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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IN RE: REFORMULATED GASOLINE (RFG) ANTITRUST & PATENT LITIGATION,

This document relates to:
ALL ACTIONS

MDL Case No. 05-1671 CAS (VBKx)

The Honorable Christina A. Snyder

<u>Class Action</u>

STATUS REPORT AND PLAINTIFFS' APPLICATION FOR AN ORDER (1) REALLOCATING REMAINING *CY PRES* FUNDS FROM THE FCCC REPAIR/SCRAP PROGRAM TO THE OPEN GRANTS PROGRAM; (2) APPROVING A DISTRIBUTION TO BAY AREA CLEAN AIR FOUNDATION; AND (3) AUTHORIZING CARL OSHIRO IN HIS CAPACITY AS THE OPEN GRANTS ADMINISTRATOR TO CONDUCT THE *CY PRES* ADMINISTRATION FOR THE REMAINING *CY PRES* FUNDS

Plaintiffs respectfully submit this Status Report and Application for an Order (1) reallocating the remaining *cy pres* funds from the Foundation for California Community Colleges ("FCCC") Repair/Scrap Program to the Open Grants Program, (2) approving distribution of funds from the Open Grants Program to the Bay Area Clean Air Foundation ("BACAF") for the clean air and fuel efficiency purposes described in BACAF's Proposal, and (3) authorizing Carl K. Oshiro in his capacity as Open Grants Administrator to conduct the *cy pres* administration for the remaining *cy pre*s funds.

Plaintiffs' Counsel submits this Application in accordance with the Order of Final Approval of Class Settlement (Document Number 282), which permits modification of the administration of the settlement in this case by application. This Application is made based on the matters described herein, the Declaration of Carl K. Oshiro ("Oshiro Decl."), the Declaration of Sally Telias ("Telias Decl."), and all exhibits submitted thereto. Plaintiffs' Counsel has consulted Defense Counsel prior to the filing of this Application and Defense Counsel has indicated that the defendant does not oppose the relief sought herein.

I. INTRODUCTION

The *cy pres* programs funded by the RFG Settlement are now completed and a variety of clean air and fuel efficiency benefits have been realized. As submitted to the Court on January 25, 2013, the grant to the Foundation for California Community Colleges ("FCCC") to implement the Vehicle Repair, Retirement, Replacement For Motorists Program (also known as "VRRRM" or the "Repair/Scrap Program") has concluded. *See* Document Number 332. The Open Grants component of the *cy pres* program is also now completed. Oshiro Decl. at ¶ 9.

As of April 30, 2015, funds remain in both the FCCC and Open Grants Programs. In particular, there is $1,466,607.49 in the FCCC fund and $684,541.19 in the Open Grants fund. Telias Decl. at ¶ 5. In light of these remaining funds, Plaintiffs request the Court approve reallocating the residual *cy pres* funds from the FCCC Repair/Scrap Program to the Open Grants Program. These funds will be used for a further grant or grants to improve air quality or fuel efficiency for California consumers. Once a potential grantee and project has been identified, Plaintiffs will seek court approval for use of the remaining funds.

With respect to the Open Grants fund, Plaintiffs request that the Court approve the Proposal submitted by Bay Area Clean Air Foundation ("BACAF")[1] to Carl K. Oshiro, the *Cy Pres* Administrator for the Open Grants Program, and distribute settlement funds to BACAF to implement the Proposal. As described in more detail below, BACAF's proposal furthers the purpose of the settlement to provide clean air and fuel efficiency benefits to California consumers. *See* the BACAF Proposal attached to the Oshiro Decl. BACAF's Proposal supplements its efforts to facilitate the widespread adoption of electric vehicles ("EV") by providing assistance to public agencies to install electric charging stations in their communities. Similar to prior grants, any disbursement to BACAF is contingent on the Court's approval, and the negotiation and execution of a written Grant Agreement with payments to be made in installments on the receipt of satisfactory reports from BACAF.

To carry out the administration of the BAFAC Proposal as well as other grants, Plaintiffs request that the Court authorize Carl K. Oshiro, in his capacity as the Open Grants Administrator, to complete the *cy pres* administration for all remaining *cy pres* funds.

[1] Established in 2008, BACAF is a nonprofit organization dedicated to improving air quality in the San Francisco Bay Area. BACAF is the nonprofit fundraising arm of the Bay Area Air Quality Management District and raises funds to supplement the District's efforts to improve air quality. Under the Open Grants Program, BACAF successfully completed its grant to deploy plug-in electric vehicles in City CarShare's fleet. Oshiro Decl. at ¶ 11.

