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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 03G-454CP

Civil Penalty Assessment Notice No. 28363

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

SUPERSHUTTLE INTERNATIONAL DENVER, INC.,

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission of the State of Colorado (Staff) and SuperShuttle International Denver, Inc. (SuperShuttle) (Staff and SuperShuttle collectively, Parties), enter into this Stipulation and Settlement Agreement (Stipulation) to stipulate and settle all disputed issues arising out of Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 28363 (CPAN No. 28363). Staff and SuperShuttle respectfully submit that this Stipulation is just and reasonable. The Parties believe that this Stipulation is justified on its face and, therefore, the Public Utilities Commission of the State of Colorado (Commission) should approve it without hearing.

Robert C. Tschupp, Vice President and General Manager of SuperShuttle, states that he has the authority to execute this Stipulation on behalf of SuperShuttle. Staff states that the undersigned member of Staff has the authority to execute this Stipulation on behalf of Staff.

I. BACKGROUND

1. On October 16, 2003 Staff issued CPAN No. 28363 to SuperShuttle. A copy of CPAN No. 28363 is attached to this Stipulation as Exhibit A and is incorporated herein by reference. CPAN No. 28363 cites SuperShuttle for violations of the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 CCR 723-15. CPAN No. 28363 specifically cites SuperShuttle for ten (10) violations of 4 CCR 723-15-2.1, which provides:

Except as otherwise provided in these rules, the Commission incorporates by reference the regulations published in Title 21, Code of Federal Regulations § 1308.11, revised as of April 1, 1999, and Title 49, Code of Federal Regulations, Parts 40, 382, 383, 390, 391, 392, 393, 395, 396, and 399, and Appendix G to Subchapter B of Chapter III, revised as of October 1, 1998. No later amendments to or editions of the Code of Federal Regulations are incorporated into these rules.

2. The violations alleged in CPAN No. 28363 occurred on September 1, 2003; September 2, 2003; and September 4, 2003. CPAN No. 28363 alleges violations of Parts 395.8(a), 396.3(b), and 396.11(a) of Title 49, CFR.

a. Part 395.8(a) of Title 49, CFR, provides in relevant part: "Except for a private motor carrier of passengers (nonbusiness), every motor carrier shall require every driver used by the motor carrier to record his/her duty status for each 24 hour period using the methods prescribed in either paragraphs (a)(1) or (2) of this section."

b. Part 396.3(b) of Title 49, CFR, provides in relevant part: "Required records--For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to

be maintained, the following record for each vehicle: ... (3) A record of inspection, repairs, and maintenance indicating their date and nature.”

c. Part 396.11(a) of Title 49 CFR, provides:

Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated and the report shall cover at least the following parts and accessories: – Service brakes including trailer brake connections – Parking (hand) brake – Steering mechanism – Lighting devices and reflectors – Tires – Horn – Windshield wipers – Rear vision mirrors – Coupling devices – Wheels and rims – Emergency equipment.

3. Section 40-7-113(1)(g), C.R.S. (2003), *as amended* by Senate Bill 03-225, authorizes the Commission to levy the civil penalties authorized by 49 CFR Part 386, subpart G (2001) for violations of the Commission's safety rules. Section 40-7-113(1)(g), C.R.S., *as amended*, provides in pertinent part: “Any person who violates any safety rule promulgated by the commission shall be subject to the civil penalties authorized pursuant to 49 CFR 386, subpart G, as such subpart existed on October 1, 2001.” Section (a)(1) of Appendix B, 49 CFR Part 386, subpart G (2001) provides:

A person or entity that fails to prepare or maintain a record required by parts 385 and 390-399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$500 for each day the violation continues, up to \$5,000.

Staff sought the maximum penalty under C.R.S. Section 40-7-113(1)(g), *as amended*, in this Docket for ten (10) violations, or five thousand dollars (\$5,000.00).

