

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

In the Matter of the Investigation of **Orear**)
Fencing, LLC of Allen, Kansas Regarding the)
Violation of the Motor Carrier Safety Statutes,)
Rules and Regulations and the Commission's) Docket No. 19-TRAM-050-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 Orear Fencing, LLC of Allen, Kansas (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 June 20, 2018, Commission Staff (Staff) Special Investigators Jared Smith conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigator Smith identified three (3) violations of the Motor Carrier Safety Regulations.
2. On August 7, 2018, the Commission issued a Penalty Order in this docket assessing a \$1,200 civil penalty against Respondent.
3. To date, Respondent's unpaid balance on the civil penalty assessed in the above Penalty Order is \$1,200.
4. On October, 23, 2018, Tyson Orear, Manager of Orear Fencing, LLC, 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.

5. 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.

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 Orear Fencing, LLC, request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.

Respectfully Submitted,

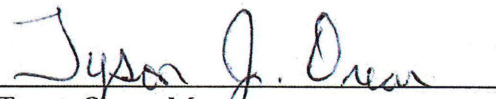
By:



Ahsan A. Latif S.Ct. #24709
Litigation Counsel
Kansas Corporation Commission
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Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By:




Tyson Orear, Manager
Orear Fencing, LLC
1024 Road 350
Allen, Kansas 66833

Respondent

VERIFICATION

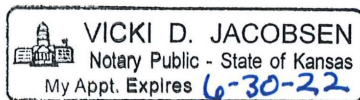
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State 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 therein are true and correct to the best of his knowledge, information and belief.



Ahsan A. Latif, S. Ct. # 24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 29th day of November, 2018.





Notary Public

My Appointment Expires: June 30, 2022

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

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Dwight D. Keen

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STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and Orear Fencing, LLC (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. 2017 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. 2017 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. 2017 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.

II. BACKGROUND

4. Under the above jurisdiction and authority, on June 20, 2018, Commission Staff (Staff) Special Investigator Jared Smith conducted a compliance review on Respondent's motor carrier operations. As a result of the review, Investigator Smith identified three (3) violations of the Motor Carrier Safety Regulations.

5. On August 7, 2018, the Commission issued a Penalty Order in this docket assessing a \$1,200 civil penalty against Respondent.

6. To date, Respondent's unpaid balance on the civil penalty assessed in the above Penalty Order is \$1,200.

7. On Tuesday, October 23, 2018, Tyson Orear, Manager of Orear Fencing, LLC 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

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. Respondent stipulates to 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.*, Respondent waives all rights to a hearing on, or appeal of, this Agreement.

IV. MODIFICATION OF PENALTY ORDER

14. Staff agrees to dismiss the \$1200 civil penalty assessed in the Commission's Penalty Order of August 7, 2018.

15. Staff's Recommendation for dismissal of this civil assessment is based upon the Respondent's agreement to cease motor carrier operations.

16. If Respondent is found operating as a motor carrier after the execution of this Agreement the \$1200 civil penalty will be reinstated, along with any other applicable fines or penalties.

V. DUTIES OF THE RESPONDENT.

17. Respondent 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.

18. Respondent agrees to cease operations as a motor carrier.

IV. RESERVATIONS

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3124
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By:



Tyson Orear, Manager
Orear Fencing, LLC
1024 Road 350
Allen, Kansas 66833

Respondent

CERTIFICATE OF SERVICE

19-TRAM-050-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 this 29th day of November, 2018, to the following:

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
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Vicki Jacobsen