II. STATUS OF THE FCCC REPAIR/SCRAP AND OPEN GRANTS PROGRAMS

A. The Open Grants Program

On November 24, 2008, the Court appointed Carl K. Oshiro and Harry M. Snyder as *cy pres* administrators for the Open Grants Program (Document Number 281). In this role, Messrs. Oshiro and Snyder prepared and issued a Notice of Funds for the Open Grants Program, received applications and conducted due diligence reviews, engaged subject matter experts to assess specific projects, prepared findings and recommendations on grant applications for counsel, and assisted counsel in requesting Court approval of grants. Oshiro Decl. at ¶ 3. On November 29, 2010, the Court approved Plaintiffs' application to distribute settlement funds to 10 applicants[2] (Document Number 312). Thereafter, the *cy pres* grant administrators negotiated, drafted, and executed grant agreements with nine grantees. Oshiro Decl. at ¶ 8. As a result of a critical equipment supplier going out of business, CALSTART's project to install electric power for ships at the Port of Richmond was the only grant that did not go forward. Despite CALSTART's efforts to locate an alternative supplier, it was unable to find a workable solution, and ultimately withdrew its application for funds. *Id*. The Grant Agreement was not executed and funds were not disbursed to CALSTART. *Id*.

On February 6, 2014, Mr. Snyder resigned from his role as a *cy pres* administrator for the Open Grants Program. Oshiro Decl. at ¶ 2, n.1. Mr. Oshiro has continued to serve as the *Cy Pres* Administrator for the Open Grants Program. *Id*.

[2] These applicants include (1) Balance Foundation; (2) Bay Area Clean Air Foundation; (3) California Center for Sustainable Energy; (4) CALSTART; (5) Center for Community and Environmental Justice; (6) Center for Energy Efficiency and Renewable Technology; (7) East Bay Clean Cities Coalition; (8) Mothers of East Los Angeles; (9) Southern California Regional Transit Training Consortium; and (10) Uncommon Good.

The Open Grants Program has delivered and continues to deliver a broad range of clean air and fuel efficiency benefits to California consumers. As reported in the Third Report on Grants for the Open Grants Program, the following is a brief summary of what has been accomplished as a result of the Open Grants Program:

(1) *Balance Foundation* researched and published a comprehensive guide, white paper and technical supplement to assist local governments with the deployment of electric vehicles in their communities. The publications funded by the grant include standardized policies, ordinances and best practices that provide a consistent framework for deployment of electric vehicle infrastructure including information on signage, ADA compliance, permitting and other key matters. The Balance Foundation also reached over 500 local leaders through workshops and technical assistance on these topics.

(2) *Bay Area Clean Air Foundation* ("BACAF") purchased, converted and deployed 10 electric plug-in hybrid cars as part of the City CarShare fleet in the San Francisco Bay Area. The vehicles were very popular among car share customers. During the grant, the electric vehicles were checked out 5,274 times, driven over 135,000 miles and reduced greenhouse gas emissions by 11.75 tons. Data collected in the course of the project demonstrated that the vehicles can achieve 100 miles per gallon on trips of 50 miles or less, double the mileage of a standard (non-converted) Toyota Prius. Based on this experience, City CarShare plans to expand the number of plug-in electric vehicles in its fleet and BACAF published a best practices guide to assist other local governments and nonprofits to launch similar programs.

(3) *California Center for Sustainable Energy* implemented a vehicle rebate program that resulted in the purchase and deployment of 181

alternative fuel vehicles serving the San Diego Airport. The hybrid, natural gas, propane, and biodiesel taxis, shuttles and light duty sedans resulted in fuel savings of nearly $1.5 million per year, reduced carbon dioxide ("CO2") emissions by approximately 618,000 metric tons per year and reduced oxides of nitrogen ("NOx") emissions by approximately 12,546 metric tons per year.

(4) *Center for Community and Environmental Justice* installed high-performance air filtration systems in five schools impacted by diesel emissions from rail yards and diesel trucks in San Bernardino and Riverside Counties. The schools serve approximately 6,900 elementary and high school students.

(5) *Mothers of East Los Angeles* installed high-performance air filtration systems in seven inner-city schools in Los Angeles County impacted by industrial pollution. The schools serve approximately 2,300 elementary and high school students.

(6) *Center for Energy Efficiency and Renewable Technology* played a leadership role in a statewide collaborative of public officials, automakers, utilities, infrastructure providers and environmental organizations that reached broad consensus on steps to advance the deployment of electric vehicle infrastructure in California.

