

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the General Investigation)
of **Kelvin Shepard d/b/a John XXL, of**)
Wichita, Kansas, Pursuant to the Kansas) Docket No. 24-GIMM-759-KHP
Highway Patrol Issuance of a Notice of)
Violation(s) and Invoice for the Violations)
of the Kansas Motor Carrier Safety)
Statutes, Rules and Regulations.)

**JOINT MOTION FOR APPROVAL OF
UNANIMOUS SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) by and through its counsel Ahsan A. Latif, and Kelvin Shepard d/b/a XXL (Carrier) by and through its President, Kelvin Shepard, file this Joint Motion requesting the Commission issue an Order approving the attached Unanimous Settlement Agreement. In support of this Motion, Staff and Carrier state as follows:

1. On February 9, 2024, the Kansas Highway Patrol (KHP) issued a Notice of Violation(s) to Kelvin Shepard d/b/a John XXL, for an alleged violation found during a January 30, 2024, routine motor carrier stop and inspection conducted by the KHP.
2. As a result of this inspection, Carrier was assessed \$150.00 in civil fines, comprised of one fine for "Operating a CMV without a CDL," citing 49 C.F.R. 383.23A2.
3. On May 20, 2024, Carrier requested a hearing before the Commission.
4. On May 22, 2024, Kelvin Shepard, President of Carrier, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and subsequent discussions, the parties were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier's counsel for approval and signature.

5. The resulting signed Unanimous Settlement Agreement is attached hereto as Attachment "A" and is hereby incorporated by reference. This Agreement resolves all issues in this proceeding between Staff and Carrier. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement in full.

6. Should the Commission accept the terms of the attached Unanimous Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission Order approving the Agreement and waive their rights to seek judicial review of said Order.

WHEREFORE, for the reasons set forth herein, Staff and Kelvin Shepard d/b/a John XXL request this Joint Motion be granted, and that the attached Unanimous Settlement Agreement be approved.

Respectfully Submitted,

/s/ Ahsan Latif

/s/ Kelvin Shepard

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OF THE STATE OF KANSAS**

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Highway Patrol Issuance of a Notice of)
Violation(s) and Invoice for the Violations)
of the Kansas Motor Carrier Safety)
Statutes, Rules and Regulations.)

UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Kelvin Shepard d/b/a John XXL (Carrier). Its effective date will be the date the Commission enters an Order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112, and 66-1,114b, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

4. Pursuant to K.S.A. 66-1,129(a), sanctions imposed against motor carriers must be done in accordance with the Kansas Administrative Procedure Act.

5. Pursuant to K.S.A. 77-505, nothing in the Kansas Administrative Procedure Act shall preclude the informal settlement of matters that may make other proceedings unnecessary.

6. Pursuant to K.S.A. 66-1,142c, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

7. Kelvin Shepard d/b/a John XXL is a common motor carrier operating under USDOT Number 2506448 that hauls general freight and refrigerated food.

8. On February 9, 2024, the Kansas Highway Patrol (KHP) issued a Notice of Violation(s) to Kelvin Shepard d/b/a John XXL, for an alleged violation found during a January 30, 2024, routine motor carrier stop and inspection conducted by the KHP.

9. As a result of this inspection, Carrier was assessed \$150.00 in civil fines, comprised of one fine for "Operating a CMV without a CDL," citing 49 C.F.R. 383.23A2.

10. On May 20, 2024, Carrier requested a hearing before the Commission.

11. On May 22, 2023, Kelvin Shepard, President of Carrier, and Ahsan A. Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During this and

subsequent discussions, the parties were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier's counsel for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

12. The parties agree that the Commission has jurisdiction and authority over this matter.

13. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

14. Carrier agrees to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

15. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

16. Pursuant to K.S.A. 77-504, the Carrier waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

17. Pursuant to K.S.A. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

18. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Carrier waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF EXAMINATION AND INVOICE

19. Staff agrees to reduce the \$150.00 civil fine alleging "Operating a CMV without a CDL," to \$0.00.

20. Staff's recommendation for reduction of this civil assessment is based upon the specific circumstances of the alleged violation as well as the Carrier's efforts to remediate the violation and attempts to ensure compliance.

21. Carrier agrees to withdraw its Request for Hearing before the Commission.

22. Carrier shall ensure his medical card is updated in a timely fashion.

23. Carrier shall, when applicable, comply with Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

VI. RESERVATIONS

24. This Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

25. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

26. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way

conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

27. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court. If the Commission approves this Agreement in its entirety and incorporates the same into a Final Order in this docket, the parties agree to be bound by its terms and the Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order.

28. This Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, Staff and Kelvin Shepard d/b/a John XXL hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

/s/ Ahsan Latif

/s/ Kelvin Shepard

By: _____
Ahsan A. Latif, KS S. Ct. #24709
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President for John XXL

CERTIFICATE OF SERVICE

24-GIMM-759-KHP

I, the undersigned, certify that a true copy of the attached Motion has been served to the following by means of electronic service on June 4, 2024.

AHSAN LATIF, LITIGATION COUNSEL
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Kelvin Shepard, PRESIDENT
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/S/ Kiley McManaman
Kiley McManaman
