SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and MARQUEZ BROTHERS INTERNATIONAL, INC. (hereinafter "MARQUEZ BROTHERS INTERNATIONAL, INC."), 5801 Rue Ferrari, San Jose, CA 95138-1857.

I. RECITALS

TRUCK & BUS REGULATION

(1) HSC §§ 39650-39675 mandate the reduction of the emissions of substances that have been determined to be toxic air contaminants. In 1998, following an exhaustive ten-year scientific assessment process, ARB identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. In-use On-Road diesel vehicles are powered by diesel fueled engines that emit toxic PM. On-Road vehicles are controlled under the Truck and Bus regulation, as codified in 13 CCR § 2025.

(2) 13 CCR § 2025(e)(1)(B) states: "Starting January 1, 2012, for all vehicles with GVWR greater than 26,000 lbs, excluding school buses, fleets must meet the requirements of 13 CCR § 2025(g) or fleets that report may instead comply with the phase-in option of 13 CCR § 2025(i)."

(3) Failure to comply with the requirements of 13 CCR § 2025 is a violation of state law resulting in penalties. HSC §§ 39674(a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars ($1,000) or ten thousand dollars ($10,000), respectively, for each day in which the violation occurs. **

(4) MARQUEZ BROTHERS INTERNATIONAL, INC. has elected to meet the requirements of the Engine Model Year Compliance Schedule provided for in 13 CCR § 2025(g).

(5) 13 CCR § 2025(g) requires that owners of diesel vehicles with a GVWR greater than 26,000 lbs. (heavier vehicles) to meet PM BACT requirements for all 1996 through 1999 engine model years by January 1, 2012, all 2000 through 2004 engine model years by January 1, 2013, and all 2005 through 2006 engine model years by January 1, 2014, and upgrade to a 2010 model year emissions equivalent engine for all 1993 and older model year engines by January 1, 2015, and 1994 and 1995 engine model years by January 1, 2016.

(6) ARB has documented that MARQUEZ BROTHERS INTERNATIONAL, INC. failed to meet PM BACT requirements for 1996 through 1999 engine model years by January 1, 2012, 2000 through 2004 engine model years by January 1, 2013, and failed to upgrade heavier vehicles with a 1993 and older model year engine to a 2010 model year emissions equivalent engine by January 1, 2015.

(7) In order to resolve these alleged violations, MARQUEZ BROTHERS INTERNATIONAL, INC. has taken, or agreed to take, the actions enumerated below under "RELEASE". Further, ARB accepts this Agreement in termination and settlement of this matter.

(8) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. agree as follows:

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against MARQUEZ BROTHERS INTERNATIONAL, INC. for the alleged violations referred to above, ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. agree as follows:

(1) Upon execution of this Agreement, MARQUEZ BROTHERS INTERNATIONAL, INC. shall pay a civil penalty of **$48,250.00**

Payment Due Date:	**In the Amount of and Payable to:**
June 30, 2016	**$48,250.00** to **the Air Pollution Control Fund**

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

Ms. Hortencia Mora
Air Pollution Specialist
California Air Resources Board
Enforcement Division
9480 Telstar Avenue Suite 4
El Monte, California 91731

Please submit payment by the applicable payment due date along with the corresponding "Settlement Agreement Payment Transmittal Form" (Attachment A) to:

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

(2) If the Attorney General files a civil action to enforce this settlement agreement, MARQUEZ BROTHERS INTERNATIONAL, INC. shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

(3) It is further agreed that the penalties described in "Terms and Release", paragraph 1 are punitive in nature, rather than compensatory. Furthermore, the penalty is intended to deter and punish MARQUEZ BROTHERS INTERNATIONAL, INC. for violations of state environmental statutes, and these penalties are payable to and for the benefit of ARB, a governmental unit. Therefore, it is agreed that these penalties imposed on MARQUEZ BROTHERS INTERNATIONAL, INC. by ARB arising from the facts described in recital paragraphs (1) through (8) are non-dischargeable under 11 United States Code § 523 (a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty or forfeiture payable to and for benefit of governmental unit, and is not compensation for actual pecuniary loss, other than certain types of tax penalties.

(4) MARQUEZ BROTHERS INTERNATIONAL, INC. shall not violate HSC §§ 43701 *et seq.*, 44011.6 *et seq.*, and 13 CCR §§ 2180 *et seq.*, 2190 *et seq.*, and 2485 *et seq.*

(5) ARB reserves the right to visit any MARQUEZ BROTHERS INTERNATIONAL, INC. fleet location at any time to conduct compliance audits for the HDVIP and PSIP, or any other applicable ARB program.

