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Attorney General of California  
RICHARD J. MAGASIN  
Supervising Deputy Attorney General  
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*Attorneys for Plaintiff, the People of the State  
of California ex rel. the California Air  
Resources Board*

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT

DEC 14 2012  
*Ally Martin*  
*TAWNY MARTIN*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

**THE PEOPLE OF THE STATE OF CALIFORNIA  
EX REL. THE CALIFORNIA AIR RESOURCES  
BOARD,**

**Plaintiff,**

v.

**FOSTER ENTERPRISES, GREGORY FOSTER,  
ANNA MAE FOSTER, GARY D. FOSTER,  
STANLEY M. FOSTER, AND JEFFERY C.  
FOSTER,**

**Defendants.**

Case No. CIVRS 1102120

ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE BARRY L. PLOTKIN

**[PROPOSED] JUDGMENT PURSUANT  
TO STIPULATION AGAINST FOSTER  
ENTERPRISES**

Trial Date: November 19, 2012

Action Filed: February 28, 2011

1 Health and Safety Code sections 39650-39675 mandate the reduction in the emissions of  
2 substances that have been determined to be toxic air contaminants. In 1998, following an  
3 exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate  
4 matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units  
5 (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are  
6 controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

7 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU  
8 or TRU generator set in California unless it meets specified in-use emission category performance  
9 standards.

10 Operating a TRU that does not comply with in-use emission standards is a violation of state  
11 law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2  
12 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or  
13 forty thousand dollars (\$40,000) for each day that the violation occurs.

14 The Air Resources Board's Enforcement Division has documented, and Defendants admit,  
15 that Defendants operated at least thirty-two (32) TRUs that were not in compliance with  
16 California's in-use performance standards.

17 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory  
18 Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5,  
19 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M.  
20 Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

21 Plaintiff and Defendants desire to fully settle and and resolve this Action without further  
22 litigation. Plaintiff has reached an agreement with Defendants to that end. A true and correct  
23 copy of the Settlement Agreement, executed by all parties, is attached to this Judgment Pursuant  
24 to Stipulation as **Exhibit A**. The Settlement Agreement provides that "[t]his Settlement  
25 Agreement shall be incorporated into [a] Judgment Pursuant to Stipulation, and shall be  
26 enforceable pursuant to Code of Civil Procedure section 664.6." It further provides that "[t]he  
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28

1 Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to  
2 enforce this Settlement Agreement until Defendants' performance thereunder is complete."

3 IT IS THEREFORE STIPULATED by the parties that this Action has been settled pursuant  
4 to Code of Civil Procedure section 664.6 on the terms set forth in the Settlement Agreement  
5 attached as Exhibit A. The parties request that the Court enter judgment accordingly, and retain  
6 jurisdiction of this Action to enforce the Settlement Agreement until Defendants' performance  
7 thereunder is complete.

8 IT IS FURTHER STIPULATED by the parties that this Stipulation may be executed in  
9 counterparts or duplicate originals, all of which shall be regarded as one and the same instrument,  
10 and which shall be the official and governing version in the interpretation of this Stipulation.  
11 This Stipulation may be executed by PDF or facsimile signatures and such signatures shall be  
12 deemed to bind each signatory as if they were original signatures. This Stipulation shall be  
13 deemed duly executed, effective, and binding, upon the signing of the last counterpart by the  
14 signatories hereto.

15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October 31, 2012

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19   
20 Jeffrey J. Foster  
21 General Partner and Management  
22 Committee Member

21 Dated: October \_\_, 2012

22  
23 Stanley M. Foster  
24 General Partner and Management  
25 Committee Member

25 Dated: October \_\_, 2012

26  
27 Anna Mae Foster  
28 General Partner

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Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to enforce this Settlement Agreement until Defendants' performance thereunder is complete."

IT IS THEREFORE STIPULATED by the parties that this Action has been settled pursuant to Code of Civil Procedure section 664.6 on the terms set forth in the Settlement Agreement attached as Exhibit A. The parties request that the Court enter judgment accordingly, and retain jurisdiction of this Action to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

IT IS FURTHER STIPULATED by the parties that this Stipulation 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 Stipulation. This Stipulation may be executed by PDF or facsimile signatures and such signatures shall be deemed to bind each signatory as if they were original signatures. This Stipulation shall be deemed duly executed, effective, and binding, upon the signing of the last counterpart by the signatories hereto.

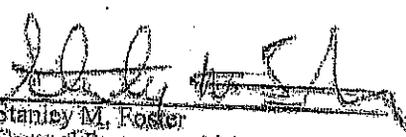
**IT IS SO STIPULATED.**

**For Defendant Foster Enterprises**

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

  
\_\_\_\_\_  
Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster  
General Partner

1 Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to  
2 enforce this Settlement Agreement until Defendants' performance thereunder is complete.

3 IT IS THEREFORE STIPULATED by the parties that this Action has been settled pursuant  
4 to Code of Civil Procedure section 664.6 on the terms set forth in the Settlement Agreement  
5 attached as Exhibit A. The parties request that the Court enter judgment accordingly, and retain  
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7 thereunder is complete.

8 IT IS FURTHER STIPULATED by the parties that this Stipulation may be executed in  
9 counterparts or duplicate originals, all of which shall be regarded as one and the same instrument,  
10 and which shall be the official and governing version in the interpretation of this Stipulation.  
11 This Stipulation may be executed by PDF or facsimile signatures and such signatures shall be  
12 deemed to bind each signatory as if they were original signatures. This Stipulation shall be  
13 deemed duly executed, effective, and binding, upon the signing of the last counterpart by the  
14 signatories hereto.

15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October \_\_, 2012

18  
19 Jeffery C. Foster  
20 General Partner and Management  
Committee Member

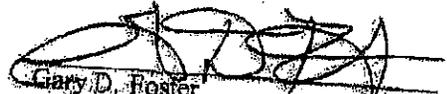
21 Dated: October \_\_, 2012

22  
23 Stanley M. Foster  
24 General Partner and Management  
Committee Member

25 Dated: October 31, 2012

26  
27 Anna Marie Foster  
28 Anna Marie Foster  
General Partner

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Gary D. Foster  
General Partner.

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Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Gary D. Foster

Dated: October 31, 2012

  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012.

Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

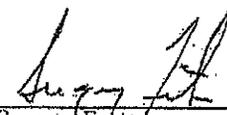
Gregory Foster

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Dated: October \_\_, 2012

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Gary D. Foster  
General Partner

Dated: October 29, 2012

  
\_\_\_\_\_  
Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

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Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

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Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

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Stanley M. Foster

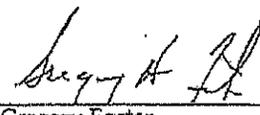
For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October 29, 2012

  
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Gregory Foster

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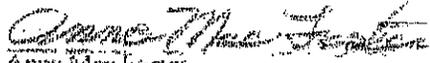
Gary D. Foster  
General Partner

Dated: October 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October 21, 2012

  
Anna Mae Foster

For Defendant Gary D. Foster

Dated: October 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 2012

Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October 2012

Gregory Foster

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Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mac Foster

Dated: October \_\_, 2012

Anna Mac Foster

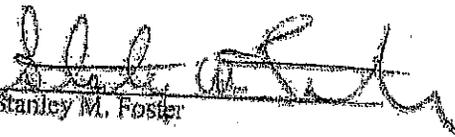
For Defendant Gary D. Foster

Dated: October \_\_, 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 31, 2012

  
Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

1 Dated: October \_\_, 2012

Gary D. Foster  
General Partner

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5 Dated: October \_\_, 2012

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7 Gregory Foster  
General Partner

8 For Defendant Anna Mae Foster

9 Dated: October \_\_, 2012

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11 Anna Mae Foster

12 For Defendant Gary D. Foster

13 Dated: October \_\_, 2012

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15 Gary D. Foster

16 For Defendant Stanley M. Foster

17 Dated: October \_\_, 2012

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19 Stanley M. Foster

20 For Defendant Jeffery C. Foster

21 Dated: October 31, 2012

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Jeffery C. Foster

24 For Defendant Gregory Foster

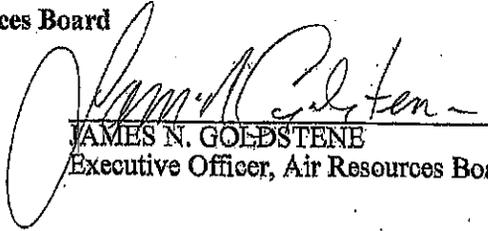
25 Dated: October \_\_, 2012

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

  
JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October 31, 2012

LAW OFFICES OF STEVEN GLASER

  
STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: October \_\_, 2012

JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October <sup>29</sup> 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES



WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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**JUDGMENT**

Pursuant to the foregoing Stipulation of the parties and the Court's power under Code of Civil Procedure section 664.6, and good cause appearing for approval of the Stipulation,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment be, and hereby is, entered against FOSTER ENTERPRISES in accordance with the terms of the Settlement Agreement between the parties, attached as **Exhibit A** hereto. This judgment expressly incorporates the terms of the attached Settlement Agreement. The Court retains jurisdiction over the parties at their request to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: 12-14, 2012



Honorable ~~Barry L. Plotkin~~  
Judge of the Superior Court

**GILBERT G. OCHOA**

**EXHIBIT A**

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into by and between the People of the State of California *ex rel.* the California Air Resources Board ("Plaintiff") on the one hand, and Foster Enterprises, Gregory Foster, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster (collectively, "Defendants") on the other hand. Plaintiff and Defendants hereinafter sometimes are referred to collectively as "Parties" and individually as "Party."

