

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 Rodolfo Nunez dba Nunez Transport aka Transportes Nunez (hereinafter "Rodolfo Nunez"), 9765 Marconi Drive, Suite 201 D, San Diego, California, 92154.

I. RECITALS

ECL

- (1) 13 CCR § 2183(c) states that "No 1974 or newer diesel powered heavy-duty commercial vehicle shall operate in California without evidence that, at the time of manufacture, the installed engine met emission standards at least as stringent as applicable federal emission standards for the model year of the engine". ARB shall base its determination on whether an engine meets the above requirements by inspecting the Emission Control Label (ECL) affixed to the vehicle's engine.
- (2) ARB has documented that RODOLFO NUNEZ failed to provide evidence that their vehicles have ECLs attached to the engines of heavy-duty diesel vehicles in its fleet in violation of HSC § 44011.6, and 13 CCR § 2183, *et seq.* Civil penalties for violation of the regulation covering ECLs have been set per 13 CCR § 2185(a)(2)(B) and § 2185(a)(3)(B) at \$800 per vehicle per violation.

TRUCK & BUS REGULATION

- (3) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB 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 13 CCR § 2025.
- (4) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."
- (5) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 39674(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) or ten thousand dollars (\$10,000), respectively, for each day in which the violation occurs.

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- (6) RODOLFO NUNEZ has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).
- (7) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) to meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012, all 2000 through 2004 engine model years by January 1, 2013, and all 2005 through 2006 engine model years by January 1, 2014, and upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, and 1994 and 1995 engine model years by January 1, 2016.
- (8) ARB has documented that RODOLFO NUNEZ failed to meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012, all 2000 through 2004 engine model years by January 1, 2013, and all 2005 through 2006 engine model years by January 1, 2014, and failed to upgrade all heavier vehicles with a 1993 and older model year engine to a 2010 model year emissions equivalent engine by January 1, 2015.

TRU

- (9) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive 10-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. 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 13 CCR § 2477.1 through 2477.21.
- (10) 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.
- (11) 13 CCR § 2477.5(e) requires that owner/operators of all California-based TRUs and TRU gen sets subject to this regulation shall apply for an ARB Identification Number (IDN) for all California-based TRUs or TRU gen sets operated by the operator by submitting an application to ARB.
- (12) 13 CCR § 2477.5(e)(1)(F) requires that within 30 days of receipt of the ARB-issued IDN, owners/operators of California-based TRUs and TRU gen sets permanently affix or paint the IDN to both sides of the TRU chassis housing.

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- (13) ARB Enforcement Division has documented that RODOLFO NUNEZ 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, failed to register their TRUs in ARB's Equipment Registration system (ARBER), and failed to affix ARB IDNs to both sides of the TRUs in their fleet within 30 days of receipt of ARB IDNs.
- (14) RODOLFO NUNEZ has 15 outstanding citations, as noted below:
- | | |
|-----------------|-----------------|
| STB070814006J.W | TRU070814008R.B |
| STB050615002V.A | TRU081814004J.W |
| STB052615005J.W | TRU090814003J.W |
| ECL052615005J.W | TRU111814002R.B |
| TRU042114003J.W | TRU042115001V.A |
| TRU060712002CCY | TRU052615006J.W |
| TRU061312004CCY | TRU050715001JW |
| TRU071212004J.W | |
- (15) In order to resolve these alleged violations, RODOLFO NUNEZ has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.
- (16) 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, ARB and RODOLFO NUNEZ agree as follows:

II. TERMS AND RELEASE

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

- (1) Upon execution of this Agreement, RODOLFO NUNEZ shall pay a civil penalty of \$48,200.00. Payment shall be made in eleven monthly payments as described below, beginning on **May 13, 2016**.

