

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into between the California Air Resources Board (CARB), with its principal location at 1001 I Street, Sacramento, California 95814; and Best Energy Solutions & Technology Corp., with its principal location at 417 Watts Drive, Bakersfield, California 93307 (BEST Corp.) and its Chief Executive Officer, George Sturges (together, "BEST" or the "Defendants," and collectively with CARB, the "Parties," or individually, "Party").

### LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of oxides of nitrogen (NO<sub>x</sub>). (Health & Saf. Code, §§ 39002, et seq., 39650-39675.)
- (2) Regulation. CARB's Regulation on Commercialization of Alternative Diesel Fuels (the ADF Regulation) encourages the use of low-polluting alternative diesel fuels to reduce the public health and environmental impacts of California's transportation sector, while requiring biodiesel blends above specified biodiesel percentages to employ measures to mitigate NO<sub>x</sub> emissions. (Cal. Code of Reg., tit. 13, § 2293 et seq.)
- (3) Regulatory Provisions. CARB must certify a NO<sub>x</sub>-mitigating biodiesel additive as an "emissions equivalent" additive in order for a biodiesel formulation with that additive to be sold and used in California. The ADF Regulation sets forth the procedural and substantive requirements for certification of a biodiesel additive, including detailed specifications for how an applicant's emissions testing must be performed. (Cal. Code Regs., tit. 13, Ch. 5, Art. 3, App'x 1 to Subart. 2.) The testing requirements provide:
  - (a) The applicant must test the emissions of a reference fuel (a conventional, petroleum-based diesel with fuel properties falling within certain specified ranges) and a candidate fuel blended from the reference fuel, a biodiesel blendstock, and the NO<sub>x</sub>-mitigating additive at a proposed treat rate (*id.*, subd. (a)(2)(B)(2));
  - (a) The reference fuel must have an API Gravity (a measure of the relative density of a petroleum liquid compared to water, which was created by the American Petroleum Institute) in the range of 33-39 (*id.*, subd. (a)(2)(E)(1), Table A.9); and
  - (b) The candidate fuel must be representative of the fuel that the applicant will produce commercially and must not contain streams or feedstocks

that will not be used in the commercial fuel that the applicant intends to sell (*id.*, subd. (a)(2)(C)(1)).

- (4) Penalty Provisions. Willful violations of the ADF Regulation's requirements may result in penalties up to \$250,000 and a disgorgement of economic gain. (Health & Saf. Code § 43027, subd. (a).) Maximum penalties of \$50,000 and \$35,000 apply to negligent and strict liability violations, respectively. (*Id.*, subd. (b)-(c).) Any person who enters false information in, or fails to keep, any document required to be kept pursuant to the ADF Regulation is strictly liable to up to \$25,000 per violation. (*Id.*, subd. (d).) Compensatory, consequential, and exemplary damages are further available in a fraud action. (See Civil Code § 1709.)

### **CASE BACKGROUND**

- (5) Corporate Entity. At all relevant times, BEST was organized under the laws of California as a single-member S corporation headquartered in Bakersfield, California.
- (6) Allegations. On June 5, 2018, CARB issued Executive Order G-714-ADF05 certifying BC-EC1c as an "emissions equivalent" additive, thereby allowing certain biodiesel blends additized with BC-EC1c to be sold and used in California. CARB issued Executive Order G-714-ADF05, and an amended Executive Order G-714-ADF05A, based on a February 15, 2018 testing protocol submitted by BEST and approved by CARB and emissions testing performed by Southwest Research Institute. Subsequently, CARB investigated BEST and commenced an enforcement action, *People ex rel. CARB v. BEST*, Los Angeles Superior Court, Case No. 22STCV32487.
- (7) Disputed Allegations. In that enforcement action, CARB alleges that BEST's testing protocol misrepresented the fuel properties of the reference and candidate fuels used in the Southwest Research Institute tests and included an undisclosed NOx-reducing agent in the candidate fuel. CARB alleges that, by this deception, BEST made it appear that the BC-EC1c-additized biodiesel had achieved NOx emissions equivalence to CARB Diesel when BC-EC1c in fact had no such effect. BEST disputes and denies each of the disputed allegations in this paragraph 7.
- (8) Acknowledgement. BEST admits the facts in paragraphs 1 through 6 of this Settlement Agreement. With respect to paragraph 7 of this Settlement Agreement, BEST denies any liability resulting from said allegations.
- (9) Consideration. 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, as further alleged in

the Complaint filed in Case No. 22STCV32487 ("Complaint"), and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the alleged violations described herein, BEST has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB terminating its legal action against the Defendants for the alleged violations referred to above in the Legal Background and Case Background, and the Defendants' agreement to complete all terms and conditions set forth below, the Parties agree that BEST Corp. and George Sturges are jointly and severally responsible for compliance of all terms and conditions in this agreement. Those terms and conditions are as follows:

