

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 14G-0433CP

Civil Penalty Assessment Notice No. 109385

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PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

MKBS LLC D/B/A METRO TAXI AND/OR TAXIS FIESTA,

Respondent.

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### STIPULATION AND SETTLEMENT AGREEMENT

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Staff of the Public Utilities Commission (“Staff”) and Respondent MKBS LLC d/b/a Metro Taxi and/or Taxis Fiesta (“Respondent”) (collectively, the “Parties”) enter into this Stipulation and Settlement Agreement (“Agreement”) in this docket as a complete and final resolution of all issues that were or could have been raised in this proceeding. Kyle Brown, General Manager of MKBS LLC d/b/a Metro Taxi, has authority to enter into this settlement on behalf of Respondent.

#### Background

On May 5, 2014, the Commission issued Respondent Civil Penalty Assessment or Notice of Complaint to Appear No. 109385 (the “CPAN”) seeking civil penalties of \$354,750.00 (or \$177,375.00 if paid within 10 days). The CPAN alleged 129 violations of drivers’ hours of service exceeding 80 hours in any rolling eight

consecutive day period, in violation of 4 *Code of Colorado Regulations* (“CCR”) §723-6-6103(d)(II)(D).<sup>1</sup> The CPAN was served by personal service on May 6, 2014.

### Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to all the violations in the CPAN.
2. Respondent agrees to comply with all Colorado and federal statutes and rules, including the rules with regard to hours of service of drivers.

3. This Agreement has been reached in the spirit of compromise, in light of the uncertainties of trial, and to avoid the costly expense of litigation. This Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. The public interest is served by a stay of the civil penalty, subject to certain conditions as further discussed in paragraph 4 below. In staying the penalty, Staff considered the following mitigating factors pursuant to Commission Rule 1302(b):

- a. Respondent acknowledges wrongdoing.
- b. Respondent admits the maximum level of culpability for all violations in the CPAN.
- c. Respondent actively and timely contacted Staff to resolve the issue.
- d. Respondent has made good-faith efforts to achieve compliance and prevent future similar violations, including the following:

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<sup>1</sup> Due to a scrivener’s error, violation No. 1 and No. 2 cite to 4 CCR § 723-6-6103 (c)(II)(D), which should instead read 4 CCR § 723-6-6103(d)(II)(D) . As the parties have agreed upon terms of a settlement, Staff will not at this time file a motion to amend the CPAN.

- I. Respondent's personnel expressed concern about the violations and cooperated in discussing measures to address each violation.
  - II. Since Respondent's last safety and compliance audit in 2011, Respondent has taken affirmative, proactive steps to resolve hours of service issues, resulting in significant improvement to the frequency of violations. For instance, as of early March 2014, Respondent has implemented a GPS system that works with their digital systems, which they are confident should eliminate further hours violations.
  - III. As of early March 2014, Respondent has implemented a "zero tolerance" policy which will result in termination of any driver violating the hour limits set forth in 4 CCR §723-6-6103(d)(II)(D). If a driver exceeds the hour limits, Respondent will immediately investigate how the violation occurred and put in place measures to catch any future violations.
  - IV. Respondent will be combining the Automated Vehicle Identification ("AVI") dispatch records with Respondent's own records onto one sheet, which will eliminate any miscalculation of hours. Additionally, Respondent has a person assigned to check daily the previous day's hours, and plans to add a second person to this duty.
  - V. Respondent advised that if a driver is inactive for more than 30 days, the driver must reapply to work for Respondent.
  - VI. Respondent has banned drivers' use of any credit card system other than Respondent's to prevent drivers making uncalculated rides.
- e. Respondent's support for and cooperation with random audits of Respondent's driver files, with the understanding that if within twelve months the same violations of hours of service exceeding 80 hours in any 8 day period are found in greater than six percent of the audited driver files, Respondent will owe the full civil penalty under the terms herein. This is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.

4. In consideration of Respondents' admission of liability, and for the reasons expressed above, Staff agrees to stay the full penalty amount of \$354,750.00 for twelve months following date of the Commission's final order approving this Agreement, provided that: Respondent will be subject to Staff investigators' random audits of Respondent's driver files — specifically, records relating to drivers' hours of service with respect to 80 hours in 8 days violations. The number of driver files to be audited is solely in Staff's discretion. If within that twelve-month period, Respondent avoids further violations of the same nature, *i.e.*, of the driver files audited, less than six percent of the audited drivers' hours of service exceed 80 hours in any 8 day period, the full penalty amount is waived. If, however, during any compliance review/audit conducted by Staff within that twelve-month period, the Commission finds any violations of the same nature as any of the violations for which Respondent has admitted liability, *i.e.*, greater than six percent of the audited drivers' hours of service exceed 80 hours in any 8 day period, Respondent will be liable for the full penalty amount of \$354,750.00, payable within 90 days of completion of the audit. Respondent and Staff agree the intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.

5. All matters that were raised or could have been raised in this docket relating to the issues specifically identified and addressed herein have been resolved by this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no

further modification of this Agreement is allowed, except in writing by the parties, and further agreed to in an order issued by the Commission.

6. Respondent's failure to complete its obligations as set forth in this Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.


7. In the event this Agreement is modified or not approved in its entirety, either Party, at that Party's option, may withdraw from this Agreement by filing a notice with the Commission in this docket within seven days of entry of such order. In that event, this Agreement will be void and the matter will be set for hearing.

Executed this 22<sup>nd</sup> day of May, 2014.

STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION

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*Approved as to form:*

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