Payment Due Date:	In the Amount of and Payable to:
May 13, 2016	\$10,000.00 to the Peralta Colleges Foundation
June 13, 2016	\$2,050.00 to the Peralta Colleges Foundation \$1,770.00 to the Air Pollution Control Fund
July 13, 2016	\$3,820.00 to the Air Pollution Control Fund

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August 12, 2016	\$3,820.00	to the Air Pollution Control Fund
September 13, 2016	\$3,820.00	to the Air Pollution Control Fund
October 13, 2016	\$3,820.00	to the Air Pollution Control Fund
November 14, 2016	\$3,820.00	to the Air Pollution Control Fund
December 13, 2016	\$3,820.00	to the Air Pollution Control Fund
January 13, 2017	\$3,820.00	to the Air Pollution Control Fund
February 13, 2017	\$3,820.00	to the Air Pollution Control Fund
March 13, 2017	\$3,820.00	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:

Ms. HORTENCIA MORA
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, California 95812-1436

- (2) Effect of Untimely Payment. If any payment is more than 15 days late, the entire remaining balance becomes immediately due and payable. In addition, if the Attorney General files a civil action to enforce this settlement agreement, RODOLFO NUNEZ shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) It is agreed that if RODOLFO NUNEZ, including its subsidiary or parent company, at any time becomes insolvent, or makes an assignment for the benefit of creditors or similar action adversely involving RODOLFO NUNEZ, its subsidiary, or parent company, or a proceeding or petition under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, or receivership law or statute is filed by or against RODOLFO NUNEZ, its subsidiary, or parent company, or a trustee in bankruptcy, custodian, receiver or agent is appointed or authorized to take charge of any of RODOLFO NUNEZ's, its subsidiary, or parent company's properties, or if any deposit account or other property of RODOLFO NUNEZ, its subsidiary, or parent company be attempted

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to be obtained or held by writ of execution, garnishment, attachment, condemnation, levy, forfeiture or other legal process, or RODOLFO NUNEZ, its subsidiary, or parent company takes any action to authorize any of the foregoing, the entire remaining balance becomes immediately due and payable without notice or demand.

- (4) 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 RODOLFO NUNEZ for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on RODOLFO NUNEZ by ARB arising from the facts described in recital paragraphs (1) through (16) 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.
- (5) RODOLFO NUNEZ shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*
- (6) RODOLFO NUNEZ shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at <http://www.arb.ca.gov/enf/hdvp/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.
 - (a) RODOLFO NUNEZ shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - (b) If RODOLFO NUNEZ uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, RODOLFO NUNEZ shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (7) RODOLFO NUNEZ shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance),

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- described on the ARB's webpage <http://www.arb.ca.gov/enf/hdvp/ccdet/ccdet.htm>. 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) RODOLFO NUNEZ 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 RODOLFO NUNEZ uses a contractor for the maintenance of DEATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, RODOLFO NUNEZ 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 RODOLFO NUNEZ to ARB within six months of the date of this settlement and be maintained with the DEATS installation and maintenance records.
- (8) RODOLFO NUNEZ shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.
- (9) RODOLFO NUNEZ shall comply with the ECL regulation as codified in 13 CCR § 2183 and shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.
- (10) RODOLFO NUNEZ 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.
- (11) RODOLFO NUNEZ shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.
- (12) ARB acknowledges that RODOLFO NUNEZ submitted proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), prior to the execution of this Agreement.
- (13) ARB acknowledges that RODOLFO NUNEZ submitted proof of compliance with the Transport Refrigeration Unit regulation as codified in 13 CCR § 2477.5(a), prior to the execution of this Agreement.
- (14) Within 45 days of the execution of this Agreement, RODOLFO NUNEZ shall apply for an ARB IDN for each of the California-based TRUs or TRU gen sets

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that it owns and/or operates as required by 13 CCR § 2477.5(e) and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the IDN from ARB as required by 13 CCR § 2477.5(e)(1)(F). RODOLFO NUNEZ shall submit the proof of reporting in ARBER to Ms. Hortencia Mora, Air Pollution Specialist, California Air Resources Board, Enforcement Division, 9480 Telstar Avenue Suite 4, El Monte, California 91731.

- (15) RODOLFO NUNEZ has 15 outstanding citations as listed below, for not meeting the requirements of the Truck and Bus, Emissions Control Label, and Transport Refrigeration Unit programs. These citations will be cleared through this Agreement.

STB070814006J.W
STB050615002V.A
STB052615005J.W
ECL052615005J.W
TRU042114003J.W
TRU060712002CCY
TRU061312004CCY
TRU071212004J.W

TRU070814008R.B
TRU081814004J.W
TRU090814003J.W
TRU111814002R.B
TRU042115001V.A
TRU052615006J.W
TRU050715001JW

The above citations had become delinquent on various dates as a result of RODOLFO NUNEZ's not submitted payment or proof of correction in a timely manner.

