

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF COLORADO

Proceeding No. 24G-0179TO

Civil Penalty Assessment Notice: 135862-CPAN

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

KLAUS' TOWING LLC / DBA-KLAUS' TOWING, INC.,

Respondent.

UNANIMOUS COMPREHENSIVE SETTLEMENT AGREEMENT

This Unanimous Comprehensive Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into between Klaus' Towing LLC dba Klaus' Towing, Inc. ("Respondent") and Trial Staff of the Colorado Public Utilities Commission ("Trial Staff"), each a "Settling Party," and collectively the "Settling Parties." There are no parties in this proceeding other than the Settling Parties. This Settlement Agreement is intended to resolve all issues raised in this proceeding.

Trial Staff and Respondent agree as follows:

CPAN Civil Penalties

1. CPAN No. 135862 ("the CPAN") concerns 72 tows, and the maximum civil penalty for violations alleged in the CPAN is \$383,927.50.

2. Regarding specific violations alleged in the CPAN:

a. Respondent admits to:

- i. All 72 violations of C.R.S. § 40-10.1-405(3)(a);
- ii. All 14 violations of C.R.S. § 40-10.1-405(2)(a)(I); and
- iii. All 62 violations of Rule 6508(b)(III)(B).

b. Respondent states it committed a general violation of Rule 6007 by improperly acquiring and documenting the 72 towing authorizations at issue in this proceeding.

3. Regarding civil penalties in the CPAN, Respondent agrees to the following calculation of civil penalties:

- a. For C.R.S. § 40.10.1-405(3)(a): **\$22,770** = 72 x \$316.25
- b. For C.R.S. § 40-10.1-405(2)(a)(I): **\$4,427.50** = 14 x \$316.25
- c. For Rule 6508(b)(III)(B): **\$39,215** = 62 x \$632.50¹ = \$39,215
- d. For Rule 6007: **\$88,550** = 70 x \$1,265²

4. The sum of these four civil penalties is as follows: **\$154,962.50** = \$22,770 + \$4,427.50 + \$39,215 + \$88,500.

5. To achieve resolution of this proceeding, Respondent agrees to pay 65% of this amount, which equals **\$100,725.63**.

¹ To achieve resolution of this proceeding, Respondent and Trial Staff agreed to reduce the per penalty amount for the Rule 6508(b)(III)(B) violation from \$1,265 to \$632.50.

² To achieve resolution of this proceeding, Respondent and Trial Staff agree to the smallest total of the three types of Rule 6007 violations.

6. An affidavit by Troy Porras, agreed upon by Trial Staff and Respondent, concerning Respondent's financial situation is included here as **Exhibit A**.

7. The Settling Parties agree a 65% reduction of the total civil penalty from \$154,962.50 to \$100,725.63 represents a just and reasonable result and comports with the public interest because:

- a. Respondent agreed to ensure as many as possible of the 72 tows would be refunded;
- b. Respondent agreed to withdraw Respondent's towing permits as well as towing permits of affiliated Colorado towing companies;
- c. Respondent has limited funds available, as discussed in Attachment A;
- d. Respondent is unable to pay a \$154,962.50 total civil penalty (nor a \$383,927.50 civil penalty) even if it fully liquidates, and furthermore, its financial assets will continue to shrink as it winds up;
- e. the cost of litigation to Respondent if this matter proceeded to a fully litigated hearing and resultant decreasing funds available to pay a civil penalty if this matter were fully litigated;
- f. a mutual recognition by Trial Staff and Respondent as to the time requirements and costs inherent in fully litigating the CPAN to both themselves and the Commission;

- g. the possibility the Commission could, pursuant to Rule 1302, further reduce a \$154,862.50 total civil penalty if Trial Staff met its burden of proof at hearing; and
- h. Respondent already ceased towing operations in Colorado prior to execution of the Settlement Agreement.

Customer Refunds

- 1. Of the 72 tows associated with the CPAN, the Settling Parties agree Respondent already paid \$6,333.96 to refund towing fees and charges for 21 of them.
- 2. Respondent shall pay the remaining 51 unrefunded towing fees and charges totaling \$16,878.82 by delivering refund checks via certified mail return receipt to the person who paid the towing fees and charges and provide evidence of same to Trial Staff within 7 calendar days of a final Commission decision in this proceeding or October 31, 2024, whichever is later.

Further Adjustment of Payment

- 1. Towing fees and charges refunded (*i.e.*, via cashing a check) shall result in a reduction of the \$100,725.63 civil penalty if these checks are cashed on/before November 29, 2024, and Respondent shall provide evidence of same to Trial Staff.

Payment of Civil Penalties

- 1. Respondent shall pay **\$83,846.81** = (\$100,725.63 - \$16,878.82) within 7 calendar days of a final Commission decision in this proceeding or October 31, 2024, whichever is later.