- (10) Business Prohibition. Defendants shall not participate in California's ADF market or certified diesel fuel formulation market (the "2282(g) market") for a period of 10 years. For purposes of this provision, "Defendants" includes any entity owned or controlled by Mr. Sturges that is involved in the development and sale of diesel fuel or diesel fuel additives for use by road vehicles in California. "Participate" in the California ADF market or 2282(g) market means: (i) the commercial development, certification, and sale or marketing of a BEST-made proprietary alternative diesel fuel or BEST-made additive under Appendix 1 of the ADF Regulation (Cal. Code Regs., tit. 13, Div 3, Ch. 5, Art. 3, Subart. 2, §§ 2293-2293.9); (ii) the commercial development, certification, and sale or marketing of a BEST-made certified diesel fuel formulation under Section 2282(g) of the California Code of Regulations, title 13; or (iii) any of the foregoing activities through a third party or agent on behalf of Defendants. However, Defendants shall not be prohibited from any other fuel distribution business activities, including the sale, marketing, or transportation of (i) others' certified ADF or diesel formulations or (ii) diesel formulations which Sturges assisted in creating prior to his establishing of BEST Corp. Notwithstanding the foregoing, BEST may request CARB waive or modify the above business prohibition to allow it to participate in the ADF market or 2282(g) market under conditions that meet or exceed regulatory requirements and that are acceptable to CARB at its sole discretion. Denial of such a request shall not be subject to administrative or judicial review. However, neither the request itself nor participation according to the terms of CARB's grant of such a waiver or modification shall be a violation of this section.

(11) Settlement Amount and Suspended Penalties. Defendants' total settlement amount is eleven million ninety thousand dollars (\$11,090,000.00 USD). Of that amount, Defendants shall pay a civil penalty of one hundred fifty thousand dollars (\$150,000.00 USD), with ten million nine hundred forty thousand dollars (\$10,940,000.00 USD) being suspended. The ten million nine hundred forty thousand dollars (\$10,940,000.00 USD) suspended portion of the penalty only becomes payable if BEST violates the business prohibition in Paragraph 10 (Business Prohibition).

(12) Payment Plan and Schedule. BEST shall pay the one hundred fifty thousand dollars (\$150,000.00 USD) civil penalty in quarterly installments over a period of five years, beginning on June 30, 2024, in equal quarterly payment amounts to be paid by September 30, December 30, March 30, and June 30 of each year in amounts that sum to the annual totals in the schedule below:

Year 1	\$10,000.00	by June 30, 2025
Year 2	\$20,000.00	by June 30, 2026
Year 3	\$30,000.00	by June 30, 2027
Year 4	\$40,000.00	by June 30, 2028
Year 5	\$50,000.00	by June 30, 2029

(13) BEST Noncompliance. In the event BEST violates the business prohibition in Paragraph 10 (Business Prohibition) or does not make payment of the annual amount owed by the June 30 deadline for that year as specified in this paragraph, the entirety of the civil penalty amount is immediately due and owing, including the entirety of the suspended penalty and any portion of the one hundred fifty thousand dollars (\$150,000 USD) civil penalty amount not yet paid. Otherwise, this suspended portion of the penalty shall be deemed satisfied if BEST has not violated Paragraph 10 (Business Prohibition) and has otherwise made all timely payments as specified in this paragraph and Paragraph 12 (Payment Plan and Schedule). If BEST fails to comply with any payments according to the payment schedule identified in Paragraph 12 (Payment Plan and Schedule), BEST shall pay an additional stipulated penalty of \$1,000.00 for each full day payment is not made.

(14) CARB Requests for Documents or Records. CARB may request, no more than once per year while the business prohibition in Paragraph 10 (Business Prohibition) is in place, and BEST shall provide, the documents or records relevant to confirming compliance with the business prohibition in paragraph 10, including but not limited to BEST's filed tax returns. If CARB has good cause to believe that BEST has violated the business prohibition in Paragraph 10 (Business Prohibition), CARB may request documents or records relevant to confirming

BEST's compliance with the business prohibition in Paragraph 10 (Business Prohibition), even if CARB has previously requested records in the same calendar year. Any such requested documents or records are to be delivered to CARB within 30 calendar days of the request. This deadline may be extended by agreement of the Parties.

