

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 18G-0773EC

Civil Penalty Assessment Notice: 122394

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

J. VAITH ENTERPRISES LLC, doing business as SUMMIT CAR SERVICE,

Respondent.

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Respondent J. Vaith Enterprises LLC (Respondent) (collectively, the Parties and singularly, Party) enter into this Stipulation 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. Jason Michael Vaith has authority to enter into this Agreement on behalf of the Respondent.

BACKGROUND AND RECITALS

1. On October 30, 2018, Staff issued and filed Civil Penalty Assessment or Notice of Complaint to Appear Number 122394 (CPAN). Staff served the CPAN on the Respondent through certified mail via the United States Postal Service, which was delivered to the Respondent on November 2, 2018.

2. The CPAN alleges one violation, which occurred on August 27, 2018, of Section 4 CCR 723-6-6102(a)(I) and 49 C.F.R. Section 390.35 with regard to Falsified Records. The CPAN also alleges one violation, which occurred on July 8, 2018, of Section 4 CCR 723-6-6103(c)(II)(D) for failing to maintain and retain accurate and true time records. The CPAN states that the civil penalties assessed for the alleged for both violations amount to \$3,450.00. This amount includes a penalty amount of \$3,000.00 plus an additional 15 percent surcharge of \$450.00, for a total amount of \$3,450.00. The total amount for the first count of the CPAN is \$2,875.00 (\$2,500.00, plus a \$375.00 surcharge). The total amount for the second count of the CPAN is \$575.00 (\$500.00, plus a \$75.00 surcharge). The CPAN further provides that if the Respondent pays the civil penalty within 10 calendar days of his receipt of the CPAN, the civil penalty violation will be reduced to \$1,725.00.

3. This proceeding is set for a one-day hearing starting on January 8, 2019.

SETTLEMENT AND AGREEMENT

4. The Parties have reached a settlement in this matter. The total settlement amount is \$1,897.50. This amount is comprised of the settlement amount of \$1,650.00 and a fifteen percent surcharge of \$247.50, pursuant to Section 24-34-108(2).

5. The Respondent admits liability for all violations alleged 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 and adequacy 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 \$3,450.00 to \$1,897.50.
- ii. Staff will agree to allow the Respondent to pay the settlement amount in two equal payments of \$948.75.
- iii. Staff will agree to consider the following mitigating factors, pursuant to Commission Rule 1302(b), in reducing the penalty amount:
 - a. The Respondent cooperated with the PUC to resolve the CPAN.

B. Performance by Respondent

- i. The Respondent shall pay the negotiated penalty amount in the CPAN, or \$1,897.50, which includes a \$1,650.00 penalty and a fifteen percent surcharge of \$247.50, pursuant to Section 24-34-108(2).
- ii. The Respondent shall make the first payment 10 days after the entry of the final Commission decision and the second payment will be due 30 days thereafter.
- iii. If the Respondent fails to make a timely payment according to the conditions in Paragraph 6(B)(i) and 6(B)(ii), the full

balance owed on the total penalty amount in the CPAN of \$3,450.00, less any payments already made, will be due and owing immediately.

- iv. If the Respondent violates any of the admitted violations in this docket within one-year after the Agreement is signed, the full amount of the penalty will be due and owed immediately.
- v. The Respondent agrees that he will comply with all requirements of CCR 723-6-6102(a)(I), 49 C.F.R. Section 390.35, and 4 CCR 723-6-6103(c)(II)(D).
- vi. The Respondent agrees that he will Cease and Desist violating any rules adopted by the Commission.

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 \$1,897.50 according to the terms of Paragraph 6(B).

10. The parties agree that all matters that have been raised, or that could have been raised, in this proceeding have been resolved by this Settlement Agreement.

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

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

13. The Respondent's failure to comply with the payment schedule and to complete the payment obligations described in Paragraph 6(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, re-argument, and reconsideration, or to file any other form of appeal.

14. Should this Settlement Agreement be modified or not approved in its entirety by 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 entry of such order. In this event, this Settlement Agreement shall be void and this matter be reset for hearing.

Dated this 10th day of December, 2018.

COMPLAINANT STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: _____
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Lead Criminal Investigator
Colorado Public Utilities Commission
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J. VAITH ENTERPRISES LLC, doing business as Summit Car Service,

By: _____
Jason Michael Vaith
1463 Garfield Street
Denver, CO 80206

Approved as to form:

CYNTHIA H. COFFMAN
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