4. Section 40-7-113(2), C.R.S., however, mandates that “[t]he amount of the civil penalties to be assessed pursuant to subsection (1) of this section shall be set in rules and regulations promulgated by the commission.” The Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 CCR 723-15-12, authorize a civil

penalty of up to two hundred dollars (\$200.00) per violation for each category of violation cited in CPAN No. 28363 (4 CCR 723-15-12.7). The Commission's rules have not been revised to increase the civil penalty amount in accordance with the 2003 amendment to C.R.S. Section 40-7-113(1)(g) described above. Therefore, as authorized in 4 CCR 723-15-12.7, the civil penalty assessed by CPAN No. 28363 should be two hundred dollars (\$200.00) per violation, for a total civil penalty of two thousand dollars (\$2,000.00).

5. For purposes of settlement and conditional upon the Commission's approval of this Stipulation, SuperShuttle admits that, as set forth on CPAN No. 28363:

- a. On September 1, 2003 SuperShuttle committed four (4) separate violations of the requirement for drivers to have a duty status record, as required by 49 CFR Section 395.8(a);
- b. On September 1, 2003 SuperShuttle committed three (3) separate violations of the requirement to maintain inspection, repair, and maintenance records, as required by 49 CFR Section 396.3(b)(3); and
- c. On September 1, 2, and 4, 2003 SuperShuttle committed three (3) separate violations of the requirement that each driver prepare a vehicle inspection report, as required by 49 CFR Section 396.11(a).

II. STIPULATION

6. The Parties agree that this Stipulation resolves all of the issues that were or could have been raised in this matter. In general terms, Staff is accepting reduced payment in satisfaction of the assessed civil penalty in response to measures undertaken by SuperShuttle to ensure compliance with the requirements to maintain duty status records, and inspection, repair,

and maintenance records, as required by 4 CCR 723-15-2.1 and 49 CFR Parts 395.8, 396.3, and 396.11. A copy of a letter, dated December 1, 2003, from SuperShuttle outlining the measures SuperShuttle has taken or is taking to ensure compliance is attached to this Stipulation as Exhibit B and is incorporated herein by reference.

7. Staff and SuperShuttle agree that, for each of the ten (10) violations alleged on CPAN No. 28363, the corrected authorized civil penalty amount is two hundred dollars (\$200.00). Staff and SuperShuttle further agree that the corrected authorized total civil penalty assessed by CPAN No. 28363 is two thousand dollars (\$2,000.00).

8. Staff agrees to accept a reduced payment of one thousand dollars (\$1,000.00) for the civil penalties assessed by CPAN No. 28363.

9. Staff's acceptance of a reduced payment of one thousand dollars (\$1,000.00) is appropriate in light of the measures undertaken by SuperShuttle to ensure future compliance with the requirements of 4 CCR 723-15-2.1 and Parts 395.8, 396.3, and 396.11 of Title 49, CFR.

10. SuperShuttle shall remit to the Commission the amount of one thousand dollars (\$1,000.00) in satisfaction of CPAN No. 28363. SuperShuttle shall remit the one thousand dollars (\$1,000.00) not later than ten (10) calendar days after the date of the final Commission decision approving this Stipulation.

11. SuperShuttle agrees that, subject to paragraph 15 hereof, if the Commission approves this Stipulation and if SuperShuttle fails to comply with the provisions of Paragraph 10 of this Stipulation, then (a) the admission of liability as stated above shall be conclusive evidence that the alleged violations occurred and that the two hundred dollar (\$200) civil penalty assessed for each alleged violation is justified, and (b) the corrected authorized total civil penalty

assessed by CPAN No. 28363 (maximum \$2,000.00, less any payments by SuperShuttle to date) shall immediately be due and payable.

III. GENERAL PROVISIONS

12. The Parties agree that the Commission should approve this Stipulation in its entirety.

13. The Parties agree that reaching this agreement by means of negotiation and settlement rather than through litigation is in the public interest and that the results of the compromises and settlements reflected in this Stipulation are in the public interest. The Parties further agree that all matters that were raised or could have been raised in this Docket have been resolved by this Stipulation. This resolution depends upon SuperShuttle fully complying with the terms set forth in Section II above.

