

SETTLEMENT AGREEMENT

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 Progressive Produce LLC, also *dba* Pathfinder Logistics (collectively, "Progressive *dba* Pathfinder"), with their principal location at 5790 Peachtree Street, Los Angeles, California 90040 (collectively, the "Parties," or individually, "Party").

LEGAL BACKGROUND

- (1) Purpose. The California Health and Safety Code mandates the reduction of the emission of toxic air contaminants (TAC). CARB has determined that particulate matter (PM) from diesel-fueled engines is a TAC. (Health & Saf. Code §§ 39002, et seq., 39650-39675.) Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic PM.
- (2) Regulation.
 - a. CARB adopted the *"Off-Road Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate"* Regulation (TRU Regulation) to reduce diesel PM and criteria pollutant emissions from diesel-fueled TRUs and TRU generator sets (TRU genset). (Cal. Code Regs., tit.13, § 2477 et seq.)
 - b. CARB adopted the *Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles* (Truck and Bus Regulation) to reduce diesel PM and criteria pollutant emissions from on-road heavy-duty diesel-fueled vehicles. (Cal. Code Regs., tit.13, § 2025.)
- (3) Regulatory Provisions.
 - a. Owners and operators of TRU and TRU gensets must comply with the in-use performance standards, apply for a CARB Identification Number (IDN), affix or paint the IDN to both sides of the TRU chassis housing, and report the inventory information for each TRU and TRU genset into CARB's online database called ARBER. (Cal. Code Regs., tit. 13, § 2477.5, 2477.6.)
 - b. Any person, business, federal government agency, school district or school transportation provider, or broker, that owns, operates, leases, rents or sells vehicles in California that operate on diesel-fuel, dual-fuel, or alternative diesel-fuel, that are registered to be driven on public highways, were originally designed to be driven on public highways whether or not they are registered, yard trucks with on-road engines or yard trucks with off-road engines used for agricultural operations, both

engines of two-engine sweepers, school buses, and have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds must comply with broker requirements. (Cal. Code Regs., tit. 13, § 2025.)

- (4) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to ten thousand nine hundred ten dollars (\$10,910.00 USD) for strict liability violations; respectively, for each day in which the violation occurs. (Cal. Code Regs., tit.13, § 2025, 2477-2477.21; Health & Saf. Code §§ 39674, 39675, 42400 et seq., 42402 et seq., and 42410.)

CASE BACKGROUND

- (5) Corporate Entity.

- a. At all relevant times, Progressive *dba* Pathfinder was organized under the laws of Delaware as a limited liability company and was registered and conducted business in the State of California.
- b. At all relevant times, Pathfinder Logistics was Progressive *dba* Pathfinder, and conducted business in the State of California.

- (6) Allegations.

- a. This Settlement Agreement resolves Notice of Violation (NOV) HDD-2019-0024, which was issued on August 25, 2020. CARB alleges Progressive *dba* Pathfinder violated the TRU Regulation by failing to comply with the in-use compliance requirements by the compliance date (Cal. Code Regs., tit. 13, § 2477.5(a)), resulting in three violations, as outlined in Notice of Violation HDD-2019-0024. CARB alleges that if paragraphs 5 and 6 of this Settlement Agreement were proven, civil penalties could be imposed against Progressive *dba* Pathfinder for each and every vehicle involved in the violations and each day.
- b. This Settlement Agreement resolves Notice of Violation (NOV) HDD-2019-0025, which was issued on August 25, 2020. CARB alleges Progressive *dba* Pathfinder, violated the Truck and Bus Regulation by failing to comply with the broker requirements (Cal. Code Regs., tit. 13, § 2025(x)(2)), resulting in 50 violations from the years 2017, 2018, and 2019, as outlined in the Notice of Violation HDD-2019-0025. CARB alleges that if paragraphs 5 and 6 of this Settlement Agreement were proven, civil penalties could be imposed against Progressive *dba* Pathfinder for each and every vehicle involved in the violations and each day.

- (7) Acknowledgment. Progressive *dba* Pathfinder admits to the facts in paragraphs 5 and 6, but denies any liability resulting from said allegations.
- (8) 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 and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the violations described herein, Progressive *dba* Pathfinder 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 not filing a legal action against Progressive *dba* Pathfinder for the alleged violations referred to above in the Legal Background and Case Background, and Progressive *dba* Pathfinder's agreement to complete all terms and conditions set forth below, CARB and Progressive *dba* Pathfinder agree as follows:

- (9) Settlement Amount. Progressive *dba* Pathfinder shall pay a total civil penalty settlement of fifty-three thousand dollars (\$53,000.00 USD). Progressive *dba* Pathfinder shall make payment in full within 60 calendar days from the date CARB provides Progressive *dba* Pathfinder with a copy of the fully executed Settlement Agreement.
- (10) Civil Penalty Payment Method. Progressive *dba* Pathfinder shall pay the civil penalty by check, credit card, wire transfer, or portal, payable to CARB, using instructions provided separately by CARB in a Payment Transmittal Form. Progressive *dba* Pathfinder are responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the civil penalty amount to 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 Progressive *dba* Pathfinder in accordance with Paragraph 13 (Notices).
- (11) Other Relief.
 - a. Progressive *dba* Pathfinder shall only operate compliant TRUs with the applicable in-use performance standards as required by California Code of Regulations, title 13, section 2477.5(a).

