth in the SEP Agreement and funding the School Filtration Project, SSA is released of all liabilities as they relate to the School Filtration Project reflected in this Agreement. Should South Coast Air Management District not approve SSA's proposed payment of that amount into the School Filtration Project, SSA may, upon consultation with CARB, choose another SEP(s) or pay any balance to the California Air Pollution Fund. Payment into any SEP must be completed by November 27, 2017.

SSA will also send to counsel for CARB a copy of the document evidencing its payment to fund the School Filtration Project.

- c) **\$496,940.30** to the "The Northern California Breathmobile (NCB)," a SEP, which CARB has approved for mitigation for past violations. Pursuant to this Agreement, SSA shall, within 30 calendar days of executing this Agreement, comply with the NCB Agreement attached hereto regarding the NCB, and shall send a check to: "The Northern California Breathmobile Project," which shall include the entire SEP and all handling, service, or other administrative fees. SSA agrees that by funding this Project, it will not receive any direct or indirect benefit.

Upon agreeing to the terms set forth in the NCB Agreement and funding the NCB, SSA is released of all liabilities as they relate to the NCB reflected in this Agreement.

Should the NCB not approve SSA's proposed payment, SSA may, upon consultation with CARB, choose other SEP(s) or pay any balance to the California Air Pollution Fund. Payment into any SEP must be completed by November 27, 2017.

SSA will also send to counsel for CARB a copy of the document evidencing the payment to fund the NCB.

- d) SSA will not be responsible for the payment of any handling or service fees or fees of like nature that might be assessed in the administration or disbursement of the SEP as these fees will be taken out of the total SEP money.
- (3) Now therefore, in consideration of the penalty payment on behalf of SSA required by Section II, subdivision (2) above, CARB hereby releases SSA and certain of its affiliated companies and their principals, officers, agents, insurers, attorneys, predecessors, members, liquidators, and successors from claims for violations of the CHE Regulation alleged in in the recitals, above.

- (4) CARB will also file a Notice of Settlement after SSA executes this agreement, and will dismiss the Action within 30 calendar days of confirmation of the payments referenced in Section II, subdivision 2, above.

III. GENERAL PROVISIONS

- (1) This Agreement constitutes the entire agreement and understanding between CARB and SSA concerning the subject matter hereof, and supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and SSA concerning the subject matter hereof.
- (2) The payment obligation under Section II, subdivision (2) and the release obligations under Section II, subdivision (3) shall apply to and be binding upon SSA and its officers, directors, receivers, trustees, employees, successors and assignees, members, parent corporations, and subsidiaries and affiliates, if any; and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (3) The terms and conditions set forth in this Agreement shall remain valid and enforceable notwithstanding any future violations that may occur.
- (4) The effective date of this Agreement shall be the date upon which SSA executes this Agreement.
- (5) 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.
- (6) It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
- (7) This Agreement shall further serve to toll any statute of limitation related to any of the claims alleged in the Action until all terms and conditions of this Agreement have been fulfilled.
- (8) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
- (9) The headings in this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents of this Agreement.
- (10) This 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.

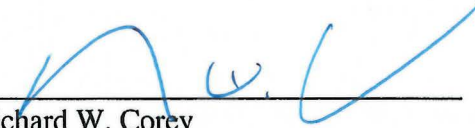
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- (11) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said party drafted it.
- (12) Each of the undersigned represents and warrants that he or she has full authority to enter into this Agreement.
- (13) CARB expressly reserves the right to bring an enforcement action based on violations of law not covered in this Agreement, including future violations, and to seek whatever fines, penalties, or remedies provided by law, including injunctive relief.

ACKNOWLEDGED AND ACCEPTED BY:

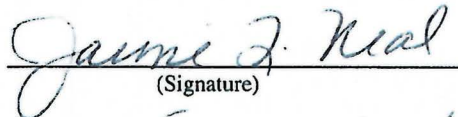
CALIFORNIA AIR RESOURCES BOARD

Dated: 11-16-2017

By: 
Richard W. Corey
Executive Officer


SSA CONTAINERS, INC.

Dated: 11-3-2017

By: 
(Signature)
Printed Name: Jaime L. Neal
Title: Senior Vice President

SSA TERMINALS (OAKLAND), LLC


Dated: 11-3-2017

By: 
(Signature)
Printed Name: William Hirai
Title: Vice President

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SSA TERMINALS (LONG BEACH), LLC

Dated: 11/3/17

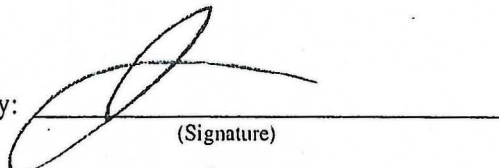
By: 
(Signature)

Printed Name: Matthew McCardell

Title: Secretary

SSA TERMINALS, LLC

Dated: 11/3/17

By: 
(Signature)


Printed Name: John Aldaya

Title: CFO

APPROVED AS TO FORM AND CONTENT


XAVIER BECERRA
ATTORNEY GENERAL OF CALIFORNIA

Dated: 11/14/17

By: 
Gary Tavean
Supervising Deputy Attorney General

RUSSELL, MIRKOVICH & MORROW

Dated: 11/13/2017

By: 
Joseph Mirkovich
Attorneys for SSA Containers, Inc.,
SSA Terminals (Long Beach), LLC
SSA Terminals (Oakland), LLC and
SSA Terminals, LLC

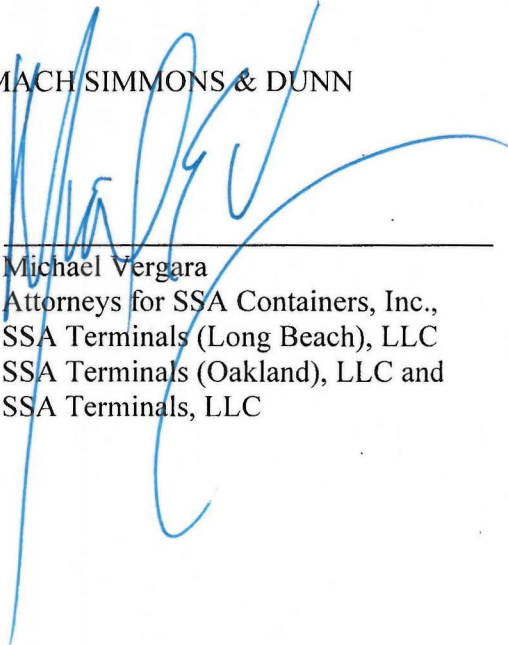
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Dated: _____

11/9/17

SOMACH SIMMONS & DUNN

By: _____


Michael Vergara
Attorneys for SSA Containers, Inc.,
SSA Terminals (Long Beach), LLC
SSA Terminals (Oakland), LLC and
SSA Terminals, LLC

SCHEDULE 1

SSA and its affiliate companies are to pay the following allocated share of the \$2,450,000.00 payment:

SSA Containers, Inc.:	\$1,480,290.00
SSA Terminals (Long Beach), LLC:	\$ 587,265.00
SSA Terminals (Oakland), LLC:	\$ 301,350.00
SSA Terminals, LLC:	\$ 81,095.00