### 1. RECITALS

1.1 This Settlement Agreement is made with reference to the following facts:

1.1.1 Health and Safety Code sections 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, the Air Resources Board identified particulate matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

1.1.2 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU or TRU generator set in California unless it meets specified in-use emission category performance standards.

1.1.3 Operating a TRU that does not comply with in-use emission standards is a violation of state law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or forty thousand dollars (\$40,000) for each day that the violation occurs.

1.1.4 The Air Resources Board's Enforcement Division has documented, and Defendants admit, that Defendants operated at least thirty-two (32) TRUs that were not in compliance with California's in-use performance standards.

1.1.5 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5, 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

1.1.6 Plaintiff and Defendants now desire and intend to fully and finally settle and resolve all disputes that exist or that may exist between the Parties with regard to the Action.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH THE PARTIES HEREBY ACKNOWLEDGE, THE PARTIES AGREE AS FOLLOWS:

## **2. INJUNCTIVE RELIEF & PENALTIES**

### **2.1 PERMANENT INJUNCTION**

2.1.1 Defendants and their agents, servants, employees, representatives, and all persons acting in concert or participating with them, and each of them, are permanently enjoined and ordered not to violate any applicable statutes and regulations currently in effect under the jurisdiction of the California Air Resources Board, as well as any and all applicable statutes and regulations that may be enacted in the future under the jurisdiction of the California Air Resources Board.

2.1.2 No provision of the injunction shall bar Plaintiff from seeking other judicial remedies (including penalties or injunctive relief) as to future violations.

### **2.2 CIVIL PENALTIES**

2.2.1 Defendants shall pay Plaintiff a total penalty of Three Hundred Thousand dollars (\$300,000) under Health and Safety Code sections 39674, 39675 and 42402.2.

2.2.2 Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, jointly and severally, shall be responsible for paying Two Hundred Eighty Thousand Five Hundred dollars (\$280,500) of the total penalty. However, the payment of Ninety Three Thousand Five Hundred dollars (\$93,500) of that amount shall be stayed (Stayed Penalty Amount No. 1) as long as the following conditions are met:

(a) Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, or any of them, do not intentionally violate the permanent injunction for a period of at least five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises; and

(b) Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, or any of them, do not violate the payment conditions for payment of One Hundred Eighty Seven Thousand dollars (\$187,000) of the total civil penalty, as set forth below.

2.2.3 Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, jointly and severally, shall pay Plaintiff the sum of One Hundred Eighty Seven Thousand dollars (\$187,000) in twenty (20) separate payments over a twenty (20) month period. A first payment of Nine Thousand Three Hundred Fifty dollars (\$9,350) shall be made on January 1, 2013. The nineteen (19) remaining payments of Nine Thousand Three Hundred and Fifty dollars (\$9,350) each shall be made on the first day of the month for nineteen (19) consecutive months, starting on February 1, 2013.

2.2.4 Gregory Foster shall be responsible for paying Nineteen Thousand Five Hundred dollars (\$19,500) of the total penalty. However, the payment of Six Thousand Five Hundred dollars (\$6,500) of that amount shall be stayed (Stayed Penalty Amount No. 2) as long as the following conditions are met:

(a) Gregory Foster does not intentionally violate the permanent injunction for a period of at least five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises; and

(b) Gregory Foster does not violate the payment conditions for payment of Thirteen Thousand dollars (\$13,000) of the total civil penalty, as set forth below.

2.2.5 Gregory Foster shall pay Plaintiff the sum of One Thousand dollars (\$1,000) in thirteen (13) separate payments over a thirteen (13) month period. A first payment of One Thousand dollars (\$1,000) shall be made within ten (10) days of the date that the Court signs the Order on the Stipulation for Settlement Pursuant to Code of Civil Procedure Section 664.6 and Entry of Judgment. The twelve (12) remaining payments of One Thousand dollars (\$1,000) each shall be made on the first day of the month for the twelve (12) consecutive months following the month in which the first payment is made.

2.2.6 All penalty payments shall be made payable to the "California Air Pollution Control Fund." All payments and documents shall be sent to the attention of:

Aldo Chaney, Air Pollution Specialist  
Air Resources Board, Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

2.2.7 There shall be no penalty, or other charge for the prepayment of Defendants' obligations.

### 3. ENTRY OF JUDGMENT

3.1 Contemporaneous with the execution of this Settlement Agreement, the Parties shall execute a Judgment Pursuant to Stipulation against FOSTER ENTERPRISES in the form attached hereto as **Exhibit 1**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Plaintiff shall submit the Judgment Pursuant to Stipulation against Foster Enterprises to the Court for entry of judgment forthwith.

3.2 Contemporaneous with the execution of this Settlement Agreement, the Parties shall execute a Judgment Pursuant to Stipulation against ANNA MAE FOSTER, GARY D. FOSTER, STANLEY M. FOSTER, and JEFFERY C. FOSTER in the form attached hereto as **Exhibit 2**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Unless and until there has been a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster under this Settlement Agreement, Plaintiff shall hold and shall not file with the Court the Judgment Pursuant to Stipulation against them, nor seek to have it entered by the Court. A default, as it pertains to Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, is defined in sections 4.1.2 and 4.2.2, below.

3.3 Contemporaneous with the execution of this Settlement Agreement, the Parties shall execute a Judgment Pursuant to Stipulation against GREGORY FOSTER in the form

attached hereto as **Exhibit 3**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Unless and until there has been a default by Gregory Foster under this Settlement Agreement, Plaintiff shall hold and shall not file with the Court the Judgment Pursuant to Stipulation against him, nor seek to have it entered by the Court. A default, as it pertains to Gregory Foster, is defined in sections 4.1.5 and 4.2.2, below.

#### 4. ENFORCEMENT

##### 4.1 Failure to Make Payments

4.1.1 If Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster fail to make timely payment or pay in full any of the payments, as described in sections 2.2.2 through 2.2.3, above, then Plaintiff or its counsel shall give notice by certified mail that they shall have thirty (30) calendar days from the date of such notice to cure and make the payment ("Cure Period"). There will be no further notices required. Notice shall be addressed as follows:

Jeffery C. Foster  
Foster Enterprises  
13610 South Archibald Avenue  
Ontario, California 91761-7930

4.1.2 If Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster fail to pay the full amount within the Cure Period, then they shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have the right to have the judgment in the form attached hereto as **Exhibit 2** entered by the Court.

4.1.3 Upon the occurrence of a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the following rights:

(a) The right to have the Judgment Pursuant to Stipulation against Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster entered ex parte by the Court; and

(b) The right to make an ex parte application to the Court seeking to lift or set aside the stay on Stayed Penalty Amount No. 1 and to order Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster to pay Two Hundred Eighty Thousand Five Hundred dollars (\$280,500) within thirty (30) days following the Order, less credit for any monies already received by Plaintiff pursuant to this Settlement Agreement.

4.1.4 If Gregory Foster fails to make timely payment or pay in full any of the payments, as described in sections 2.2.4 and 2.2.5, above, then Plaintiff or its counsel shall give notice by certified mail that he shall have thirty (30) calendar days from the date of such notice to cure and make the payment. There will be no further notices required. Notice shall be addressed as follows:

Gregory Foster  
c/o William Nassar, Esq.  
215 Cajon Street  
Redlands, California 92373

4.1.5 If Gregory Foster fails to pay the full amount within the Cure Period, then he shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have the right to have the judgment in the form attached hereto as **Exhibit 3** entered by the Court.

4.1.6 Upon the occurrence of a default by Gregory Foster, Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the following rights:

(a) The right to have the Judgment Pursuant to Stipulation against Gregory Foster entered ex parte by the Court; and

(b) The right to make an ex parte application to the Court seeking to lift or set aside the stay on Stayed Penalty Amount No. 2 and to order Gregory Foster to pay Nineteen Thousand Five Hundred dollars (\$19,500) within thirty (30) days following the Order, less credit for any monies already received by Plaintiff pursuant to this Settlement Agreement.

4.1.7 Plaintiff shall not deem a default by Gregory Foster to be a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, or vice versa.

#### 4.2 Failure to Comply With Injunction

4.2.1 If Plaintiff believes that any Defendant has intentionally violated the permanent injunction within five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises, then Plaintiff or its counsel shall meet and confer with the offending Defendant(s) in an attempt to resolve any dispute without Court intervention.

4.2.2 If the offending Defendant(s) fail(s) to meet and confer or if, after the meet and confer takes place, Plaintiff believes that an intentional violation of the injunction has not been resolved, then the offending Defendant(s) shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the rights specified in sections 4.1.3 or 4.1.6, above.

4.2.3 Plaintiff shall not deem an intentional violation of the permanent injunction by Gregory Foster acting in his individual capacity to be an intentional violation by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, or vice versa.

#### 5. DISMISSAL OF ACTION & RETAINED JURISDICTION

5.1 Plaintiff shall file a Notice of Conditional Settlement and Voluntary Dismissal as to Anna Mae Foster, Gary D. Foster, Stanley M. Foster, Jeffery C. Foster and Gregory Foster no later than 45 days from the date that the Court signs the Order on the Stipulation for Settlement Pursuant to Code of Civil Procedure Section 664.6.

5.2 The Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to enforce this Settlement Agreement until Defendants' performance thereunder is complete.

## 6. EFFECT OF BANKRUPTCY

6.1 It is agreed that the penalty described in section 2.2, above, is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Defendants for violations of state environmental statutes, and this penalty is payable to and for the benefit of the California Air Resources Board, a governmental unit. Therefore, it is agreed that this penalty imposed on Defendants arising from the facts described in the Complaint is non-dischargeable under 11 U.S.C § 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.