(7) *East Bay Clean Cities Coalition* (in collaboration with Waste Management of Alameda County ("WMAC")) completed construction of a compressed natural gas fueling station at WMAC's Altamont Landfill near Livermore, California. In February 2013, WMAC began fueling CNG-powered transfer trailers that transport trash from its Transfer Station in San Leandro to the Altamont Landfill. WMAC estimates that the project will displace nearly 20 million gallons of diesel fuel and result in a 200,000 metric ton

reduction in greenhouse gas emissions, 1,526-ton reduction in NOx and a 30-ton reduction in Particulate Matter over its 20-year life.

(8) *Southern California Regional Transit Training Consortium* developed three new courses, updated five courses and provided 10,944 hours of training to 688 transit mechanics on how to maintain electric gas hybrid buses in transit fleets across Southern California. The courses and training are critical to keeping the advanced buses well maintained and in operation.

(9) *Uncommon Good* completed construction of "Whole Earth Building" ("WEB"), a superadobe building to be a model on how to reduce carbon emissions from buildings and building operations. Greenhouse gas calculations indicate that the WEB required approximately 85,162 kilograms of CO2 to construct, compared to 139,828 kilograms of CO2 for regular construction and operates on 8,449 kilograms of CO2 per year compared to 15,261 kilograms of CO2 per year for regular construction.

Oshiro Decl. at ¶ 9.

As of December 31, 2014, the nine grants that the Court approved under the Open Grants Program were completed. Oshiro Decl. at ¶ 9. At that time, there was a balance of approximately, $703.586.12. Telias Decl. at ¶ 4. Plaintiffs' Counsel contacted Mr. Oshiro and requested that he reach out to one of the Open Grant recipients, Bay Area Clean Air Foundation ("BACAF"), to inquire whether there were any projects that could be feasibly implemented using remaining funds. Oshiro Decl. at ¶ 10. In response, BACAF submitted a $500,000 Proposal to provide assistance to public agencies (cities, community colleges, parks, fire and water districts, etc.) to install electric charging stations in their communities. Of this amount $450,000 would be used for subsidies to public agencies for charger installation, $20,000 for preparation of the White Paper and $30,000 (6%) to

BACAF for project administration. The Proposal states that Open Grants funds would supplement, not supplant, other sources of funding. Oshiro Decl. at ¶ 14.

BACAF's Proposal builds on state and regional efforts to promote the adoption of electric vehicles and deployment of charging facilities, both of which are considered critical to achieving the state's goals for clean air and fuel efficiency. In addition, the BACAF Proposal furthers the goals of several of the grants previously awarded under the Open Grants Program. For example, the grant to the Balance Foundation provided resources, training, and technical assistance to local governments on the adoption of ordinances, policies, and best practices to provide a consistent framework for electric vehicle infrastructure. Similarly, the previous grant to BACAF deployed plug-in vehicles in car share and commercial fleets which demonstrated the clean air and fuel efficiency advantages of using electric vehicles to the public and in the community. In addition, the grant awarded to the Center for Energy Efficiency and Renewable Technology reached a consensus through a collaborative process involving public officials, automakers, utilities, infrastructure providers and environmental organizations on the steps needed to advance the deployment of electric vehicle infrastructure in California. The BACAF Proposal builds on these programs and expands the effort to provide clean air and fuel efficiency benefits to California consumers. Additional details regarding BACAF's Proposal is discussed in Part IV, *infra*.

B. The FCCC Repair/Scrap Program

On January 7, 2010, the Court appointed Brenda Jackson Drake as *cy pres* administrator for the component of the settlement in this case known as the Repair/Scrap Program. *See* Document Number 306. As contemplated in the *Cy Pres* Order, Ms. Drake executed a Grant Agreement with the Foundation for California's Community Colleges (the "FCCC") on January 21, 2010. *See* Document Number 313.

The Repair/Scrap Program, also known as the VRRRM Program, became operational on February 11, 2010. *Id.* The VRRRM Program comprised four discrete projects, each designed to improve air quality and reduce emissions by reducing the number of high emitting vehicles on California's roads.[3]

Plaintiffs submitted three applications seeking modification of the Repair/Scrap Program Grant Agreement. The Court granted the first on February 8, 2011. *See* Order Authorizing (1) Amendment of the Repair and Scrap Program Grant Agreement; (2) Adjustment to the *Cy Pres* Administrator's Budget; and (3) Setting a Date for Submission of Year Two Budget for the Repair and Scrap Program (Document Number 317). The Court granted the second on November 15, 2011. *See* Order Authorizing Amendment of the Repair and Scrap Program Grant Agreement (Document Number 324). The Court granted the third on May 14, 2012. *See* Order Authorizing Amendment of the Repair and Scrap Program Grant Agreement (Document Number 331).