(6) MARQUEZ BROTHERS INTERNATIONAL, INC. shall complete Low NOx Software Upgrades (reflash) on all applicable heavy-duty diesel engines operating in California and report to ARB within 45 days of this agreement.

(7) MARQUEZ BROTHERS INTERNATIONAL, INC. shall remain in compliance with the ECL regulation as codified in 13 CCR § 2183.

(8) MARQUEZ BROTHERS INTERNATIONAL, INC. shall instruct all employees who operate diesel-fueled vehicles to comply with the idling regulations set forth in 13 CCR § 2485, within 45 days of this Agreement.

(9) MARQUEZ BROTHERS INTERNATIONAL, INC. shall not violate the Truck and Bus regulation as codified in 13 CCR § 2025.

(10) This Agreement shall apply to and be binding upon MARQUEZ BROTHERS INTERNATIONAL, INC., and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

(11) MARQUEZ BROTHERS INTERNATIONAL, INC. acknowledges that ARB has requested that the California Department of Motor Vehicles maintain registration holds on the following three non-compliant trucks that MARQUEZ BROTHERS INTERNATIONAL, INC. has not brought to compliance prior to the execution of this Agreement: 1HTSDPPN9RH544294, 1HTMMAAN13H555876 and 1HSZDGFN4JH569080.

(12) ARB acknowledges that MARQUEZ BROTHERS INTERNATIONAL, INC. submitted proof of compliance with the Truck and Bus regulation (as codified in 13 CCR § 2025), prior to the execution of this Agreement.

(13) MARQUEZ BROTHERS INTERNATIONAL, INC. has 2 outstanding citations as listed below, for not meeting the requirements of the Truck and Bus regulation. These citations will be cleared through this Agreement.

STB042914001GTP
STB071514002GTP

The above citations had become delinquent on various dates as a result of MARQUEZ BROTHERS INTERNATIONAL, INC.'s not submitted payment or proof of correction in a timely manner.

(14) This Agreement constitutes the entire agreement and understanding between ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. concerning the subject matter hereof.

(15) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

(16) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.

(17) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.

(18) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.

(19) Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (HSC § 39619.7). This information, which is provided throughout this settlement agreement, is summarized here:

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

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

Truck and Bus Violations

The per unit penalty for the Truck and Bus violations involved in this case is a maximum of $1,000 per vehicle per day for strict liability violations or $10,000 per vehicle per day for negligent or intentional violations. The penalty was discounted based on the fact that the violator made diligent efforts to comply and to cooperate with the investigation.

The penalty obtained for the Truck and Bus violations involved in this case for failure to meet the requirements of the Engine Model Year Compliance Schedule for heavier vehicles is $48,250.00. Additionally, two Citations issued in the field STB042914001GTP and STB071514002GTP were included in the penalty collected:

- Approximately $25,250.00 for (7) vehicles with a 1996 through 1999 model year engine; and
- Approximately $9,500.00 for (4) vehicles with a 2000 through 2004 model year engine; and
- Approximately $13,500.00 for (4) vehicles with a 1993 & older model year engine.

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

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

Truck and Bus Violations

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

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.

Truck and Bus Violations

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

(20) MARQUEZ BROTHERS INTERNATIONAL, INC. acknowledges that ARB has complied with Senate Bill 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC § 43024, has explained the manner in which the penalty amount was calculated, has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level.

(21) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential costs and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.

(22) The penalty was based on confidential settlement communications between ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. that ARB does not retain in the ordinary course of business. The penalty is the product of an arms length negotiation between ARB and MARQUEZ BROTHERS INTERNATIONAL, INC. and reflects ARB's assessment of the relative strength of its case against MARQUEZ BROTHERS INTERNATIONAL, INC., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that MARQUEZ BROTHERS INTERNATIONAL, INC. may have secured from its actions.

(23) Now therefore, in consideration of the payment on behalf of MARQUEZ BROTHERS INTERNATIONAL, INC. to the Air Pollution Control Fund, ARB hereby releases MARQUEZ BROTHERS INTERNATIONAL, INC. and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (8) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

Signature: _____

Print Name: Ellen M. Peter

Title: Chief Counsel

Date: 8/8/2016

MARQUEZ BROTHERS INTERNATIONAL, INC.

Signature: _____

Print Name: _____

Title: President

Date: 7-27-2016