## 7. COMPUTATION OF TIME

7.1 If the last day for the performance of any act provided or required by this Settlement 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.

## 8. SCOPE OF SETTLEMENT

8.1 This Settlement Agreement settles all violations of those provisions of the Health and Safety Code that are the subject of the Complaint in this action. Nothing in this Settlement 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 herein.

## 9. LEGAL CONSTRUCTION

9.1 The laws of the State of California shall govern and control the enforcement and interpretation of this Settlement Agreement.

9.2 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.

9.3 This Settlement 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 Settlement Agreement.

9.4 The section headings have been inserted for convenience only and shall not affect the interpretation or construction of this Settlement Agreement.

9.5 This Settlement 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 Settlement Agreement. This Settlement 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.

9.6 This Settlement Agreement shall be deemed duly executed, effective, and binding, upon the signing of the last counterpart by the signatories hereto.

## 10. FEES AND COSTS

10.1 Plaintiff and Defendants shall bear their own costs and attorney's fees, except that in the event that Plaintiff should be required to bring any legal proceeding in order to enforce the terms of this Settlement Agreement, Plaintiff shall be entitled to recover its reasonable attorney's fees and costs actually incurred therein.

## 11. LEGAL CAPACITY

11.1 The Parties to this Settlement Agreement represent and warrant that they have the authority and capacity to enter into this agreement, and to thereby bind the Party on whose behalf they have signed.

## 12. SUCCESSORS AND ASSIGNS

12.1 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

## 13. SB 1402 STATEMENT

13.1 Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the Air Resources Board to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this Settlement Agreement, is summarized here.

13.1.1 **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 eight factors specified in Health and Safety Code sections 42403 and 43024.

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 Health and Safety Code section 39674. The maximum penalty rises to \$40,000 per vehicle per day when the violation was committed knowingly and corrective action was not taken within a reasonable period of time under the circumstances pursuant to Health and Safety Code section 42402.2. The penalty obtained for the violations involved in this case is \$300,000.00 for thirty-two (32) non-compliant TRUs operated by Foster Enterprises or

\$9,375 for each TRU that failed to meet the in-use performance standard. The penalty was discounted based on the fact that the company and its principals are in financial distress.

**13.1.2 The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.** The penalty provision being applied for the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Unit and TRU Generator Set (Title 13, CCR, section 2477 et seq.) violations is Health and Safety Code section 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in Health and Safety Code sections 39650-39675. Foster Enterprises and Gregory Foster, as owners of TRUs, failed to bring all TRUs in their fleet into compliance by the deadlines set forth in the TRU Air Toxic Control Measure.

**13.1.3 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.** The provisions cited above do prohibit emissions above a specified level of grams/horsepower-hour. However, because the hours of operation of the non-compliant TRUs involved and their individual emission rates are not known, it is not practicable to do so.

**13.2** Defendants acknowledge that the Air Resources Board has complied with SB 1402 in prosecuting and settling this case. Specifically, the Air Resources Board has considered all relevant facts, including those listed at Health and Safety Code sections 42403 and 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), 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. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable for the Air Resources Board to quantify the excess emissions.

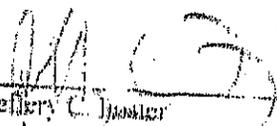
**13.3** Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

**13.4** The penalty is based on confidential settlement communications between the Air Resources Board and Defendants that the Air Resources Board does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between the Air Resources Board and Defendants and reflects the Air Resources Board's assessment of the relative strength of its case against Defendants, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Defendants may have secured from their actions.

We, the undersigned, have read and understand the foregoing, and agree to all the terms, conditions and covenants therein.

For Defendant Foster Enterprise

Dated: October 21, 2012

  
Jeffrey C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Foster Enterprises

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

  
\_\_\_\_\_  
Stanley M. Kopper  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

\_\_\_\_\_  
Gary D. Foster  
General Partner

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster

for Defendant Foster Enterprises

Dated: October \_\_, 2012

Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

Anna Mae Foster  
Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster  
Anna Mae Foster

For Defendant Foster Enterprises

Dated: October \_\_, 2012

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Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

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Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

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Anna Mae Foster  
General Partner

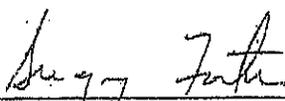
Dated: October \_\_, 2012

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Gary D. Foster  
General Partner

Dated: October 29, 2012

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Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

---

Anna Mae Foster

For Defendant Foster Enterprises:

Dated: October \_\_, 2012

Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Anna Mae Foster  
General Partner

Dated: October 31, 2012

  
Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

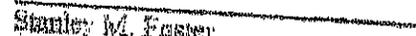
For Defendant Gary L. Foster:

Dated: October 31, 2012

  
Gary L. Foster

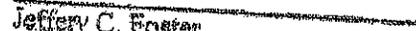
For Defendant Stanley M. Foster:

Dated: October \_\_, 2012

  
Stanley M. Foster

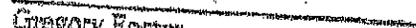
For Defendant Jeffery C. Foster:

Dated: October \_\_, 2012

  
Jeffery C. Foster

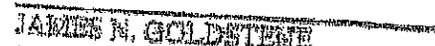
For Defendant Gregory Foster:

Dated: October \_\_, 2012

  
Gregory Foster

For Plaintiff People of the State of  
California ex rel. the California Air Resources Board

Dated: October \_\_, 2012

  
JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

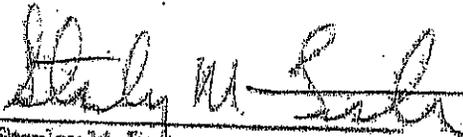
For Defendant Gary D. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 31, 2012

  
\_\_\_\_\_  
Stanley M. Foster

For Defendant Jeffrey C. Foster

Dated: October \_\_, 2012

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Jeffrey C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster

For Plaintiff People of the State of  
California ex. rel. the California Air Resources Board

Dated: October \_\_, 2012

\_\_\_\_\_  
JAMES N. COLLIER  
Executive Officer, Air Resources Board



For Defendant Gary D. Foster

Dated: October \_\_, 2012

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Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

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Stanley M. Foster

For Defendant Jeffery C. Foster

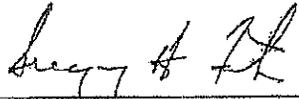
Dated: October \_\_, 2012

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Jeffery C. Foster

For Defendant Gregory Foster

Dated: October 29, 2012



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Gregory Foster

For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: October \_\_, 2012

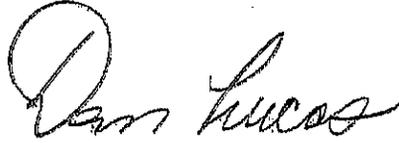
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JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October 29, 2012

KAMALA D. HARRIS  
Attorney General of California



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

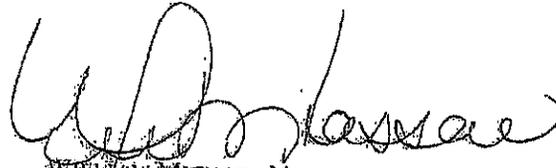
Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October 29, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES



WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

**APPROVED AS TO FORM**

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October 31, 2012

LAW OFFICES OF STEVEN GLASER



STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffrey C. Foster*

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

Case Name: **California Air Resources Board v. Foster Enterprises, et. al.**  
No.: **CIVRS1102120**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013

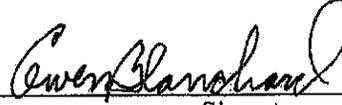
On November 27, 2012, I served the attached **[PROPOSED] JUDGMENT PURSUANT TO STIPULATION AGAINST FOSTER ENTERPRISES** by transmitting a true copy via electronic mail addressed as follows:

Steven Glaser, Esq.  
Law Offices of Steven Glaser  
15 S. Beverly Drive, Suite 410  
Beverly Hills, CA 90212  
E-mail Address: [steven@sglaserlaw.com](mailto:steven@sglaserlaw.com)  
*Attorney for Defendants*  
**FOSTER ENTERPRISES, et al.,**

William M. Nassar, Esq.  
Law Office of William M. Nassar &  
Associates, Inc.  
P.O. Box 2323  
Redlands, CA 92373  
E-mail Address: [wnassar@nassarlaw.com](mailto:wnassar@nassarlaw.com)  
*Attorney for Defendant*  
**GREGORY FOSTER**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 27, 2012**, at Los Angeles, California.

Gwen Blanchard  
Declarant

  
Signature

ORIGINAL

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KAMALA D. HARRIS  
Attorney General of California  
RICHARD J. MAGASIN  
Supervising Deputy Attorney General  
GARY E. TAVETIAN (STATE BAR NO. 117135)  
DANIEL M. LUCAS (STATE BAR NO. 235269)  
DIANA J. VERNAZZA (STATE BAR NO. 239472)  
Deputy Attorneys General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-0628  
Fax: (213) 897-2802  
E-mail: Daniel.Lucas@doj.ca.gov  
*Attorneys for Plaintiff, the People of the State  
of California ex rel. the California Air  
Resources Board*

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

**FILED**  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
RANCHO CUCAMONGA DISTRICT  
**NOV 28 2012**  
BY Jeanne Zour  
JEANNE ZOUR, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

**THE PEOPLE OF THE STATE OF CALIFORNIA  
EX REL. THE CALIFORNIA AIR RESOURCES  
BOARD,**

**Plaintiff,**

v.