14. This Stipulation has been entered into between the Parties solely for the purpose of settlement and resolution of the issues in this Docket. Therefore, the issues and matters resolved by this Stipulation apply only to this Docket and the issues raised in this Docket. Except as otherwise provided, the Parties reserve the right in the future to advocate positions different from those stated in this Stipulation. Nothing in this Stipulation shall constitute a waiver by any party with respect to any matter not specifically addressed.

15. If the Commission does not approve this Stipulation in its entirety, this Stipulation may be rendered null and void. If the Commission imposes any conditions or modifications to

its approval of this Stipulation which are unacceptable to a party, such party shall notify the other party within five (5) business days after the date the Commission's decision becomes final, which shall be effective notice to render this Stipulation null and void. In that event, this matter shall be set for hearing.

16. The Stipulation may be executed in counterparts and by facsimile copies of signatures, all of which taken together shall constitute the entire Stipulation.

DATED this 31st day of December 2003.

**FOR STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION:**

By: Robert Laws

Robert Laws
Compliance Investigator III
Public Utilities Commission
1580 Logan Street, OL-1
Denver, Colorado 80203

**FOR SUPERSHUTTLE INTERNATIONAL
DENVER, INC.:**

By: Robert C. Tschupp

Robert C. Tschupp
Vice President & General Manager
4929 Ironston Street
Denver, Colorado 80239

Approved as to form:

KEN SALAZAR
Attorney General

By: John J. Roberts
JOHN J. ROBERTS, 30124*
Assistant Attorney General
Business and Licensing Section

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: 303-866-5267
Facsimile: 303-866-5395

Attorneys for Staff of the Colorado
Public Utilities Commission

* Counsel of record

DUFFORD & BROWN, P.C.

By: Richard L. Fanyo
Richard L. Fanyo, 7238
1700 Broadway, Suite 1700
Denver, CO 80290
Telephone: 303-861-8013
Facsimile: 303-832-3804

Attorneys for SuperShuttle International
Denver, Inc.

CIVIL PENALTY ASSESSMENT NOTICE OR NOTICE OF COMPLAINT TO APPEAR

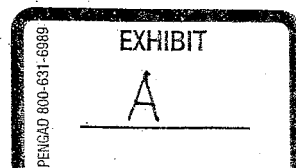
NO. 28363 - CPAN

Public Utilities Commission of the State of Colorado

v.
SuperShuttle International Denver Inc
PUC Authority #: 55686
4929 Ironton Street
Denver, CO 80239

No.	Date of Violation	Violation Cite	Nature of Violation	Place of Violation	Penalty
1	9/1/2003	4 CCR 723-15-2.1 Part 395.8(a)	Driver G. Tischner did not have an off duty time or total hours. (NO RECORD OF DUTY STATUS)	Denver, CO	\$500.00
2	9/1/2003	4 CCR 723-15-2.1 Part 395.8(a)	Driver G. Mohammad did not have an off duty time or total hours. (NO RECORD OF DUTY STATUS)	Denver, CO	\$500.00
3	9/1/2003	4 CCR 723-15-2.1 Part 395.8(a)	Driver A. Abdalla did not have an off duty time or total hours. (NO RECORD OF DUTY STATUS)	Denver, CO	\$500.00
4	9/1/2003	4 CCR 723-15-2.1 Part 395.8(a)	Driver A. Ali did not have an off duty time or total hours. (NO RECORD OF DUTY STATUS)	Denver, CO	\$500.00
5	9/1/2003	4 CCR 723-15-2.1 Part 396.3(b)(3)	Failed to maintain records of inspection, repair, and maintenance for vehicle #73	Denver, CO	\$500.00
6	9/1/2003	4 CCR 723-15-2.1 Part 396.3(b)(3)	Failed to maintain records of inspection, repair, and maintenance for vehicle #246	Denver, CO	\$500.00
7	9/1/2003	4 CCR 723-15-2.1 Part 396.3(b)(3)	Failed to maintain records of inspection, repair, and maintenance for vehicle #291	Denver, CO	\$500.00
8	9/1/2003	4 CCR 723-15-2.1 Part 396.11(a)	Failed to require the driver of vehicle #73 to prepare a vehicle inspection report.	Denver, CO	\$500.00
9	9/2/2003	4 CCR 723-15-2.1 Part 396.11(a)	Failed to require the driver of vehicle #111 to prepare a vehicle inspection report	Denver, CO	\$500.00
10	9/4/2003	4 CCR 723-15-2.1 Part 396.11(a)	Failed to maintain records of inspection, repair, and maintenance for vehicle #116	Denver, CO	\$500.00

