

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

In the Matter of the Investigation of **Miller's of**)
Claflin, Inc. of Claflin, Kansas, Pursuant to the)
Kansas Highway Patrol Issuance of a Notice of)
Violation for Violation(s) of the Kansas Motor Carrier) Docket No. 14-GIMM-575-KHP
Safety Statutes, Rules and Regulations and the)
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor Carrier)
Authority.)

JOINT MOTION FOR APPROVAL OF
STIPULATED SETTLEMENT AGREEMENT

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Colby Miller, Fleet Manager of Miller's of Claflin, Inc. (Respondent) file this Joint Motion requesting the Commission issue an Order approving the attached Stipulated Settlement Agreement. In support of this Motion, Staff and Respondent state as follows:

1. On or about March 13, 2014, Kansas Highway Patrol Trooper F.J. Veverka conducted a routine "Level II – Walk-Around" inspection on a commercial motor vehicle operated by the Respondent.
2. As a result of this inspection, Kansas Highway Patrol Trooper F.J. Veverka identified one (1) apparent violation of the Kansas motor carrier safety rules and regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200.
3. On or about March 17, 2014, the Commission issued a Notice of Violation and Invoice No. H000546598, filed in this docket on June 17, 2014, assessing Respondent a \$150.00 civil penalty.

4. On or about June 26, 2014, Respondent; Mike Hoeme, Director of the Commission's Transportation Division; and Robert E. Vincent, Litigation Counsel for Staff informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent 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 Respondent for approval and signature.


5. The resulting signed Stipulated 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 Respondent. 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 Stipulated 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 Colby Miller request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respect fully Submitted,


By:



Robert E. Vincent, S. Ct. #26028
Litigation Counsel
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Attorney for Commission Staff

By:



Colby Miller, Fleet Manager
Miller's of Claflin, Inc.
P.O. Box 285
200 Main Street
Claflin, KS 67525
Phone: 620-587-3601

Respondent

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Safety Statutes, Rules and Regulations and the)
Commission's Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor Carrier)
Authority.)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated 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 Colby Miller, Fleet Manager of Miller's of Claflin, Inc. (Respondent). 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. 2013 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2013 Supp. 66-1,108, 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 K.S.A. 2013 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 a party under its jurisdiction.

4. Pursuant to K.S.A. 2013 Supp. 74-2108, the Kansas Highway Patrol may require the driver of any motor vehicle operated by any motor carrier to stop and submit to an inspection to determine compliance with the laws, rules and regulations relating to motor carriers. Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine motor carrier equipment operating on the highways in Kansas, and examine the manner of the motor carrier's conduct as it relates to the public safety and the operation of commercial motor vehicles in Kansas.

5. Pursuant to K.S.A. 2013 Supp. 66-1,129(a), sanctions imposed against motor carriers must be done in accordance with the Kansas administrative procedure act.

6. Pursuant to K.S.A. 2013 Supp. 77-505, nothing in the Kansas administrative procedure act shall preclude the informal settlement of matters that may make other proceedings unnecessary.

7. Pursuant to K.S.A. 2013 Supp. 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

8. On or about March 13, 2014, Kansas Highway Patrol Trooper F.J. Veverka conducted a routine “Level II – Walk-Around” inspection on a commercial motor vehicle operated by the Respondent.

9. As a result of this inspection, Kansas Highway Patrol Trooper F.J. Veverka identified one (1) apparent violation of the Kansas motor carrier safety rules and regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200.

10. On or about March 17, 2014, the Commission issued a Notice of Violation and Invoice No. H000546598, filed in this docket on June 17, 2014, assessing Respondent a \$150.00 civil penalty.

11. On or about June 26, 2014, Respondent; Mike Hoeme, Director of the Commission’s Transportation Division; and Robert E. Vincent, Litigation Counsel for Staff informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent 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 Respondent for approval and signature.

III. TERMS OF THE STIPULATED 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. Respondent stipulates to the violations identified in the March 13, 2014, Kansas Highway Patrol Driver/Vehicle Examination Report No. H000546598.

15. Respondent agrees to continue to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

16. 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.

17. Pursuant to K.S.A. 2013 Supp. 77-504, the Respondent waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

18. Pursuant to K.S.A. 2013 Supp. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

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

IV. MODIFICATION OF THE INVOICE ASSESSING CIVIL PENALTY

20. Staff hereby agrees and requests that Invoice No. H000546598 dated March 13, 2014, be amended as follows:

- a. The penalty for Violation 393.75A be dismissed.

21. Staff's recommendation for modification of the civil penalty for the violations stated in Invoice No. H000546598 is based upon the following mitigating factors:

- a. Respondent is making a good faith effort to revise its operating procedures and to 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.

- b. Respondent took immediate corrective action upon notice of the violation, and is engaged in continuing safety management practices designed to prevent future violations.
- c. A review of Respondent's company history indicates widespread and effective safety management procedures and policies. Staff believes the assessment of a civil penalty will not serve as deterrence to future violations.

V. DUTIES OF THE RESPONDENT.

22. Respondent shall 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. BREACH OF THIS AGREEMENT

23. Respondent understands and agrees that failure to fully comply with all terms of this Agreement shall constitute a breach of the Agreement.

24. A future violation of Kansas law governing the regulation of motor carriers that was not initially identified in the Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200, or adjusted in this Agreement shall not constitute a breach of this Agreement.

25. Respondent understands and agrees that Staff will, upon discovery of a breach of this Agreement, proceed to enforce the terms of the Agreement pursuant to the Kansas administrative procedure act, K.S.A. 77-501 *et seq.*

26. If the Commission finds that Respondent breached the terms of this Agreement, the Commission may proceed to determine if the Respondent violated 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 thereunder as found in the Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200, based solely on the facts as stipulated herein. Respondent shall have the opportunity for a hearing only on the following issues:

- a. Did Respondent breach the Agreement?
- b. Did Respondent violate 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 as set forth in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200 based solely on the stipulated facts herein?

27. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring a breach by the Respondent as described in ¶ 23, above, this Agreement shall constitute a final resolution of this matter.

VII. RESERVATIONS

28. 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.

29. 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.

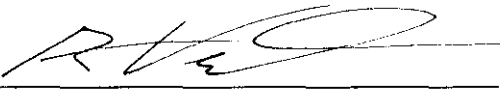
30. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission 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.

31. 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.

32. 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.

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

IN WITNESS WHERETO, Staff and Colby Miller hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By: 

Robert E. Vincent, S. Ct. #26028
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3273
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Attorney for Commission Staff

By: 

Colby Miller, Fleet Manager
Miller's of Claflin, Inc.
P.O. Box 285
200 Main Street
Claflin, KS 67525
Phone: 620-587-3601

Respondent


CERTIFICATE OF SERVICE

14-GIMM-575-KHP

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Stipulated Settlement Agreement was served via e-mail this 24th day of July, 2014, to the following:

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Vicki Jacobsen