

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

In the Matter of the Investigation of **Custom**)
Tree Care, Inc., of Topeka, KS, Regarding the)
Violation of the Motor Carrier Safety Statutes,)
Rules and Regulations and the Commission's) Docket No. 20-TRAM-119-PEN
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 Custom Tree Care, Inc. (Respondent), file this Joint Motion requesting the Commission issue an order approving the attached Stipulated Settlement Agreement.

In support of its Motion, Staff and Respondent state as follows:

1. On August 21, 2019, Commission Staff (Staff) Special Investigators Jared Smith and Verna Jackson conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigators Smith and Jackson identified two (2) violations of the Motor Carrier Safety Regulations.

2. On September 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$2,500 civil penalty against Respondent.

3. On November 18, 2019 through electronic mail correspondence, Greg Gathers, President of Custom Tree Care, Inc., and Ahsan Latif, Litigation Counsel for Staff (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.

4. The resulting signed Stipulated Settlement Agreement is attached hereto 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.

5. 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 Custom Tree Care, Inc. request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

By: 

Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
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Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By: 

Greg Gathers,
President
Custom Tree Care, Inc.
3722 SW Spring Creek Ln
Topeka, Kansas 66610
Phone: 785-221-7550
Email: ggathers@customtreecare.com

11/19/19

Respondent

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.

II. BACKGROUND

4. Under the above jurisdiction and authority, on August 21, 2019, Commission Staff (Staff) Special Investigators Jared Smith and Verna Jackson conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigators Smith and Jackson identified two (2) violations of the Motor Carrier Safety Regulations.

5. On September 17, 2019, the Commission issued a Penalty Order in this docket assessing a \$2,500 civil penalty against Respondent.

6. On November 18, 2019 through electronic mail correspondence, Greg Gathers, President of Custom Tree Care, Inc., and Ahsan Latif, Litigation Counsel for Staff (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

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

8. 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.

9. Respondent stipulates to the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

10. Respondent stipulates that he has submitted a corrective action plan to bring the motor carrier operation into compliance with both state and federal motor carrier safety regulations and will maintain such compliance into the future.

11. Respondent, therefore, agrees to pay fines totaling \$2,500 for the above violations. Staff agrees to extend the timeline for total payments due to September 1, 2020, to be repaid as follows: Respondent will make ten payments of \$250, each due on the first day of the month beginning December 1, 2019 and ending September 1, 2020. Payments shall be made payable to the Kansas Corporation Commission and mailed to the Kansas Corporation Commission, Legal Division, 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027. ***Respondent shall include the docket number of these proceedings (20-TRAM-119-PEN) in the memo field of the payment.*** **Respondent understands and agrees that failure to make the payment will result in the entire remaining balance becoming due in full at that time, as well as the immediate suspension of the carrier's operating authority (if then applicable) without further notice.**

12. Respondent acknowledges that at least one safety compliance review will be conducted within 18 months from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Staff will contact Respondent at a later date to determine an appropriate time for this review.

13. Respondent further agrees to attend a Commission-sponsored safety seminar within the next ninety (90) days from the date this Agreement is approved or amended pursuant to entry of an order by the Commission. Respondent agrees to provide Litigation Counsel with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website at http://www.kcc.state.ks.us/trans/safety_meetings.htm.

14. Respondent understands that failure to pay the stipulated civil penalty as set out in ¶11 above, could result in the suspension of its authority without further notice and the Commission could submit the matter for judicial enforcement or enforcement through the Kansas Attorney General's Office.

15. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring default proceedings pursuant to K.S.A. 2017 Supp. 77-520, as described in ¶11 above, this Agreement shall constitute a final resolution of this matter.

IV. RESERVATIONS

16. This Stipulated 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.

17. 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.

18. 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

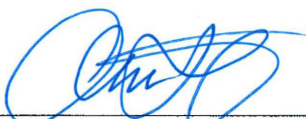
the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

19. 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.

20. 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.

21. This Stipulated Settlement Agreement shall be binding on all parties upon signing.

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

By: 

Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
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Attorney for Commission Staff

By: 

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11/19/19

Respondent

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

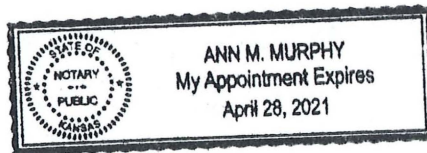
Ahsan A. Latif, being duly sworn upon his oath deposes and states that he is a Litigation Counsel for Litigation Counsel of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Joint Motion For Approval Of Stipulated Settlement Agreement*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Ahsan A. Latif
Litigation Counsel
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 21 day of November, 2019.

Ann Murphy

My Appointment Expires: 4-28-21



CERTIFICATE OF SERVICE

20-TRAM-119-PEN

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion For Approval Of Stipulated Settlement Agreement was served via electronic service and First Class U.S. Mail this 21st day of November, 2019, to the following:

GREG GATHERS, PRESIDENT
CUSTOM TREE CARE, INC.
3722 SW SPRING CREEK LN
TOPEKA, KS 66610
Fax: 785-478-4195
ggathers@customtreecare.com

AHSAN LATIF, LITIGATION COUNSEL
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Ann Murphy
