

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 14G-0205TO

Civil Penalty Assessment Notice No. 108810

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PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

MICHAEL LEACH D/B/A ACE TOWING,

Respondent.

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### **STIPULATION AND SETTLEMENT AGREEMENT**

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Staff of the Public Utilities Commission ("Staff") and Respondent Michael Leach d/b/a Ace Towing ("Respondent") (collectively, the "Parties") enter into this Stipulation and Settlement Agreement ("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.

#### **Background**

On February 27, 2014, the Commission issued Respondent Civil Penalty Assessment Notice No. 108810 (the "CPAN") seeking civil penalties of \$36,300.00 (or \$18,150.00 if paid within 10 days). The CPAN alleged twenty violations of section 40-10.1-401(1)(a), C.R.S., and one violation of section 40-10.1-107(1), C.R.S. The CPAN was served on Respondent by certified mail, return receipt requested, on March 3, 2014. Staff voluntarily moved to amend the CPAN to dismiss the count

arising under section 40-10.1-107(1), C.R.S., which motion was granted by the ALJ on June 11, 2014.

### Settlement Agreement

Staff and Respondent hereby stipulate and agree as follows:

1. Respondent admits liability to all remaining violations in the CPAN.
2. Respondent agrees to comply with all Colorado and federal statutes and rules concerning authorization for towing carriers.
3. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The 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 requiring Respondent to pay a civil penalty in the amount of \$12,700 under the terms in this Agreement. In reducing 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 remaining violations in the CPAN.
  - c. Payment of the total amount of the CPAN, or even the 50% amount within the 10-day period, would create a financial hardship on Respondent, given his current financial situation.
  - d. With the assistance of PUC Staff, Respondent has a renewed understanding regarding PUC towing carrier requirements and is confident Respondent can remain compliant going forward.

- e. Assessing Respondent a civil penalty of \$12,700.00 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.
- f. Assessing Respondent a civil penalty of \$12,700.00 under the terms herein 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 Respondent's admission of liability, and for the reasons expressed above, Staff agrees reducing the amount of the civil penalty from \$24,200.00 to \$12,700.00 is appropriate and in the public interest. This \$12,700.00 settlement amount consists of a \$11,545.45 penalty, plus a ten-percent surcharge of \$1,154.55 pursuant to section 24-34-108, C.R.S.

5. Respondent shall pay the \$12,700.00 penalty through an initial payment of \$2,500.00 within 15 days of the date the Commission order regarding this settlement becomes final. Thereafter, Respondent shall pay 12 monthly installments of \$850, each of which is due 30 days after the date of the prior payment.

6. If Respondent fails to make any of the installment payments when due, Respondent shall be liable for the full civil penalty amount of \$24,200.00, less any payments made, which amount will be due immediately.

7. Respondent further agrees that if, during any investigation(s) conducted by Staff within twelve months of the date of a Commission final order in this proceeding, the Commission finds any violations of the same rules or statutes as any of the violations for which Respondent has admitted liability, Respondent shall be liable for the full civil penalty, less payments made. In this event, the remaining full



civil penalty will be due immediately. Respondent and Staff agree the specific intent of this provision is to prevent further violations of the Public Utilities Laws and Commission Rules.


8. All matters that were raised or could have been raised in this proceeding 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.

9. Respondent's failure to complete its payment 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.

10. In the event that 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 shall be void and this matter shall be set for hearing.

Executed this 12<sup>th</sup> day of October, 2014.

**STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION**

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*Approved as to form:*

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