

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

In the Matter of the Investigation of **D & M** )  
**Marketing LLC, of Larned, Kansas**, Regarding )  
the Violation(s) of the Motor Carrier Safety )  
Statutes, Rules and Regulations and the ) Docket No. 24-TRAM-258-PEN  
Commission's Authority to Impose Penalties, )  
Sanctions and/or the Revocation of Motor Carrier )  
Authority. )

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

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and D & M Marketing LLC (Carrier), file this Joint Motion requesting the Commission issue an order approving the attached Unanimous Settlement Agreement. In support of its Motion, Staff and Carrier state as follows:

1. On July 18, 2023, a Commission Staff (Staff) Special Investigator (SI) conducted a compliance review on Carrier's motor carrier operations. As a result of the review, the SI identified four (4) violation(s), accounting for three (3) count(s), of the Motor Carrier Safety Regulations.
2. On September 26, 2023, the Commission issued a Penalty Order in this docket assessing a \$4,500 civil penalty against Carrier.
3. On February 8, 2024, Carrier requested a hearing on the Penalty Order.
4. On May 22, 2024 and in subsequent correspondence thereafter, Michael Robinson, Attorney of Carrier, and Ahsan Latif, Litigation Counsel for Staff, informally discussed the possibility of a settlement. During the informal discussions, Staff and Carrier 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 for approval and signature.

5. The resulting signed Unanimous Settlement Agreement is attached hereto 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.

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 D & M Marketing LLC request this Joint Motion be granted, and that the attached Unanimous Settlement Agreement be approved.

Respectfully Submitted,

By: /s/ Ahsan A. Latif  
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Attorney for D & M Marketing LLC



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.

## **II. BACKGROUND**

4. On July 18, 2023, a Commission Staff (Staff) Special Investigator (SI) conducted a compliance review on Carrier's motor carrier operations. As a result of the review, the SI identified four (4) violation(s), accounting for three (3) count(s), of the Motor Carrier Safety Regulations.

5. On September 26, 2023, the Commission issued a Penalty Order in this docket assessing a \$4,500 civil penalty against Carrier.

6. On February 8, 2024, Carrier requested a hearing on the Penalty Order.

7. On May 22, 2024 and in subsequent correspondence thereafter, Michael Robinson, Attorney of Carrier, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Carrier were able to reach mutually agreeable terms in anticipated settlement of the contested issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier for approval and signature.

## **III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT**

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

9. 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.

10. Carrier agrees not to contest the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

11. 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.

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

13. 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 PENALTY ORDER

14. Staff agrees to modify the violation found in Count One of Staff's Report and Recommendation (R&R), attached as Attachment A to the September 26, 2023, Penalty Order. Count One alleged Carrier "was found to be in violation of using a driver known to have tested positive for a controlled substance," which is a violation of 49 C.F.R. 382.215, as adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129. The Commission updates the R&R to state that Carrier used a driver who was prohibited from safety sensitive functions in the Federal Drug and Alcohol Clearinghouse. Carrier was unaware its driver, Travis Edwards, was a prohibited driver because D & M Marketing LLC was not enrolled in the Federal Drug and Alcohol Clearinghouse and therefore had not conducted a pre-employment query on Mr. Edwards.

15. Staff's R&R is updated to read as follows:

##### **Count One (1 of 3)**

**Jurisdiction:** 49 C.F.R. 382.215 and 49 C.F.R. 382.217, adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129.

**Intent of Law:** No MC shall permit a driver that is prohibited in the Federal Drug and Alcohol Clearinghouse to perform or continue to perform safety-sensitive functions.

**Supporting Documentation:** On April 5, 2023, D&M Marketing LLC required or permitted its driver to operate a commercial driver's license (CDL) required commercial motor vehicle (CMV), a 2014 Kenworth, VIN ending in 7133, GVWR 52,000 lbs., pulling a 2015 Antares trailer, VIN ending in 0282, GVWR 68,000 lbs., in intrastate commerce from Emporia, Kansas to McPherson, Kansas. At the time of this transport, the driver was involved in a double fatality accident that involved five vehicles. The transport is evidenced by a Driver/Vehicle Examination Report (DVER) Number KSHP01762252, attached hereto as **Exhibit 2**. Additionally, the MC's prohibited driver Drug and Alcohol Clearinghouse (DACH) report is attached hereto as **Exhibit 3**.

**Violation:** D&M Marketing LLC was found to be in violation of using a prohibited driver according to the DACH (**Exhibit 1, Page 3**). One (1) violation was discovered.

**Recommendation:** Staff recommends a fine of \$3,500.

16. Carrier agrees to withdraw its Request for Hearing.
17. Carrier, therefore, agrees to pay fines totaling \$4,500 for the violations alleged in the Penalty Order. Staff agrees to extend the timeline for total payment due until June 30, 2024.
18. 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.
19. Carrier agrees that it remains obligated under the terms of the September 26, 2023, Penalty Order to allow at least one follow-up safety compliance review that will be conducted within 18 months from the date the Penalty Order was issued. Staff will contact Carrier at a later date to determine an appropriate time for this review.
20. Carrier understands that failure to pay the civil penalty as set out in ¶17 above, could result in the suspension of its authority without further notice.
21. 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.

## V. RESERVATIONS

21. This Unanimous Settlement 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.

### *A. Negotiated Settlement*

22. This Agreement represents a negotiated settlement that fully resolves the issues raised in this proceeding. The Signatories represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatories 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.

23. This Agreement is entered into by the Carrier for the purpose of settling disputed violations alleged by the Commission on the part of Carrier. This Settlement Agreement does not constitute, and shall not be construed as, an admission of negligence, fault, or liability by Carrier.

24. This Agreement is not intended to be admissible in and shall not be construed as or used as an admission of negligence, liability, and/or fault in any claim or civil lawsuit involving Carrier, including but not limited to any claim or civil lawsuit arising out of or related to any motor vehicle accident referenced in September 26, 2023, Penalty Order and any attachments thereto.

### *B. Interdependent Provisions*

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, or materially changes the Agreement terms, the Agreement shall be voidable and no Signatory Party hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

26. 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.

27. This Unanimous Settlement Agreement shall be binding on all parties upon signing.

**IN WITNESS WHERETO**, the parties hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

By: /s/ Ahsan A. Latif

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Attorney for D & M Marketing LLC



## CERTIFICATE OF SERVICE

24-TRAM-258-PEN

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 24, 2024.

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/S/ Kiley McManaman  
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