Total Penalty: \$5,000.00



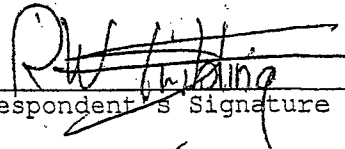
CIVIL PENALTY ASSESSMENT NOTICE
OR NOTICE OF COMPLAINT TO APPEAR

NO. 28363 - CPAN

Public Utilities Commission of the State of Colorado
v.

SuperShuttle International Denver Inc
PUC Authority #: 55686
4929 Ironton Street
Denver, CO 80239

I HEREBY ACKNOWLEDGE RECEIPT OF THIS NOTICE.


Respondent's Signature

UPON PAYMENT OF THIS ASSESSMENT, I ACKNOWLEDGE
LIABILITY OF ALL VIOLATIONS HEREIN.
(See Instructions on Last Page)

Respondent's Signature

If the penalty assessment is not paid within ten days of the issuance of this notice, then you must contact the Public Utilities Commission by 4:00 p.m. on November 17, 2003 to set the alleged violation(s) for hearing. Call the P.U.C. at 800/888-0170, ext. 2824, or 303/894-2824.

THE UNDERSIGNED HAS PROBABLE CAUSE TO BELIEVE THAT THE RESPONDENT COMMITTED THE VIOLATION(S) CITED AND AFFIRMS THAT A COPY OF THIS CIVIL PENALTY ASSESSMENT NOTICE OR NOTICE OF COMPLAINT TO APPEAR WAS DULY SERVED UPON THE RESPONDENT.

COMPLAINANT J.P. Opeka #5011
print last name

COMPLAINANT 
signature

INVESTIGATIVE PERSONNEL OF THE COLORADO PUBLIC UTILITIES COMMISSION

DATED THIS 16th DAY OF October, 2003

Copy Distribution: #1: Commission Records #3: Enforcement
 #2: Respondent #4: Colorado Attorney General

Copy # _____

THIS IS A LEGAL DOCUMENT -- PLEASE READ ALL ENCLOSED INFORMATION.

THIS IS A LEGAL DOCUMENT -- PLEASE READ ALL ENCLOSED INFORMATION

This document provides you information about your options upon receipt of this notice. You may pay this civil penalty by mail or in person. Or, you may contest the penalty at a hearing. Please read carefully the following instructions.

CIVIL PENALTY ASSESSMENT NOTICE INSTRUCTIONS

The notice you have received is called a Civil Penalty Assessment Notice. The penalty for the alleged violation(s) is described on the preceding pages. It is the prescribed penalty for the stated violation(s) as required by law and specified in the Public Utilities Commission's Rules and Regulations Concerning Civil Penalties for Carriers. You may pay this penalty by mail or in person.

By paying the Civil Penalty Assessment, you acknowledge your liability.

Your payment may be made by money order or check. Do not mail cash. If the payment is mailed, it must be postmarked no later than 10 days from the date of issuance of this notice. This date appears on the fourth line from the bottom of the previous page.