**FOSTER ENTERPRISES, GREGORY FOSTER,  
ANNA MAE FOSTER, GARY D. FOSTER,  
STANLEY M. FOSTER, AND JEFFERY C.  
FOSTER,**

**Defendants.**

Case No. CIVRS 1102120

ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE BARRY L. PLOTKIN

**STIPULATION FOR SETTLEMENT  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 664.6;  
[PROPOSED] ORDER THEREON**

Trial Date: January 28, 2013

Action Filed: February 28, 2011

1 This Stipulation for Settlement ("Stipulation") is entered into by and among Plaintiff, the  
2 People of the State of California *ex rel.* the California Air Resources Board ("Plaintiff"), and  
3 Defendants, Foster Enterprises, Gregory Foster, Anna Mae Foster, Gary D. Foster, Stanley M.  
4 Foster, and Jeffery C. Foster (collectively, "Defendants"). For purposes of this Stipulation,  
5 Plaintiff and Defendants sometimes are referred to collectively as "Parties" and individually as  
6 "Party." The Parties hereby stipulate, through their attorneys of record, as follows:

7 1. This matter is deemed settled pursuant to Code of Civil Procedure section 664.6 on  
8 the terms and conditions specified in the Settlement Agreement attached hereto as **Exhibit A**  
9 ("Settlement Agreement"). By entering into this Stipulation, the Parties request that the Court  
10 enter judgment in this matter against Foster Enterprises in the form of the Judgment Pursuant to  
11 Stipulation attached as **Exhibit 1** to the Settlement Agreement.

12 2. This Stipulation is entered into following good faith negotiations and with the desire  
13 to avoid further litigation.

14 3. This settlement is final and binding on the Parties and their heirs, representatives,  
15 successors and assigns, and the Parties accept this settlement with the knowledge that they will be  
16 barred from proceeding against any person or entity in this lawsuit in the future regarding any  
17 claims or causes of action related to this lawsuit. There will be no trial of this matter, and the  
18 Parties waive their rights to appeal.

19 4. Except as otherwise expressly provided for herein, Plaintiff and Defendants shall bear  
20 their own costs and attorney's fees.

21 5. The Parties shall promptly perform all terms and conditions of this settlement,  
22 including, but not limited to, signing the Settlement Agreement and stipulated judgments.

23 6. Plaintiff shall file a Notice of Conditional Settlement and Voluntary Dismissal as to  
24 Anna Mae Foster, Gary D. Foster, Stanley M. Foster, Jeffery C. Foster and Gregory Foster no  
25 later than 45 days from the date of this Order. If any enforcement of the Settlement Agreement or  
26 Judgment Pursuant to Stipulation is necessary, then the Court reserves jurisdiction under Code of  
27 Civil Procedure section 664.6 to enforce the same.

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7. Upon failure to comply with any of the terms of the Settlement Agreement, any Party may apply ex parte for entry of judgment and any other appropriate relief, as set forth in the Settlement Agreement.

8. This Stipulation, including attachments, contains the entire understanding and agreement between the Parties concerning the resolution of this action and has been executed without reliance on any promise, representation or warranty not contained herein.

9. This Stipulation 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 Stipulation. This Stipulation may be executed by PDF or facsimile signatures and such signatures shall be deemed to bind each Party as if they were original signatures.

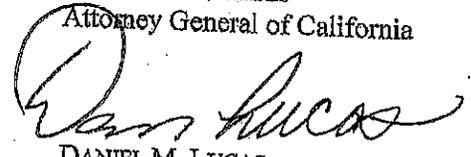
10. Each signatory to this Stipulation certifies that he is fully authorized by the Party or Parties he represents to enter into this Stipulation, to execute it on behalf of the Party or Parties represented, to make representations on behalf of the Party or Parties, and to bind such Party or Parties.

**IT IS SO STIPULATED.**

Dated: October 31, 2012

Dated: October 31, 2012

KAMALA D. HARRIS  
Attorney General of California



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

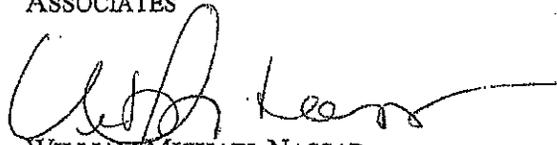
LAW OFFICES OF STEVEN GLASER



STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster and Jeffery C. Foster*

1 Dated: October ~~27~~<sup>29</sup>, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

2  
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4 WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

5 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

6  
7 Dated: **DEC 14 2012**, 2012.

8  
9 By: GILBERT G. OCHOA  
10 Honorable ~~Barry L. Plotkin~~  
11 Judge of the Superior Court

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**EXHIBIT A**

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Settlement Agreement") is entered into by and between the People of the State of California *ex rel.* the California Air Resources Board ("Plaintiff") on the one hand, and Foster Enterprises, Gregory Foster, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster (collectively, "Defendants") on the other hand. Plaintiff and Defendants hereinafter sometimes are referred to collectively as "Parties" and individually as "Party."

### 1. RECITALS

1.1 This Settlement Agreement is made with reference to the following facts:

1.1.1 Health and Safety Code sections 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, the Air Resources Board identified particulate matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

1.1.2 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU or TRU generator set in California unless it meets specified in-use emission category performance standards.

1.1.3 Operating a TRU that does not comply with in-use emission standards is a violation of state law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or forty thousand dollars (\$40,000) for each day that the violation occurs.

1.1.4 The Air Resources Board's Enforcement Division has documented, and Defendants admit, that Defendants operated at least thirty-two (32) TRUs that were not in compliance with California's in-use performance standards.

1.1.5 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5, 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

1.1.6 Plaintiff and Defendants now desire and intend to fully and finally settle and resolve all disputes that exist or that may exist between the Parties with regard to the Action.

NOW THEREFORE, FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH THE PARTIES HEREBY ACKNOWLEDGE, THE PARTIES AGREE AS FOLLOWS:

## **2. INJUNCTIVE RELIEF & PENALTIES**

### **2.1 PERMANENT INJUNCTION**

**2.1.1** Defendants and their agents, servants, employees, representatives, and all persons acting in concert or participating with them, and each of them, are permanently enjoined and ordered not to violate any applicable statutes and regulations currently in effect under the jurisdiction of the California Air Resources Board, as well as any and all applicable statutes and regulations that may be enacted in the future under the jurisdiction of the California Air Resources Board.

**2.1.2** No provision of the injunction shall bar Plaintiff from seeking other judicial remedies (including penalties or injunctive relief) as to future violations.

### **2.2 CIVIL PENALTIES**

**2.2.1** Defendants shall pay Plaintiff a total penalty of Three Hundred Thousand dollars (\$300,000) under Health and Safety Code sections 39674, 39675 and 42402.2.

**2.2.2** Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, jointly and severally, shall be responsible for paying Two Hundred Eighty Thousand Five Hundred dollars (\$280,500) of the total penalty. However, the payment of Ninety Three Thousand Five Hundred dollars (\$93,500) of that amount shall be stayed (Stayed Penalty Amount No. 1) as long as the following conditions are met:

(a) Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, or any of them, do not intentionally violate the permanent injunction for a period of at least five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises; and

(b) Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, or any of them, do not violate the payment conditions for payment of One Hundred Eighty Seven Thousand dollars (\$187,000) of the total civil penalty, as set forth below.

**2.2.3** Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster, jointly and severally, shall pay Plaintiff the sum of One Hundred Eighty Seven Thousand dollars (\$187,000) in twenty (20) separate payments over a twenty (20) month period. A first payment of Nine Thousand Three Hundred Fifty dollars (\$9,350) shall be made on January 1, 2013. The nineteen (19) remaining payments of Nine Thousand Three Hundred and Fifty dollars (\$9,350) each shall be made on the first day of the month for nineteen (19) consecutive months, starting on February 1, 2013.

**2.2.4** Gregory Foster shall be responsible for paying Nineteen Thousand Five Hundred dollars (\$19,500) of the total penalty. However, the payment of Six Thousand Five Hundred dollars (\$6,500) of that amount shall be stayed (Stayed Penalty Amount No. 2) as long as the following conditions are met:

(a) Gregory Foster does not intentionally violate the permanent injunction for a period of at least five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises; and

(b) Gregory Foster does not violate the payment conditions for payment of Thirteen Thousand dollars (\$13,000) of the total civil penalty, as set forth below.

2.2.5 Gregory Foster shall pay Plaintiff the sum of One Thousand dollars (\$1,000) in thirteen (13) separate payments over a thirteen (13) month period. A first payment of One Thousand dollars (\$1,000) shall be made within ten (10) days of the date that the Court signs the Order on the Stipulation for Settlement Pursuant to Code of Civil Procedure Section 664.6 and Entry of Judgment. The twelve (12) remaining payments of One Thousand dollars (\$1,000) each shall be made on the first day of the month for the twelve (12) consecutive months following the month in which the first payment is made.

2.2.6 All penalty payments shall be made payable to the "California Air Pollution Control Fund." All payments and documents shall be sent to the attention of:

Aldo Chaney, Air Pollution Specialist  
Air Resources Board, Enforcement Division  
9480 Telstar Avenue, Suite 4  
El Monte, California 91731

2.2.7 There shall be no penalty, or other charge for the prepayment of Defendants' obligations.

### 3. ENTRY OF JUDGMENT

3.1 Contemporaneous with the execution of this Settlement Agreement; the Parties shall execute a Judgment Pursuant to Stipulation against FOSTER ENTERPRISES in the form attached hereto as **Exhibit 1**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Plaintiff shall submit the Judgment Pursuant to Stipulation against Foster Enterprises to the Court for entry of judgment forthwith.