As stated in Ms. Drake's Final Report Regarding Foundation for California Community Colleges (Document Number 332-1) filed with the Court on January 25, 2013, the Repair/Scrap Program is completed. The following is a brief summary of the timelines and what has been accomplished as a result of the FCCC Program:

(1) The VRRM Replacement Incentive which was launched on October 1, 2010 and completed on May 22, 2011. This program was offered to eligible vehicle owners, primarily within the South Coast Air Quality Management District and San Joaquin Valley Air Pollution Control District, an incentive of $3,500 to retire older, high emitting vehicles and replace them with newer, lower emitting, more fuel efficient models.

[3] The four components include (1) VRRRM Replacement Incentive; (2) VRRRM for CAP; (3) VRRRM for PASS; and (4) VRRRM for HEROS.

(2) VRRM for CAP which was launched on September 24, 2010 and completed on August 12, 2012. This program supplemented the Bureau of Automotive Repair's Consumer Assistance Program by providing up to an additional $800 to enable vehicle owners to repair vehicles that would otherwise be given a Repair Cost Waiver (allowing the vehicle to be registered and operated for two additional years).

(3) VRRM for PASS which was launched on September 24, 2010 and completed on August 12, 2012. This program supplemented the San Joaquin Valley Air Pollution Control District's Polluting Automobile Scrap and Salvage ("PASS") program.

(4) VRRM for HEROS which was launched on May 23, 2011 and completed on August 31, 2012. This program was one in which consumers could either retire only or retire and replace their high-emitting vehicles. Consumers received incentives ranging from $1,000 to $4,000, depending on whether they chose to retire only or retire and replace their high-emitting vehicles.

As of April 30, 2015, there was $1,466,607.49 remaining in the FCCC fund. Telias Decl. at ¶ 5.

III. RESIDUAL *CY PRES* FUNDS SHOULD BE REALLOCATED FROM THE FCCC REPAIR/SCRAP PROGRAM TO THE OPEN GRANTS PROGRAM

In light of the residual funds remaining in the FCCC Repair/Scrap Program, Plaintiffs request the Court approve the transfer of the balance remaining in the Repair/Scrap Program to the Open Grants Program to be distributed and administered under the Open Grants Program. These funds will be used for a further grant or grants to improve air quality or fuel efficiency for California consumers. Similar to the BACAF Proposal, once a potential grantee and project is identified, Plaintiffs' Counsel will confer with Defense Counsel and seek the Court's approval for use of the remaining funds. This reallocation appears to be the most streamlined approach to administering the funds remaining in the FCCC Repair/Scrap Program.

IV. TO FURTHER THE PURPOSE OF THE SETTLEMENT, BACAF'S PROPOSAL SHOULD BE APPROVED AND OPEN GRANT FUNDS SHOULD BE DISTRIBUTED TO IT TO IMPLEMENT THE PROPOSAL

Plaintiffs request that the Court approve the Proposal submitted by Bay Area Clean Air Foundation ("BACAF"), and distribute funds to BACAF from the Open Grants Fund to implement the Proposal. BACAF's Proposal furthers the purpose of the settlement by providing clean air and fuel efficiency benefits to California consumers. BACAF's Proposal builds on state and regional efforts to promote the adoption of electric vehicles and deployment of charging facilities, both of which are considered critical to achieving the state's goals for clean air and fuel efficiency.

As a primary matter, BACAF has already successfully completed its program to deploy plug-in electric vehicles in City CarShare's fleet which was funded by the Open Grant Program. Oshiro Decl. at ¶ 11. BACAF's Proposal supplements its efforts by contracting with the Bay Area Air Quality Management District (the "District") to provide further assistance to public agencies (e.g., cities, community colleges, parks, fire and water districts, etc.) to install electric charging stations in their communities. Oshiro Decl. at ¶ 13.

Under the Proposal, the District intends to select the installation projects using a competitive process. Oshiro Decl. at ¶ 13. The District would give priority and make special efforts to reach out to public agencies in areas identified with disproportionately high levels of air quality impacts (areas defined as Highly Impacted Communities or Episodic Areas in its CARE Program). *Id.* The District would also consider an agency's readiness - the extent to which an agency has obtained all approvals (e.g., permits, lease agreements) - and demonstrated the ability to complete the project ahead of the timeline required by program guidelines. *Id.* Public agencies receiving assistance would be required to pay at least 10% of the cost of chargers. Chargers funded by the grant would be used to power plug-in vehicles in the agency's fleet. *Id.* In addition, at least 50% of the charging stations would be publicly accessible. *Id.*