To receive credit for payment, please sign on the previous page of this notice on the signature line adjacent to the statement "UPON PAYMENT OF THIS ASSESSMENT, I ACKNOWLEDGE LIABILITY OF ALL VIOLATION(S) HEREIN" and enclose this signed notice with the payment. The address to mail or pay in person is:

Public Utilities Commission
1580 Logan Street, Office Level Two
Denver, CO 80203

COMPLAINT TO APPEAR NOTICE INSTRUCTIONS

If you decide to not pay the penalty and want to contest it, you are required to contact the Public Utilities Commission by 4 p.m. on or before the date and at the telephone number shown on the previous page. When you call the Commission, be prepared to provide dates when you will be available to attend a hearing on this issue. If you fail to contact the Commission before 4 p.m. on the date shown, the Commission shall set the hearing date without any preference to your wishes. You will be notified about the hearing date. If you are under 18 years of age, you must be accompanied by a parent or a guardian at the hearing.

December 1, 2003

John Roberts
Office of the Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

Dear Mr. Roberts,

This letter is in reference to the Civil Penalty Assessment (CPAN) No. 28363 in Colorado Public Utilities Commission vs. SuperShuttle International Denver, Inc.

As we discussed on the phone earlier this week, my company enjoys an excellent overall record of compliance with the rules and regulations of the P.U.C. and a solid rapport with the transportation division staff. Further, prior to this CPAN, SuperShuttle Denver had never received any fines for violations since we started the operation in 1996.

The Safety and Compliance Audit conducted on 10/16/2003 that resulted in this CPAN identified two basic types of violations – one for “no record of driver duty status” and the other for “failure to maintain records of inspection, repair and maintenance for vehicles” and/or “failure of a driver to prepare a vehicle inspection report”.

We have made great strides rebuilding the company from scratch after the driver walk-out of August 2002. Our driver safety programs and record keeping systems are much improved over previous years but the audit highlighted areas needing attention. With this in mind, we have developed a number of compliance related initiatives that address those shortcomings.

First, we developed a new written daily log that the Dispatcher is required to complete that records time signed on/off for each driver for each shift worked. Second, we established a records program for all vehicles. This includes requiring the driver to submit repair receipts with each required monthly maintenance report. Third, management will conduct quarterly safety inspections, beginning January 2004, of all vehicles of which written copies will be included in the vehicle file for review.

PENGAD 800-631-6989

EXHIBIT

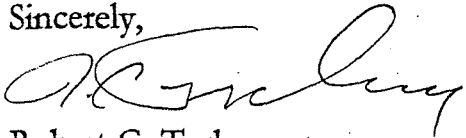
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SuperShuttle CPAN Response, page two

Fourth, we have revised the Daily Driver Vehicle Inspection Report using language suggested by John Opeka of the P.U.C. Each report is now included on our Daily Passenger Manifest (Trip Sheet) and verified at driver settlement each week. Finally, we implemented an internal system of penalties to encourage compliance by our owner/operator drivers.

Thank you for the opportunity to respond. If you have any questions or need further clarification, please call me directly at 720-374-4160.

Sincerely,



Robert C. Tschupp
Vice President & General Manager
SuperShuttle International Denver, Inc.

Cc: Ric Fanyo, Dufford & Brown, P.C.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND SETTLEMENT AGREEMENT upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 5th day of January 2004, addressed as follows:

SuperShuttle International Denver, Inc.
4929 Ironton Street
Denver, CO 80239

Richard L. Fanyo
1700 Broadway, Suite 1700
Denver, CO 80290

Robert Laws
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

John Opeka
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

BY INTERDEPARTMENTAL MAIL

BY INTERDEPARTMENTAL MAIL

Dino Ioannides
Advisory Staff
Public Utilities Commission
1580 Logan Street, OL-2
Denver, CO 80203

BY INTERDEPARTMENTAL MAIL