3.2 Contemporaneous with the execution of this Settlement Agreement; the Parties shall execute a Judgment Pursuant to Stipulation against ANNA MAE FOSTER, GARY D. FOSTER, STANLEY M. FOSTER, and JEFFERY C. FOSTER in the form attached hereto as **Exhibit 2**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Unless and until there has been a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster under this Settlement Agreement, Plaintiff shall hold and shall not file with the Court the Judgment Pursuant to Stipulation against them, nor seek to have it entered by the Court. A default, as it pertains to Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, is defined in sections 4.1.2 and 4.2.2, below.

3.3 Contemporaneous with the execution of this Settlement Agreement; the Parties shall execute a Judgment Pursuant to Stipulation against GREGORY FOSTER in the form

attached hereto as **Exhibit 3**. This Settlement Agreement shall be incorporated into that Judgment Pursuant to Stipulation, and shall be enforceable pursuant to Code of Civil Procedure section 664.6. Unless and until there has been a default by Gregory Foster under this Settlement Agreement, Plaintiff shall hold and shall not file with the Court the Judgment Pursuant to Stipulation against him, nor seek to have it entered by the Court. A default, as it pertains to Gregory Foster, is defined in sections 4.1.5 and 4.2.2, below.

#### 4. ENFORCEMENT

##### 4.1 Failure to Make Payments

4.1.1 If Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster fail to make timely payment or pay in full any of the payments, as described in sections 2.2.2 through 2.2.3, above, then Plaintiff or its counsel shall give notice by certified mail that they shall have thirty (30) calendar days from the date of such notice to cure and make the payment ("Cure Period"). There will be no further notices required. Notice shall be addressed as follows:

Jeffery C. Foster  
Foster Enterprises  
13610 South Archibald Avenue  
Ontario, California 91761-7930

4.1.2 If Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster fail to pay the full amount within the Cure Period, then they shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have the right to have the judgment in the form attached hereto as **Exhibit 2** entered by the Court.

4.1.3 Upon the occurrence of a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the following rights:

(a) The right to have the Judgment Pursuant to Stipulation against Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster entered ex parte by the Court; and

(b) The right to make an ex parte application to the Court seeking to lift or set aside the stay on Stayed Penalty Amount No. 1 and to order Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, and Jeffery C. Foster to pay Two Hundred Eighty Thousand Five Hundred dollars (\$280,500) within thirty (30) days following the Order, less credit for any monies already received by Plaintiff pursuant to this Settlement Agreement.

4.1.4 If Gregory Foster fails to make timely payment or pay in full any of the payments, as described in sections 2.2.4 and 2.2.5, above, then Plaintiff or its counsel shall give notice by certified mail that he shall have thirty (30) calendar days from the date of such notice to cure and make the payment. There will be no further notices required. Notice shall be addressed as follows:

Gregory Foster  
c/o William Nassar, Esq.  
215 Cajon Street  
Redlands, California 92373

4.1.5 If Gregory Foster fails to pay the full amount within the Cure Period, then he shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have the right to have the judgment in the form attached hereto as Exhibit 3 entered by the Court.

4.1.6 Upon the occurrence of a default by Gregory Foster, Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the following rights:

(a) The right to have the Judgment Pursuant to Stipulation against Gregory Foster entered ex parte by the Court; and

(b) The right to make an ex parte application to the Court seeking to lift or set aside the stay on Stayed Penalty Amount No. 2 and to order Gregory Foster to pay Nineteen Thousand Five Hundred dollars (\$19,500) within thirty (30) days following the Order, less credit for any monies already received by Plaintiff pursuant to this Settlement Agreement.

4.1.7 Plaintiff shall not deem a default by Gregory Foster to be a default by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, or vice versa.

#### 4.2 Failure to Comply With Injunction

4.2.1 If Plaintiff believes that any Defendant has intentionally violated the permanent injunction within five years from the date of the entry of the Judgment Pursuant to Stipulation against Foster Enterprises, then Plaintiff or its counsel shall meet and confer with the offending Defendant(s) in an attempt to resolve any dispute without Court intervention.

4.2.2 If the offending Defendant(s) fail(s) to meet and confer or if, after the meet and confer takes place, Plaintiff believes that an intentional violation of the injunction has not been resolved, then the offending Defendant(s) shall be deemed to be in default of this Settlement Agreement, and Plaintiff shall have, in addition to all of Plaintiff's other rights and remedies at law or in equity, the rights specified in sections 4.1.3 or 4.1.6, above.

4.2.3 Plaintiff shall not deem an intentional violation of the permanent injunction by Gregory Foster acting in his individual capacity to be an intentional violation by Foster Enterprises, Anna Mae Foster, Gary D. Foster, Stanley M. Foster, or Jeffery C. Foster, or vice versa.

#### 5. DISMISSAL OF ACTION & RETAINED JURISDICTION

5.1 Plaintiff shall file a Notice of Conditional Settlement and Voluntary Dismissal as to Anna Mae Foster, Gary D. Foster, Stanley M. Foster, Jeffery C. Foster and Gregory Foster no later than 45 days from the date that the Court signs the Order on the Stipulation for Settlement Pursuant to Code of Civil Procedure Section 664.6.

5.2 The Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to enforce this Settlement Agreement until Defendants' performance thereunder is complete.

## 6. EFFECT OF BANKRUPTCY

6.1 It is agreed that the penalty described in section 2.2, above, is punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish Defendants for violations of state environmental statutes, and this penalty is payable to and for the benefit of the California Air Resources Board, a governmental unit. Therefore, it is agreed that this penalty imposed on Defendants arising from the facts described in the Complaint is non-dischargeable under 11 U.S.C § 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.

## 7. COMPUTATION OF TIME

7.1 If the last day for the performance of any act provided or required by this Settlement 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.

## 8. SCOPE OF SETTLEMENT

8.1 This Settlement Agreement settles all violations of those provisions of the Health and Safety Code that are the subject of the Complaint in this action. Nothing in this Settlement 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 herein.

## 9. LEGAL CONSTRUCTION

9.1 The laws of the State of California shall govern and control the enforcement and interpretation of this Settlement Agreement.

9.2 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.

9.3 This Settlement 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 Settlement Agreement.

9.4 The section headings have been inserted for convenience only and shall not affect the interpretation or construction of this Settlement Agreement.

9.5 This Settlement 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 Settlement Agreement. This Settlement 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.

9.6 This Settlement Agreement shall be deemed duly executed, effective, and binding, upon the signing of the last counterpart by the signatories hereto.

## 10. FEES AND COSTS

10.1 Plaintiff and Defendants shall bear their own costs and attorney's fees, except that in the event that Plaintiff should be required to bring any legal proceeding in order to enforce the terms of this Settlement Agreement, Plaintiff shall be entitled to recover its reasonable attorney's fees and costs actually incurred therein.

## 11. LEGAL CAPACITY

11.1 The Parties to this Settlement Agreement represent and warrant that they have the authority and capacity to enter into this agreement, and to thereby bind the Party on whose behalf they have signed.

## 12. SUCCESSORS AND ASSIGNS

12.1 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

## 13. SB 1402 STATEMENT

13.1 Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the Air Resources Board to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This information, which is provided throughout this Settlement Agreement, is summarized here.

**13.1.1 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 eight factors specified in Health and Safety Code sections 42403 and 43024.

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 Health and Safety Code section 39674. The maximum penalty rises to \$40,000 per vehicle per day when the violation was committed knowingly and corrective action was not taken within a reasonable period of time under the circumstances pursuant to Health and Safety Code section 42402.2. The penalty obtained for the violations involved in this case is \$300,000.00 for thirty-two (32) non-compliant TRUs operated by Foster Enterprises or

\$9,375 for each TRU that failed to meet the in-use performance standard. The penalty was discounted based on the fact that the company and its principals are in financial distress.

**13.1.2 The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.** The penalty provision being applied for the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Unit and TRU Generator Set (Title 13, CCR, section 2477 et seq.) violations is Health and Safety Code section 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in Health and Safety Code sections 39650-39675. Foster Enterprises and Gregory Foster, as owners of TRUs, failed to bring all TRUs in their fleet into compliance by the deadlines set forth in the TRU Air Toxic Control Measure.

**13.1.3 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.** The provisions cited above do prohibit emissions above a specified level of grams/horsepower-hour. However, because the hours of operation of the non-compliant TRUs involved and their individual emission rates are not known, it is not practicable to do so.

**13.2** Defendants acknowledge that the Air Resources Board has complied with SB 1402 in prosecuting and settling this case. Specifically, the Air Resources Board has considered all relevant facts, including those listed at Health and Safety Code sections 42403 and 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), 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. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable for the Air Resources Board to quantify the excess emissions.

**13.3** 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. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

**13.4** The penalty is based on confidential settlement communications between the Air Resources Board and Defendants that the Air Resources Board does not retain in the ordinary course of business. The penalty is the product of an arm's length negotiation between the Air Resources Board and Defendants and reflects the Air Resources Board's assessment of the relative strength of its case against Defendants, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Defendants may have secured from their actions.

We, the undersigned, have read and understand the foregoing, and agree to all the terms, conditions and covenants therein.

For Defendant Foster Enterprises.