- b. Progressive *dba* Pathfinder shall not operate or direct the operation of any vehicle subject to the Truck and Bus Regulation without verifying the hired fleets pursuant to California Code of Regulations, title 13, section 2025(x)(2). Upon CARB's request, Progressive *dba* Pathfinder shall submit to CARB copies of records, pursuant to California Code of Regulations, title 13, section 2025 subsections (x)(2) and (s)(4). CARB reserves the right to visit Progressive *dba* Pathfinder California location(s) at any time during hours of operations to conduct audits for the compliance requirements codified in California Code of Regulations, title 13, section 2025(x)(2), or any other applicable CARB program.
- (12) Documents. Within 60 calendar days of receiving a copy from CARB of the fully executed Settlement Agreement, Progressive *dba* Pathfinder shall promptly email or mail the signed and dated Settlement Agreement, with copy of proof of payment of the penalty together with a copy of the Payment Transmittal Form to the address or email in Paragraph 13 (Notices).
- (13) 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
Diesel Program Enforcement Branch / Freight Hub Enforcement Section
P.O. Box 2815
Sacramento, California 95812-2815
Settlement_Agreement@arb.ca.gov

As to Progressive *dba* Pathfinder:

Simon Miller
Progressive Produce LLC
15130 Northam St.
La Mirada, CA 90638
Simon@ProgressiveProduce.com

With a Copy to Hartman King PC Legal Representation:

Alanna Lungren and Jennifer Hartman King
Hartman King PC
520 Capitol Mall, Suite 750
Sacramento, California 95814
ALungren@HartmanKingLaw.com
JHartmanKing@HartmanKingLaw.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.

- (14) Repeat Violations. Progressive *dba* Pathfinder agrees to comply with all regulatory requirements and acknowledges that repeat violations could result in increased penalties in the future.
- (15) 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 9 pages and 33 paragraphs.
- (16) Binding Effect. This Settlement Agreement binds Progressive *dba* Pathfinder 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.
- (17) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.
- (22) 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.

- (23) 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.
- (24) 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.
- (25) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (26) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile or photocopied signatures shall be considered as valid signatures.
- (27) Release. In consideration of full payment of the civil penalty, and all other undertakings above, CARB hereby releases Progressive *dba* Pathfinder and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in all paragraphs contained in the Case Background above.
- (28) Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.

PENALTY BASIS

- (29) Per Unit Penalty.
- a. The per unit or per vehicle penalty in this case is a maximum of ten thousand nine hundred ten dollars (\$10,910.00 USD) per day under Health and Safety Code section 39674, for violations of the TRU Regulation. (Cal. Code Regs., tit.13, § 2477.19.) The penalty of three thousand dollars (\$3,000.00 USD) over an unspecified number of days of violation is for three alleged noncompliant TRUs or TRU gensets. The per unit penalty in this case is approximately one thousand dollars (\$1,000.00 USD).

- b. The per unit or per vehicle penalty in this case is a maximum of ten thousand nine hundred ten dollars (\$10,910.00 USD) per day under Health and Safety Code section 39674, for violations of the Truck and Bus Regulation. (Cal. Code Regs., tit.13, § 2025.) The penalty of fifty thousand dollars (\$50,000.00 USD) over an unspecified number of days of violation is for alleged failure to verify that hired or dispatched vehicles were in compliance with the Truck and Bus Regulation. The penalty obtained for the alleged Truck and Bus violation involved in this case is fifty thousand dollars (\$50,000.00 USD) for 50 hired fleets in the years 2017, 2018, and 2019. The per unit penalty in this case is approximately one thousand dollars (\$1,000.00 USD).
- (30) Emissions. The provisions cited above do not prohibit emissions above a specified level.
- (31) 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.
- (32) Confidential Business Information. CARB may have based this penalty in part on confidential business information provided by Progressive *dba* Pathfinder or confidential settlement communications.
- (33) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves all claims that CARB had or could have brought related to the alleged facts and violations alleged in this Settlement Agreement.
- (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against Progressive *dba* Pathfinder 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 Progressive *dba* Pathfinder with respect to:

- (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
 - (ii) Facts that were not disclosed by Progressive *dba* Pathfinder to CARB.
 - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.
 - (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the violations addressed in this Settlement Agreement or otherwise.
 - (v) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (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, Progressive *dba* Pathfinder 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 Progressive *dba* Pathfinder 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 Progressive *dba* Pathfinder, 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. Progressive *dba* Pathfinder are responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that Progressive *dba* Pathfinder'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: Ellen M. Peter

Title: Chief Counsel

Date: January 24, 2023

Progressive Produce LLC *dba* Pathfinder Logistics

Signature: /S/

Name: Simon Miller

Title: Chief Financial Officer

Date: January 16, 2023