2. Respondent shall pay an additional amount equal to the total unrefunded towing fees and charges as of November 29, 2024 (*i.e.*, the sum of refund checks not cashed on or before November 29, 2024) on or before December 6, 2024.

3. If Respondent fails to timely make payment required under this Settlement Agreement, Respondent shall be liable for the full penalty amount of \$383,927.50 less any payments made, which shall be due immediately.

Towing Permits

1. Respondent shall, within 7 calendar days of a final Commission decision in this proceeding, file necessary forms to withdraw the Colorado PUC towing permits associated with Respondent and any other entity owned or operated by one or more of Respondent's owners, principals, officers, members, partners, or directors, including but not limited to: Towing Operations LLC dba Wyatts Towing, Boulder Valley Towing, Lone Star Towing, (collectively, "Wyatt's Family of Companies").

2. While these additional entities are not parties to this proceeding, as stated in the affidavit of Troy Porras, included here as Attachment A, Troy Porras possesses the authority to withdraw these permits.

Cooperation on Other Matters

1. As noted in Exhibit A, the Settling Parties shall continue to cooperate to complete other ongoing investigatory matters concerning Respondent and the Wyatt's Family of Companies on issues arising outside this proceeding.

2. All investigatory matters and requests for refunds shall be completed by November 29, 2024.

3. To achieve resolution of this proceeding -- and in recognition that Respondent (as well as the Wyatt's Family of Companies) have ceased towing, agreed to towing permit withdrawals, and to cooperate on all investigatory matters and requests for refunds -- Trial Staff states it does not currently foresee a need to pursue additional CPANs against Respondent (and the Wyatt's Family of Companies).

General Provisions

1. Except as expressly set forth herein, nothing in this Settlement Agreement is intended to have precedential effect or bind the Settling Parties with respect to positions they may take in any other proceeding regarding any of the issues addressed in this Settlement Agreement. No Settling Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Settlement Agreement. Furthermore, this Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than the above-captioned proceeding, except as expressly set forth herein.

2. The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement,

are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.

3. The discussions among the Settling Parties that produced this Settlement Agreement have been conducted in accordance with Rule 408 of the Colorado Rules of Evidence. Nothing in this Settlement Agreement shall constitute a waiver by any Settling Party with respect to any matter not specifically addressed in this Settlement Agreement.

4. The Settling Parties agree to use good faith efforts to support all aspects of the Settlement Agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Settlement Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Settlement Agreement or the implementation or enforcement of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Settlement Agreement, it will take no formal action in any administrative or judicial proceeding that would have the effect, directly or indirectly, of contravening the provisions or purposes of this Settlement Agreement. However, except as expressly provided herein, each Settling Party expressly reserves the right to advocate positions different from those stated in this Settlement Agreement in any proceeding other than one necessary to obtain approval of, or to implement or enforce, this Settlement Agreement or its terms and conditions.

5. The Settling Parties do not believe any waiver or variance of Commission rules is required to effectuate this Settlement Agreement but agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations if necessary to permit all provisions of this Settlement Agreement to be approved, carried out, and effectuated.

6. This Settlement Agreement does not constitute agreement, by any Settling Party, that any principle or methodology contained within or used to reach this Settlement Agreement may be applied to any situation other than this proceeding, except as expressly set forth herein.

7. This Settlement Agreement is an integrated agreement that may not be altered by the unilateral determination of any Settling Party. There are no terms, representations or agreements among the parties which are not set forth in this Settlement Agreement.

8. This Settlement Agreement shall not become effective until the Commission issues a final decision addressing the Settlement Agreement. In the event the Commission modifies this Settlement Agreement in a manner unacceptable to any Settling Party, that Settling Party may withdraw from the Settlement Agreement and shall so notify the Commission and the other Settling Parties in writing within 5 calendar days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Settlement Agreement, this

Settlement Agreement shall be null and void and of no effect in this or any other proceeding.

9. There shall be no legal presumption that any specific Settling Party was the drafter of this Settlement Agreement.

10. This Settlement Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement with respect to the issues addressed by this Settlement Agreement. This Settlement Agreement may be executed and delivered electronically, and the Settling Parties agree that such electronic execution and delivery, whether executed in counterparts or collectively, shall have the same force and effect as delivery of an original document with original signatures, and that each Settling Party may use such facsimile signatures as evidence of the execution and delivery of this Settlement Agreement by the Settling Parties to the same extent that an original signature could be used.

Dated September 19, 2024

Agreed on behalf of: **Trial Staff of the Colorado Public Utilities Commission**

By: /s/ Lloyd Swint

Lloyd Swint

Criminal Investigations and Compliance Unit Manager

Colorado Public Utilities Commission

1560 Broadway, Suite 250

Denver, CO 80202

Agreed as to form:

PHILIP J. WEISER

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/s/ Paul J. Kyed

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*Counsel of Record

Dated September 18, 2024

Agreed to on behalf of:

Klaus' Towing LLC dba Klaus' Towing

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