Dated: October 31, 2012

  
Jeffrey C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Foster Enterprises

Dated: October \_\_, 2012

Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

  
Stanley M. Rohrer  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Foster Enterprises

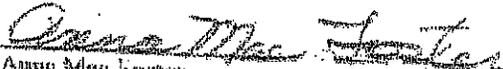
Dated: October \_\_, 2012

Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

  
Anna Mae Foster  
General Partner

Dated: October \_\_, 2012

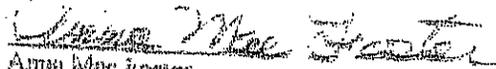
Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

  
Anna Mae Foster

For Defendant Foster Enterprises

Dated: October \_\_, 2012

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Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

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Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

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Anna Mae Foster  
General Partner

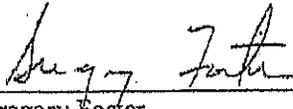
Dated: October \_\_, 2012

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Gary D. Foster  
General Partner

Dated: October 21, 2012

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Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

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Anna Mae Foster

For Defendant Foster Enterprises

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffrey C. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster  
General Partner

Dated: October 31, 2012

\_\_\_\_\_  
  
Greg D. Foster  
General Partner

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster  
General Partner

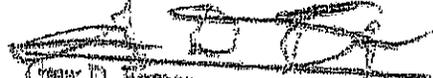
For Defendant Anna Mae Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster

For Defendant Gary D. Foster

Dated: October 31, 2012

  
\_\_\_\_\_  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster

For Plaintiff People of the State of  
California ex rel. the California Air Resources Board

Dated: October \_\_, 2012

\_\_\_\_\_  
JAMES N. GOLDSTEINE  
Executive Officer, Air Resources Board

For Defendant Gary D. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 31, 2012

\_\_\_\_\_  
*Stanley M. Foster*  
Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster

For Plaintiff People of the State of  
California ex. rel. the California Air Resources Board

Dated: October \_\_, 2012

\_\_\_\_\_  
JAMES N. GOLDFINGER  
Executive Officer, Air Resources Board

For Defendant ~~Gregory D. Foster~~

Dated: October \_\_, 2012

Gregory D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

Stanley M. Foster

For Defendant Jeffrey C. Foster

Dated: October 31, 2012

Jeffrey C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

For Plaintiff People of the State of  
California ~~vs. the California Air Resources Board~~

Dated: October \_\_, 2012

NOVEMBER 9, 2012

James N. Goldstone  
JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

For Defendant Gary D. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley M. Foster

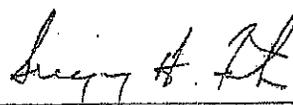
For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October 29, 2012

  
\_\_\_\_\_  
Gregory Foster

For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

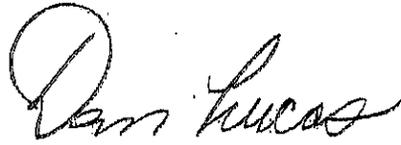
Dated: October \_\_, 2012

\_\_\_\_\_  
JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October 29, 2012

KAMALA D. HARRIS  
Attorney General of California



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

Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gay D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October 29, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES



WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

APPROVED AS TO FORM

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

DANIEL M. LUCAS  
Deputy Attorney General  
Attorneys for Plaintiff People of the State of  
California and Air Resources Board

Dated: October 21, 2012

LAW OFFICES OF STEVEN GLASER



STEVEN GLASER  
Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffrey C. Foster

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
Attorneys for Defendant Gregory Foster

**EXHIBIT 1**

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KAMALA D. HARRIS  
Attorney General of California  
RICHARD J. MAGASIN  
Supervising Deputy Attorney General  
GARY E. TAVETIAN (STATE BAR NO. 117135)  
DANIEL M. LUCAS (STATE BAR NO. 235269)  
DIANA J. VERNAZZA (STATE BAR NO. 239472)  
Deputy Attorneys General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-0628  
Fax: (213) 897-2802  
E-mail: Daniel.Lucas@doj.ca.gov  
*Attorneys for Plaintiff, the People of the State  
of California ex rel. the California Air  
Resources Board*

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

**THE PEOPLE OF THE STATE OF CALIFORNIA  
EX REL. THE CALIFORNIA AIR RESOURCES  
BOARD,**  
  
**Plaintiff,**  
  
v.  
  
**FOSTER ENTERPRISES, GREGORY FOSTER,  
ANNA MAE FOSTER, GARY D. FOSTER,  
STANLEY M. FOSTER, AND JEFFERY C.  
FOSTER,**  
  
**Defendants.**

**Case No. CIVRS 1102120**  
  
ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE BARRY L. PLOTKIN  
  
[PROPOSED] JUDGMENT PURSUANT  
TO STIPULATION AGAINST FOSTER  
ENTERPRISES  
  
Trial Date: November 19, 2012  
Action Filed: February 28, 2011

1 Health and Safety Code sections 39650-39675 mandate the reduction in the emissions of  
2 substances that have been determined to be toxic air contaminants. In 1998, following an  
3 exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate  
4 matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units  
5 (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are  
6 controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

7 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU  
8 or TRU generator set in California unless it meets specified in-use emission category performance  
9 standards.

10 Operating a TRU that does not comply with in-use emission standards is a violation of state  
11 law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2  
12 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or  
13 forty thousand dollars (\$40,000) for each day that the violation occurs.

14 The Air Resources Board's Enforcement Division has documented, and Defendants admit,  
15 that Defendants operated at least thirty-two (32) TRUs that were not in compliance with  
16 California's in-use performance standards.

17 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory  
18 Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5,  
19 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M.  
20 Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

21 Plaintiff and Defendants desire to fully settle and and resolve this Action without further  
22 litigation. Plaintiff has reached an agreement with Defendants to that end. A true and correct  
23 copy of the Settlement Agreement, executed by all parties, is attached to this Judgment Pursuant  
24 to Stipulation as Exhibit A. The Settlement Agreement provides that "[t]his Settlement  
25 Agreement shall be incorporated into [a] Judgment Pursuant to Stipulation, and shall be  
26 enforceable pursuant to Code of Civil Procedure section 664.6." It further provides that "[t]he  
27  
28

1 Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to  
2 enforce this Settlement Agreement until Defendants' performance thereunder is complete.

3 IT IS THEREFORE STIPULATED by the parties that this Action has been settled pursuant  
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13 deemed duly executed, effective, and binding, upon the signing of the last counterpart by the  
14 signatories hereto.

15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October 31, 2012

  
Stanley D. Foster  
General Partner and Management  
Committee Member

21 Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley D. Foster  
General Partner and Management  
Committee Member

25 Dated: October \_\_, 2012

\_\_\_\_\_  
Anton Marc Foster  
General Partner

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**IT IS SO STIPULATED.**

**For Defendant Foster Enterprises**

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster  
General Partner and Management  
Committee Member

Dated: October 31, 2012

  
\_\_\_\_\_  
Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster  
General Partner

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15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October \_\_, 2012

18

19

Jeffery C. Foster  
General Partner and Management  
Committee Member

20

21

Dated: October \_\_, 2012

22

23

Stanley M. Foster  
General Partner and Management  
Committee Member

24

25

Dated: October 31, 2012

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Anne Marie Foster  
General Partner

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1 Dated: October 31, 2012

  
Gary D. Foster  
General Partner

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5 Dated: October \_\_, 2012

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7 Gregory Foster  
General Partner

8 For Defendant Anna Mae Foster

9 Dated: October \_\_, 2012

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11 Anna Mae Foster

12 For Defendant Gary D. Foster

13 Dated: October 31, 2012

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Gary D. Foster

16 For Defendant Stanley M. Foster

17 Dated: October \_\_, 2012

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19 Stanley M. Foster

20 For Defendant Jeffery C. Foster

21 Dated: October \_\_, 2012

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23 Jeffery C. Foster

24 For Defendant Gregory Foster

25 Dated: October \_\_, 2012

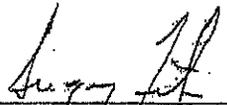
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Dated: October \_\_, 2012

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Gary D. Foster  
General Partner

Dated: October 21, 2012

  
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Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

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Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

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Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

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Stanley M. Foster

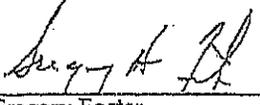
For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October 21, 2012

  
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Gregory Foster

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Dated: October , 2012

Gary D. Foster  
General Partner

Dated: October , 2012

Gregory Foster  
General Partner

For Defendant Anne Mae Foster

Dated: October 21, 2012

*Anne Mae Foster*  
Anne Mae Foster

For Defendant Gary D. Foster

Dated: October , 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October , 2012

Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October , 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October , 2012

Gregory Foster

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Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

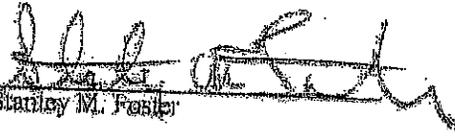
For Defendant Gary D. Foster

Dated: October \_\_, 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 31, 2012

  
Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

1 Dated: October \_\_, 2012

Gary D. Foster  
General Partner

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5 Dated: October \_\_, 2012

Gregory Foster  
General Partner

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8 For Defendant Anna Mas Foster

9 Dated: October \_\_, 2012

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11 Anna Mas Foster

12 For Defendant Gary D. Foster

13 Dated: October \_\_, 2012

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15 Gary D. Foster

16 For Defendant Stanley M. Foster

17 Dated: October \_\_, 2012

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19 Stanley M. Foster

20 For Defendant Jeffery C. Foster

21 Dated: October 21, 2012

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23 Jeffery C. Foster

24 For Defendant Gregory Foster

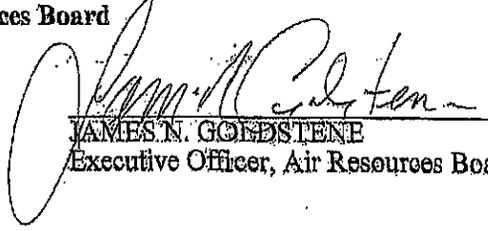
25 Dated: October \_\_, 2012

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27 Gregory Foster

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: ~~October~~, 2012  
November 9, 2012

  
JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October ~~31~~, 2012

LAW OFFICES OF STEVEN GLASER

  
STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffrey C. Foster*

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: October \_\_, 2012

JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October <sup>29</sup>\_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

  
WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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**JUDGMENT**