- (16) RODOLFO NUNEZ shall not violate TRU ATCM as codified in 13 CCR § 2477.
- (17) This Agreement shall apply to and be binding upon RODOLFO NUNEZ, 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.
- (18) This Agreement constitutes the entire agreement and understanding between ARB and RODOLFO NUNEZ concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and RODOLFO NUNEZ concerning the subject matter hereof.
- (19) 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.

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- (20) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (21) 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.
- (22) 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.
- (23) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in HSC §§ 42403 and 43024.

ECL Violations

The per vehicle penalty for the labeling violations involved in this case is a maximum of \$300.00 per vehicle per violation. The penalty obtained for the ECL violation involved in this case is \$800.00 for one delinquent ECL violation ECL052615005J.W included in the penalty collected.

Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of \$1,000 per vehicle per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations. The penalty was discounted for financial hardship based on our Economic Section review.

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the Engine Model Year Compliance Schedule for heavier vehicles is \$30,000.00. Additionally, three Citations issued in the field STB070814006J.W, STB050615002V.A and STB052615005J.W was included in the penalty collected:

- Approximately \$16,015.00 for (4) vehicles with a 1996 through 1999 model year engine; and

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- Approximately \$8,008.00 for (2) vehicles with a 2000 through 2004 model year engine; and
- Approximately \$4,624.00 for (3) vehicles with a 2005 through 2006 model year engine; and
- Approximately \$1,353.00 for (1) vehicles with a 1993 and older model year engine.

The penalty was discounted due to extreme financial hardship and based on the fact that the violator made diligent efforts to comply and cooperate with the investigation.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per vehicle per day for negligent or intentional violations pursuant to HSC § 39674. The penalty obtained for the TRU violations involved in this case is \$17,400.00 for eleven delinquent field issued TRU violations operated by RODOLFO NUNEZ listed below.

TRU042114003J.W
TRU060712002CCY
TRU061312004CCY
TRU071212004J.W
TRU070814008R.B
TRU081814004J.W

TRU090814003J.W
TRU111814002R.B
TRU042115001V.A
TRU052615006J.W
TRU050715001JW

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

ECL Violations

The penalty provision being applied to the ECL requirements is 13 CCR § 2185(a)(2) because RODOLFO NUNEZ failed to provide evidence that one of his vehicles had an ECL attached as required.

Truck and Bus Violations

The penalty provision being applied for the Truck and Bus regulation (13 CCR § 2025) violations in this case is HSC § 39674 because the Truck and Bus regulation is an Airborne Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and because RODOLFO NUNEZ failed to bring their diesel fleet into compliance by the deadlines set forth in 13 CCR § 2025(g).

TRU Violations

The penalty provision being applied for the TRU ATCM (13 CCR § 2477) violations (including registration and labeling) is HSC § 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in HSC §§ 39002 et seq., 39650-39675 and RODOLFO NUNEZ, as an owner of TRUs, failed to bring all TRUs in its fleet into compliance by the deadlines set forth in the TRU ATCM and failed to register the TRUs in its fleet in ARBER.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

ECL Violations

The penalty is not being assessed under a provision of law that prohibits the emission of pollution at a specified level.

Truck and Bus Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant trucks involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

TRU Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the noncompliant TRUs involved and their individual emission rates are not known, it is not practicable to quantify the excess emissions.

- (24) RODOLFO NUNEZ acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (25) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift

compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

- (26) The penalty was based on confidential settlement communications between ARB and RODOLFO NUNEZ that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and RODOLFO NUNEZ and reflects ARB's assessment of the relative strength of its case against RODOLFO NUNEZ, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that RODOLFO NUNEZ may have secured from its actions.
- (27) Now therefore, in consideration of the payment on behalf of RODOLFO NUNEZ to the Air Pollution Control Fund and the Peralta Colleges Foundation, ARB hereby releases RODOLFO NUNEZ and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (14) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: _____

Print Name: Ellen M. Peter

Title: Chief Counsel

Date: June 6, 2016

RODOLFO NUNEZ

Signature: _____

Print Name: RODOLFO NUNEZ VALDEZ

Title: TRANSPORTES NUNEZ OWNER

Date: 5/10/16