- (15) Civil Penalty Payment Method. BEST shall pay all civil penalties, including the one hundred fifty thousand dollars (\$150,000.00 USD) civil penalty, any stipulated penalties, and the suspended portion of the penalty (if applicable), by check, credit card, wire transfer, or portal, payable to the California Air Resources Board, using instructions provided separately by CARB in a Payment Transmittal Form. BEST is responsible for all payment processing fees. The Payment Transmittal Form shall accompany payments to ensure proper application. At the time payment is made, BEST shall email proof of payment with a copy of the Payment Transmittal Form to the email address for CARB provided in Paragraph 17 (Notices). CARB shall deposit the civil penalty amount into CARB's Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to BEST in accordance with Paragraph 17 (Notices).
- (16) Documents. BEST shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 17 (Notices).
- (17) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Enforcement Division / Settlement Agreements  
Statewide Truck and Bus Enforcement Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to BEST:

George Sturges  
BEST Corp.  
417 Watts Drive  
Bakersfield, California 93307

gsturges@bestfuelscorp.com

*with copy to*

Andrew J. Bedigian  
Larson LLP  
555 S. Flower St.  
30<sup>th</sup> Floor  
Los Angeles, CA 90071  
abedigian@larsonllp.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (18) Recovery of Costs. Each Party shall bear its own costs and attorneys' fees incurred in this matter through the effective date of this Settlement Agreement.
- (19) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 10 pages and 37 numbered paragraphs.
- (20) Binding Effect. This Settlement Agreement binds BEST and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (21) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed. A Notice of Settlement of Entire Case shall be filed by CARB within 15 business days after the effective date of this Settlement Agreement. Within 15 business days of the effective date, CARB shall file a request for dismissal without prejudice.
- (22) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (23) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid

or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.

- (24) Choice of Law. This Settlement 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.
- (25) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 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 the benefit of a governmental unit.
- (26) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (27) Non-Waiver. The failure to enforce any provision of this Settlement 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 Settlement 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 Settlement Agreement or otherwise provided by law.
- (28) Intent to Be Bound. The Parties represent that: They have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (29) Venue. The Superior Court of California, located in the County of Los Angeles, shall hear any dispute between the Parties arising from this Settlement Agreement. The Parties expressly acknowledge that the Stipulation and Protective Order entered by the Court on April 4, 2023, in Case No. 22STCV32487 remains in full force and effect. (See, e.g., Stipulation and Protective Order [04/04/2023], ¶¶ 10, 23.)

- (30) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (31) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases BEST and BEST principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB has or may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (32) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

### **PENALTY BASIS**

- (33) Per Unit Penalty. The per unit penalty in this case is a maximum penalty amount of two hundred fifty thousand dollars (\$250,000.00 USD) per violation under Health and Safety Code section 43027, for violations of the ADF Regulation. (Cal. Code Regs., tit. 13, § 2293 et seq.)
- (34) Emissions. The provisions cited above do not prohibit emissions above a specified level.
- (35) Aggravating and Mitigating Factors. The penalties in this matter were determined in consideration of all relevant circumstances, including statutory factors as described by CARB's Enforcement Policy. CARB considered whether the violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to violation; action taken to mitigate the violation; financial burden to the violator; and voluntary disclosure. The penalties are set at levels sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (36) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by BEST or confidential settlement communications.



(37) Effect of Settlement/Reservation of Rights. The following shall apply:

- (a) This Settlement Agreement resolves all of CARB's claims for the violations alleged in the Complaint in this matter.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against BEST with respect to all matters not expressly resolved in this Settlement Agreement. Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against BEST with respect to:
  - i. Noncompliance with or enforcement of any provision of this Settlement Agreement.
  - ii. Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly alleged in the Complaint and therefore not resolved in this Settlement Agreement.
  - iii. Any imminent and substantial endangerment to the public health, welfare, or the environment in California, resulting from conduct not expressly alleged in the Complaint and therefore not resolved by this Settlement Agreement.
  - iv. Any claim(s) of any officer or agency of the United States or California not bound by this Settlement Agreement. This Settlement Agreement is made and entered into by and on behalf of CARB only.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, BEST shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of BEST or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against BEST, except as otherwise provided

by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.

- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. BEST is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; BEST's compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or waver in any manner that BEST's compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Steven S. Cliff, Ph.D.

Title: Executive Officer

Date: July 31, 2024

**Best Energy Solutions & Technology Corp.**

Signature: /S/

Name: George Sturges

Title: Chief Executive Officer

Date: July 22, 2024