Pursuant to the foregoing Stipulation of the parties and the Court's power under Code of Civil Procedure section 664.6, and good cause appearing for approval of the Stipulation,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment be, and hereby is, entered against FOSTER ENTERPRISES in accordance with the terms of the Settlement Agreement between the parties, attached as **Exhibit A** hereto. This judgment expressly incorporates the terms of the attached Settlement Agreement. The Court retains jurisdiction over the parties at their request to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Honorable Barry L. Plotkin  
Judge of the Superior Court

**EXHIBIT 2**

1 KAMALA D. HARRIS  
Attorney General of California  
2 RICHARD J. MAGASIN  
Supervising Deputy Attorney General  
3 GARY E. TAVETIAN (STATE BAR NO. 117135)  
4 DANIEL M. LUCAS (STATE BAR NO. 235269)  
DIANA J. VERNAZZA (STATE BAR NO. 239472)  
5 Deputy Attorneys General  
300 South Spring Street, Suite 1702  
6 Los Angeles, CA 90013  
7 Telephone: (213) 897-0628  
Fax: (213) 897-2802  
8 E-mail: Daniel.Lucas@doj.ca.gov  
9 *Attorneys for Plaintiff, the People of the State  
of California ex rel. the California Air  
Resources Board*

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN BERNARDINO**

14 **THE PEOPLE OF THE STATE OF CALIFORNIA**  
15 **EX REL. THE CALIFORNIA AIR RESOURCES**  
16 **BOARD,**  
17 **Plaintiff,**  
18 v.  
19 **FOSTER ENTERPRISES, GREGORY FOSTER,**  
20 **ANNA MAE FOSTER, GARY D. FOSTER,**  
21 **STANLEY M. FOSTER, AND JEFFERY C.**  
22 **FOSTER,**  
23 **Defendants.**

Case No. CIVRS 1102120  
ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE BARRY L. PLOTKIN  
  
[PROPOSED] JUDGMENT PURSUANT  
TO STIPULATION AGAINST ANNA MAE  
FOSTER, GARY D. FOSTER, STANLEY  
M. FOSTER AND JEFFERY C. FOSTER  
  
Trial Date: November 19, 2012  
Action Filed: February 28, 2011

1 Health and Safety Code sections 39650-39675 mandate the reduction in the emissions of  
2 substances that have been determined to be toxic air contaminants. In 1998, following an  
3 exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate  
4 matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units  
5 (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are  
6 controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

7 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU  
8 or TRU generator set in California unless it meets specified in-use emission category performance  
9 standards.

10 Operating a TRU that does not comply with in-use emission standards is a violation of state  
11 law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2  
12 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or  
13 forty thousand dollars (\$40,000) for each day that the violation occurs.

14 The Air Resources Board's Enforcement Division has documented, and Defendants admit,  
15 that Defendants operated at least thirty-two (32) TRUs that were not in compliance with  
16 California's in-use performance standards.

17 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory  
18 Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5,  
19 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M.  
20 Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

21 Plaintiff and Defendants desire to fully settle and and resolve this Action without further  
22 litigation. Plaintiff has reached an agreement with Defendants to that end. A true and correct  
23 copy of the Settlement Agreement, executed by all parties, is attached to this Judgment Pursuant  
24 to Stipulation as Exhibit A. The Settlement Agreement provides that "[t]his Settlement  
25 Agreement shall be incorporated into [a] Judgment Pursuant to Stipulation, and shall be  
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14 signatories hereto.

15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October 31, 2012

  
\_\_\_\_\_  
Jeffrey M. Foster  
General Partner and Management  
Committee Member

21 Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley M. Foster  
General Partner and Management  
Committee Member

25 Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster  
General Partner

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15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October \_\_, 2012

19 \_\_\_\_\_  
20 Jeffrey C. Foster  
21 General Partner and Management  
22 Committee Member

21 Dated: October 31, 2012

22 \_\_\_\_\_  
23 Stanley M. Foster  
24 General Partner and Management  
25 Committee Member

25 Dated: October \_\_, 2012

27 \_\_\_\_\_  
28 Anna Mae Foster  
General Partner

1 Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 604.6 to  
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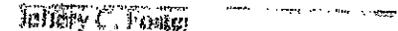
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15 IT IS SO STIPULATED.

16 For Defendant Foster Enterprises

17 Dated: October \_\_, 2012

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20 Jeffrey C. Foster  
21 General Partner and Management  
22 Committee Member

23 Dated: October \_\_, 2012

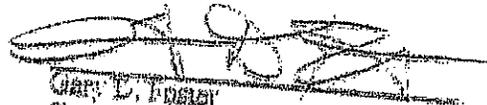
24   
25 Stanley M. Foster  
26 General Partner and Management  
27 Committee Member

28 Dated: October 31, 2012

  
Anna Mae Foster  
General Partner

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Dated: October 31, 2012

  
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Gary D. Foster  
General Partner

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster  
General Partner

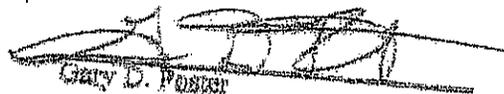
For Defendant Anna Mae Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster

For Defendant Gary D. Foster

Dated: October 31, 2012

  
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Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

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Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

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Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

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Gregory Foster

1 Dated: October \_\_, 2012

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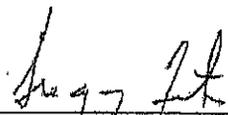
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Gary D. Foster  
General Partner

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5 Dated: October 31, 2012

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\_\_\_\_\_  
Gregory Foster  
General Partner

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9 For Defendant Anna Mae Foster

10 Dated: October \_\_, 2012

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Anna Mae Foster

13 For Defendant Gary D. Foster

14 Dated: October \_\_, 2012

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Gary D. Foster

17 For Defendant Stanley M. Foster

18 Dated: October \_\_, 2012

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Stanley M. Foster

21 For Defendant Jeffery C. Foster

22 Dated: October \_\_, 2012

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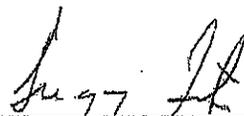
\_\_\_\_\_  
Jeffery C. Foster

25 For Defendant Gregory Foster

26 Dated: October 31, 2012

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Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October 31, 2012

*Anna Mae Foster*  
Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

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Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October 31, 2012

  
Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

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Dated: October \_\_, 2012

Gary D. Foster  
General Partner

Dated: October \_\_, 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October 31, 2012

  
Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

Gregory Foster

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

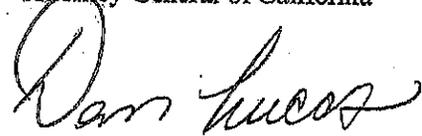
Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

  
JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

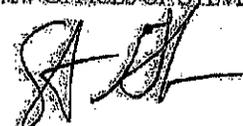
Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

KAMALA D. HARRIS  
Attorney General of California

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

Dated: October 31, 2012

LAW OFFICES OF STEVEN GLASER



STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: October \_\_, 2012

JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

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

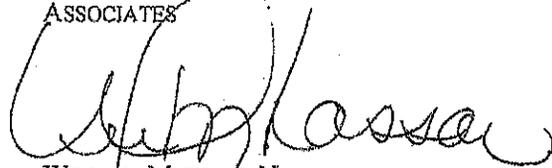
Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October <sup>29</sup>/<sub>7</sub> 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

  
WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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**JUDGMENT**

Pursuant to the foregoing Stipulation of the parties and the Court's power under Code of Civil Procedure section 664.6, and good cause appearing for approval of the Stipulation,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment be, and hereby is, entered against ANNA MAE FOSTER, GARY D. FOSTER, STANLEY M. FOSTER AND JEFFERY C. FOSTER in accordance with the terms of the Settlement Agreement between the parties, attached as **Exhibit A** hereto. This judgment expressly incorporates the terms of the attached Settlement Agreement. The Court retains jurisdiction over the parties at their request to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Honorable Barry L. Plotkin  
Judge of the Superior Court

**EXHIBIT 3**

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KAMALA D. HARRIS  
Attorney-General of California  
RICHARD J. MAGASIN  
Supervising Deputy Attorney General  
GARY E. TAVETIAN (STATE BAR NO. 117135)  
DANIEL M. LUCAS (STATE BAR NO. 235269)  
DIANA J. VERNAZZA (STATE BAR NO. 239472)  
Deputy Attorneys General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-0628  
Fax: (213) 897-2802  
E-mail: Daniel.Lucas@doj.ca.gov  
*Attorneys for Plaintiff, the People of the State  
of California ex rel. the California Air  
Resources Board*

**EXEMPT FROM FILING FEES  
(GOV. CODE § 6103)**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

**THE PEOPLE OF THE STATE OF CALIFORNIA  
EX REL. THE CALIFORNIA AIR RESOURCES  
BOARD,**  
  
**Plaintiff,**  
  
v.  
  
**FOSTER ENTERPRISES, GREGORY FOSTER,  
ANNA MAE FOSTER, GARY D. FOSTER,  
STANLEY M. FOSTER, AND JEFFERY C.  
FOSTER,**  
  
**Defendants.**

**Case No. CIVRS 1102120**  
  
ASSIGNED FOR ALL PURPOSES TO THE  
HONORABLE BARRY L. PLOTKIN  
  
[PROPOSED] JUDGMENT PURSUANT  
TO STIPULATION AGAINST GREGORY  
FOSTER  
  
Trial Date: November 19, 2012  
Action Filed: February 28, 2011

1 Health and Safety Code sections 39650-39675 mandate the reduction in the emissions of  
2 substances that have been determined to be toxic air contaminants. In 1998, following an  
3 exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate  
4 matter from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units  
5 (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are  
6 controlled under the California Code of Regulations ("CCR"), title 13, section 2477.

