

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

4. The parties signed a Stipulated Settlement Agreement and submitted a Joint Motion for its approval to the Commission on November 29, 2018. In the Stipulated Settlement Agreement, Respondent stipulates to the violations as set out in the Commission's Penalty Order. Respondent further agrees to cease operations as a motor carrier. Staff agrees to dismiss the \$1,200 civil penalty assessed in the Commission's Penalty Order of August 7, 2018.

## **II. FINDINGS AND CONCLUSIONS**

5. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement and the dismissal of the civil penalty contained therein constitute a reasonable and appropriate final resolution of this matter.

6. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

7. The Commission further concludes that 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, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2017 Supp. 66-1,108b, 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. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A. 2017 Supp. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

8. The Commission has reviewed the Stipulated Settlement Agreement attached to the Joint Motion for Approval of Stipulated Settlement Agreement of the parties and concludes

that the terms and provisions therein are an appropriate and reasonable disposition of this matter.

The Commission therefore adopts and incorporates by reference the terms of the Agreement.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Orear Fencing, LLC and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2017 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 12/04/2018



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Lynn M. Retz  
Secretary to the Commission

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

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

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. )  
)

## **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.

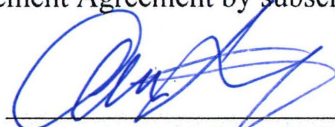
23. If the Commission approves this Agreement in its entirety and incorporates the same into a final order in this docket, the parties agree to be bound by its terms and the Commission's

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  
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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



## CERTIFICATE OF SERVICE

19-TRAM-050-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 12/04/2018.

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
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TYSON OREAR, MANAGER  
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/S/ DeeAnn Shupe  
DeeAnn Shupe