After installation, the District would collect data from the charging stations and electric vehicles for at least six months to measure the effectiveness of the project in terms of environmental, economic, and operating benefits. Oshiro Decl. at ¶ 13. The District would publish a White Paper describing the project, key documents used to make agencies aware of the funding opportunity and solicit applications, the installations funded, usage data, summary of clean air and fuel efficiency benefits, financial summary, case studies, and lessons learned. *Id.* The White Paper would be posted on the District's website and publicized through Association of Bay Area Governments, Metropolitan Transportation Commission, EV Readiness Councils, other air districts and entities with an interest in the deployment of EV infrastructure in California. *Id.*

As stated above, BACAF submitted a proposed budget based on a $500,000 award from the Open Grants Program. Of this amount $450,000 would be used for subsidies to public agencies for charger installation, $20,000 for preparation of the White Paper and $30,000 (6%) to BACAF for project administration. The Proposal states that Open Grants funds would supplement, not supplant, other sources of funding. Oshiro Decl. at ¶ 14.

Although the clean air and fuel efficiency benefits will depend on the number, types, and costs of the chargers ultimately installed, the potential benefits are substantial. For illustration purposes, BACAF estimates that if 6 DC Chargers and 19 Level 2 Chargers are installed, the project will result in a reduction of 708 tons of carbon dioxide emissions and a reduction of 72,130 gallons of gasoline usage over three years. Oshiro Decl. at ¶ 15. BACAF believes that these estimates are conservative as more chargers will be deployed and the chargers will operate longer than three years. The project is estimated to take approximately 30 months. Oshiro Decl. at ¶ 17. Additional details of the Proposal are set forth in Carl K. Oshiro's Declaration and accompanying exhibits.

V. TO COMPLETE *CY PRES* ADMINISTRATION FOR ALL RESIDUAL *CY PRES* FUNDS CARL K. OSHIRO SHOULD BE APPROVED AS THE OPEN GRANTS ADMINISTRATOR

To carry out the administration of the BACAF Proposal as well as other grants, Plaintiffs request that the Court authorize Carl K. Oshiro, in his capacity as the Open Grants Administrator to complete the *cy pres* administration for all remaining *cy pres* funds.

In this role, Mr. Oshiro would be responsible for the following:

(1) administering the BACAF Proposal (if approved by the Court), including negotiating, executing and monitoring the BACAF Grant Contract, approving payment(s) to the grantee during the term of the grant;

(2) assisting Plaintiffs' Counsel in identifying one or more appropriate recipients and use or uses for funds remaining in the Open Grants Program (including funds transferred from the Repair/Scrap Program) consistent with the purposes of the Open Grants Program;

(3) assisting Plaintiffs' Counsel in applying to the Court for approval of such distributions;

(4) if approved by the Court, administering the subsequent grant(s) including drafting, negotiating and executing the Grant Contract(s), monitoring progress of the grant(s) and approving payments to the approved grantee(s);

(5) keeping Plaintiffs' Counsel informed of the progress of approved grants and significant developments related thereto;

(6) preparing three written annual reports to Plaintiffs' Counsel regarding the status of the BACAF Grant and grant or grants subsequently approved by the Court covering the periods of calendar years 2015, 2016 and 2017.

To accomplish the aforementioned tasks as the *cy pres* claims administrator, Plaintiffs request that Mr. Oshiro's reasonable fees and budget be approved. The budget approved in the Court's November 24, 2008 Order did not contemplate the further grant administration services. Plaintiffs' Counsel therefore requests that Mr. Oshiro be reimbursed from the settlement fund at a rate of $350 per hour (this is the same rate that was previously approved by the Court). Oshiro Decl. at ¶ 26. Reasonable costs for travel, incidental expenses (such as photocopying and postage), and the expenses of pertinent experts shall also be reimbursed. Oshiro Decl. at ¶ 25. Plaintiffs' Counsel and Mr. Oshiro have agreed that the budget for this *cy pres* administration shall not exceed $85,000 without additional Court approval. Oshiro Decl. at ¶ 27.

VI. CONCLUSION

For the reasons described above, Plaintiffs' Counsel respectfully requests an order approving the following: (1) reallocating the remaining *cy pres* funds from the Foundation for California Community Colleges ("FCCC") Repair/Scrap Program to the Open Grants Program; (2) approving distribution of funds from the Open Grants Program to the Bay Area Clean Air Foundation ("BACAF") for the clean air and fuel efficiency purposes described in BACAF's Proposal; and (3) authorizing Carl K. Oshiro in his capacity as Open Grants Administrator to conduct the *cy pres* administration for the remaining *cy pres* funds.

Dated: May 8, 2015

Respectfully submitted,

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