7 CCR, title 13, section 2477(e)(1)(A)(1) provides that no owner/operator shall operate a TRU  
8 or TRU generator set in California unless it meets specified in-use emission category performance  
9 standards.

10 Operating a TRU that does not comply with in-use emission standards is a violation of state  
11 law that gives rise to penalties. Health and Safety Code sections 39674, 39675 and 42402.2  
12 authorize penalties not to exceed one thousand dollars (\$1,000), ten thousand dollars (\$10,000) or  
13 forty thousand dollars (\$40,000) for each day that the violation occurs.

14 The Air Resources Board's Enforcement Division has documented, and Defendants admit,  
15 that Defendants operated at least thirty-two (32) TRUs that were not in compliance with  
16 California's in-use performance standards.

17 On February 28, 2011, Plaintiff filed a Complaint against Foster Enterprises and Gregory  
18 Foster in San Bernardino Superior Court as Case No. CIVRS 1102120 (the "Action"). On July 5,  
19 2012, Plaintiff amended the Complaint to substitute Anna Mae Foster, Gary D. Foster, Stanley M.  
20 Foster, and Jeffery C. Foster for Doe Defendants 1 through 4.

21 Plaintiff and Defendants desire to fully settle and and resolve this Action without further  
22 litigation. Plaintiff has reached an agreement with Defendants to that end. A true and correct  
23 copy of the Settlement Agreement, executed by all parties, is attached to this Judgment Pursuant  
24 to Stipulation as **Exhibit A**. The Settlement Agreement provides that "[t]his Settlement  
25 Agreement shall be incorporated into [a] Judgment Pursuant to Stipulation, and shall be  
26 enforceable pursuant to Code of Civil Procedure section 664.6." It further provides that "[t]he  
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Court shall retain jurisdiction of this Action pursuant to Code of Civil Procedure section 664.6 to enforce this Settlement Agreement until Defendants' performance thereunder is complete."

IT IS THEREFORE STIPULATED by the parties that this Action has been settled pursuant to Code of Civil Procedure section 664.6 on the terms set forth in the Settlement Agreement attached as Exhibit A. The parties request that the Court enter judgment accordingly, and retain jurisdiction of this Action to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

IT IS FURTHER STIPULATED by the parties that this Stipulation 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 Stipulation. This Stipulation may be executed by PDF or facsimile signatures and such signatures shall be deemed to bind each signatory as if they were original signatures. This Stipulation shall be deemed duly executed, effective, and binding, upon the signing of the last counterpart by the signatories hereto.

IT IS SO STIPULATED.

For Defendant Foster Enterprises

Dated: ~~October~~ 2012  
November 12

  
Jeffrey C. Foster  
General Partner and Management  
Committee Member

Dated: ~~October~~ 2012  
Nov. 12

  
Stanley M. Foster  
General Partner and Management  
Committee Member

Dated: ~~October~~ 2012  
November 12

  
Anna Mae Foster  
General Partner

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Dated: October 2012

Cary D. Foster  
General Partner

Dated: October 2012

Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October 2012  
November 12

Anna Mae Foster  
Anna Mae Foster

For Defendant Cary D. Foster

Dated: October 2012

Cary D. Foster

For Defendant Stanley M. Foster

Nov. 12  
Dated: October 2012

Stanley M. Foster  
Stanley M. Foster

For Defendant Jeffrey C. Foster

Dated: October 2012  
November 12

Jeffrey C. Foster  
Jeffrey C. Foster

For Defendant Gregory Foster

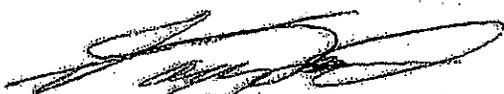
Dated: October 2012

Gregory Foster

JUDGMENT PURSUANT TO STIPULATION AGAINST GREGORY FOSTER (CVRS 1103120)

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*November*  
Dated: ~~October~~ 13 2012

  
\_\_\_\_\_  
Gary D. Foster  
General Partner

Dated: October \_\_, 2012

\_\_\_\_\_  
Gregory Foster  
General Partner

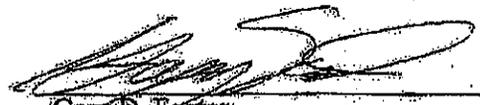
For Defendant Anna Mae Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster

For Defendant Gary D. Foster

*November*  
Dated: ~~October~~ 13 2012

  
\_\_\_\_\_  
Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

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Stanley M. Foster

For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

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Jeffery C. Foster

For Defendant Gregory Foster

Dated: October \_\_, 2012

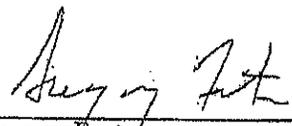
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Gregory Foster

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Dated: October \_\_, 2012

\_\_\_\_\_  
Gary D. Foster  
General Partner

Dated: October \_\_, 2012  
11-14-12

  
\_\_\_\_\_  
Gregory Foster  
General Partner

For Defendant Anna Mae Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Anna Mae Foster

For Defendant Gary D. Foster

Dated: October \_\_, 2012

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Gary D. Foster

For Defendant Stanley M. Foster

Dated: October \_\_, 2012

\_\_\_\_\_  
Stanley M. Foster

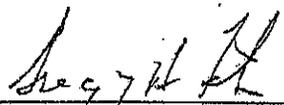
For Defendant Jeffery C. Foster

Dated: October \_\_, 2012

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Jeffery C. Foster

For Defendant Gregory Foster

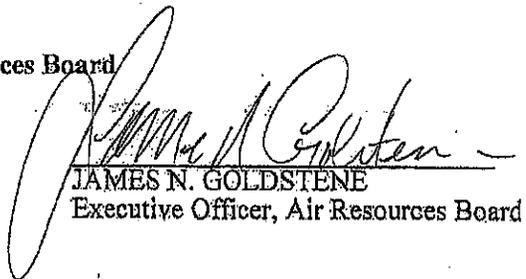
Dated: October \_\_, 2012  
11-14-12

  
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Gregory Foster

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

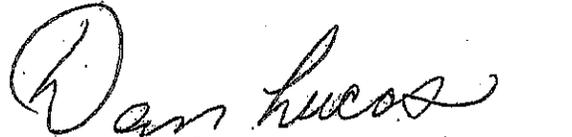
Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

  
JAMES N. GOLDSTENE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: ~~October~~, 2012  
NOVEMBER 9, 2012

KAMALA D. HARRIS  
Attorney General of California

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

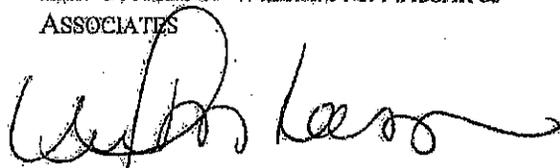
Dated: October \_\_, 2012

LAW OFFICES OF STEVEN GLASER

STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October 24, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

  
WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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For Plaintiff People of the State of  
California *ex rel.* the California Air Resources Board

Dated: October \_\_, 2012

JAMES N. GOLDSTONE  
Executive Officer, Air Resources Board

APPROVED AS TO FORM

Dated: October \_\_, 2012

KAMALA D. HARRIS  
Attorney General of California

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

~~Dated: October~~ *November 15,*  
2012

LAW OFFICES OF STEVEN GLASER



STEVEN GLASER  
*Attorneys for Defendants Foster Enterprises,  
Anna Mae Foster, Gary D. Foster, Stanley  
M. Foster and Jeffery C. Foster*

Dated: October \_\_, 2012

LAW OFFICES OF WILLIAM M. NASSAR &  
ASSOCIATES

WILLIAM MICHAEL NASSAR  
*Attorneys for Defendant Gregory Foster*

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**JUDGMENT**

Pursuant to the foregoing Stipulation of the parties and the Court's power under Code of Civil Procedure section 664.6, and good cause appearing for approval of the Stipulation,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment be, and hereby is, entered against GREGORY FOSTER in accordance with the terms of the Settlement Agreement between the parties, attached as **Exhibit A** hereto. This judgment expressly incorporates the terms of the attached Settlement Agreement. The Court retains jurisdiction over the parties at their request to enforce the Settlement Agreement until Defendants' performance thereunder is complete.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Honorable Barry L. Plotkin  
Judge of the Superior Court

**DECLARATION OF SERVICE BY ELECTRONIC MAIL**

Case Name: **California Air Resources Board v. Foster Enterprises, et. al.**  
No.: **CIVRS1102120**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013

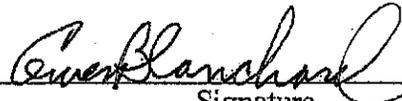
On November 27, 2012, I served the attached **STIPULATION FOR SETTLEMENT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 664.6; [PROPOSED] ORDER THEREON** by transmitting a true copy via electronic mail addressed as follows:

Steven Glaser, Esq.  
Law Offices of Steven Glaser  
15 S. Beverly Drive, Suite 410  
Beverly Hills, CA 90212  
E-mail Address: [steven@sglaserlaw.com](mailto:steven@sglaserlaw.com)  
*Attorney for Defendants*  
**FOSTER ENTERPRISES, et al.,**

William M. Nassar, Esq.  
Law Office of William M. Nassar &  
Associates, Inc.  
P.O. Box 2323  
Redlands, CA 92373  
E-mail Address: [wnassar@nassarlaw.com](mailto:wnassar@nassarlaw.com)  
*Attorney for Defendant*  
**GREGORY FOSTER**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 27, 2012**, at Los Angeles, California.

Gwen Blanchard  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature