

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19G-0508TO

Civil Penalty Assessment Notice: 124040-CPAN

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

KLAUS' TOWING, INC.,

Respondent.

**AMENDMENT TO JOINT STIPULATION AND SETTLEMENT
AGREEMENT**

The Parties, Trial Staff of the Colorado Public Utilities Commission (Staff) and Respondent Klaus' Towing, Inc. (Respondent), enter into this Amendment to the Joint Stipulation and Settlement Agreement (Amendment to Settlement Agreement) in the above-referenced proceeding. Individually, Staff and the Respondent shall be referred to as Party. Together, Staff and the Respondent shall be referred to as the Parties.

BACKGROUND AND RECITALS

1. The Parties previously entered into a Joint Stipulation and Settlement Agreement in this proceeding on October 31, 2019.
2. The Joint Stipulation and Settlement Agreement resolved all disputes between the Parties that arose from the Civil Penalty and Assessment or Notice of

Complaint to Appear (CPAN) Number 124040 issued by Staff on September 18, 2019 to the Respondent. The original agreement, the Joint Stipulation and Settlement Agreement is attached to this Amendment to Settlement Agreement as **Exhibit 1.**

3. The Parties intend to amend only Paragraph 1 of the Joint Stipulation and Settlement Agreement. The Parties intend that all other terms of the original agreement will remain in full force and effect.

AGREEMENT

4. Other than as amended, the terms of the Joint Stipulation and Settlement remain in full force and effect as if fully set forth herein. For good and valuable consideration, the Parties agree to delete Paragraph 1 of the Joint Stipulation and Settlement and insert new Paragraph 1 as follows:

Troy Porras, the Chief Executive Officer of Klaus' Towing, Inc. has authority to enter into this Settlement Agreement on behalf of the Respondent.

EXECUTION AND AUTHORITY TO EXECUTE

5. This Amendment to the Joint Stipulation and Settlement Agreement is effective upon execution by both Parties. Each signatory expressly represents and warrants that he has full authority to execute this Amendment on behalf of the designated Party.

6. This Settlement Agreement may be signed in counterparts, each of which, when taken together, shall constitute the entire agreement of the Parties.

7. This Settlement Agreement may not be modified by the Parties, except in writing, with express agreement of each Party, and with the approval of the Commission.

8. Should this Settlement Agreement be modified or not approved in its entirety by the Administrative Law Judge or the Commission, either Party, at that Party's option, may withdraw from this Settlement Agreement by filing a notice with the Commission in this proceeding within seven days of such order. In this event, this Settlement Agreement Shall be void and this matter set for hearing.

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DATED this 17th day of ~~November~~ ^{December}, 2019.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: Brian K Chesher
Brian Chesher
Director of Transportation
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

KLAUS' TOWING, INC.

By: Trey Porras
Trey Porras
Chief Executive Officer
Klaus' Towing, Inc.

Approved as to form:

PHILIP J. WEISER
Attorney General

By: Heather W. Whitman
Heather W. Whitman, #31909
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Counsel for Klaus' Towing, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 19G-0508TO

Civil Penalty Assessment Notice: 124040-CPAN

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

KLAUS' TOWING, INC.,

Respondent.

JOINT STIPULATION AND SETTLEMENT AGREEMENT

The Parties, Trial Staff of the Colorado Public Utilities Commission (Staff) and Respondent Klaus' Towing, Inc. (Respondent), enter into this Stipulation and Settlement Agreement (Settlement Agreement) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Individually, Staff and the Respondent shall be referred to as Party. Together, Staff and the Respondent shall be referred to as Parties.

BACKGROUND AND RECITALS

1. Trevor Forbes, the President and Chief Operating Officer of Klaus' Towing, Inc. has authority to enter into this Settlement Agreement on behalf of the Respondent.

2. On September 18, 2019, Staff issued and filed a Civil Penalty and Assessment or Notice of Complaint to Appear (CPAN) Number 124040. It was

served on the Respondent on September 20, 2019. The CPAN alleges one violation of 4 CCR 723-6-6508(b)(I) for the alleged failure to have proper authorization prior to the performance of a nonconsensual tow.

3. The CPAN provides that the civil penalty assessed for the alleged violation is \$1,100.00, plus an additional 15-percent surcharge of \$165.00 for a total amount of \$1,265.00. It further provides that if the Respondent pays the civil penalty within 10 calendar days of its receipt of the CPAN, the civil penalty violation will be reduced to \$632.50.

SETTLEMENT AND AGREEMENT

4. The Parties have reached a settlement in this matter. The settlement includes a penalty amount of \$550.00, plus a fifteen-percent surcharge of \$82.50, pursuant to Section 24-34-108(2), C.R.S. for a total penalty amount of \$632.50.

5. The Respondent does not admit liability for the violation in the CPAN.

6. In consideration of the following promises and agreements set out below in the Settlement Agreement and for other good and valuable consideration, the sufficiency of which are acknowledged herein, the Parties have agreed to the following terms and conditions:

A. Performance by Staff:

- i. Staff will agree to reduce the total amount of the penalty from \$1,265.00 to \$632.50, and therefore, will allow the Respondent to pay one-half of the penalty amount. This amount includes the

penalty amount of \$550.00, plus the surcharge amount of \$82.50, for a total penalty amount of \$632.50.

- ii. Staff will agree to consider the following mitigating factors, pursuant to Commission Rule 1302(b), in reducing the penalty amount:
 - a. The Respondent contacted the PUC within 10 days to resolve this proceeding;
 - b. The Respondent actively worked with the PUC to discuss the issues that led to the CPAN and to resolve the CPAN;
 - c. The Respondent paid a full refund to the complainant;
 - d. The Respondent was at a disadvantage in this case because the third-party who could verify the authorization for the tow would not cooperate and did not return Staff's telephone calls to verify that he had the authority to authorize the tow.

B. Performance by the Respondent

- i. The Respondent will pay one-half of the total amount of the CPAN or \$550.00, plus \$82.50, for a total penalty amount of \$632.50.
- ii. The Respondent will pay the penalty amount on one lump sum of \$632.50 within 14 days after the Settlement Agreement becomes an order of the Commission.

- iii. The Respondent agrees that it will comply with the requirements of 4 CCR 723-6-6508(b)(I).
- iv. If the Respondent violates any of the terms in this Settlement Agreement, the full amount of the balance owed for the penalty will be due and owing immediately.

7. This Settlement Agreement has been reached in the spirit of compromise and to avoid the uncertainties of trial and the costly expense of litigation.

8. This Settlement Agreement promotes administrative efficiency because it avoids the time and expense that necessarily would be devoted to preparing for and attending the hearing for this proceeding.

9. This Settlement Agreement serves the public interest because it requires the Respondent to pay a civil penalty of \$632.50, according to the terms of Paragraph 5(B).

10. This Settlement Agreement may be signed in counterparts, each of which, when taken together, shall constitute the entire agreement of the Parties.

11. This Settlement Agreement may not be modified by the Parties, except in writing, with express agreement of each Party, and with the approval of the Commission.

12. The Respondent's failure to make the required settlement payment and to complete the payment obligations described in Paragraph 5(B) of the Settlement Agreement shall be deemed as a waiver by the Respondent of any rights

and all rights to file exceptions, as well as a request for rehearing, reargument, and reconsideration, or to file any other form of the appeal.

13. Should this Settlement Agreement be modified or not approved in its entirety by the Administrative Law Judge or the Commission, either Party, at that Party's option, may withdraw from this Settlement Agreement by filing a notice with the Commission in this proceeding within seven days of such order. In this event, this Settlement Agreement shall be void and this matter set for hearing.


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DATED this 31st day of October, 2019.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: _____
Brian K. Chesher
Director of Transportation
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

KLAUS' TOWING, INC.

By:  _____
Trey Pomas
CEO
Klaus' Towing, Inc.

Approved as to form:

PHILIP J. WEISER
Attorney General

By: /s/ Heather Whitman
Heather W. Whitman, #31909
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Counsel for Klaus' Towing, Inc.

DATED this ____ day of October, 2019.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: Brian K. Chesher 10.11.2019
Brian K. Chesher
Director of Transportation
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

KLAUS' TOWING, INC.

By: _____
Trevor Forbes
President and Chief Operating Officer
Klaus' Towing, Inc.

Approved as to form:

PHILIP J. WEISER
Attorney General

By: _____
Heather W. Whitman, #31909
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