**BEFORE THE**

**PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of Five Star Trucking, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture. | :  :  : | Case No. 12-1039-TR-CVF  (CR12H009) |

**SETTLEMENT AGREEMENT**

# Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Five Star Trucking, Inc. (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Public Utilities Commission of Ohio (Commission) to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Commission. This agreement, however, is based on the Respondent’s and the Staff’s desire to arrive at a reasonable result considering the law, facts, and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This Settlement Agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party shall have the right, within thirty days of the date of the Commission’s entry or order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate and withdraw from the Settlement Agreement being granted by the Commission, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

# Procedural History

1. On October 28, 2011, a compliance review of the Respondent’s facility located at 4380 Glenbrook Road, Willoughby, Ohio, was conducted by Staff. Staff discovered the following violations of Rule 4901:2-5-02, O.A.C.:
2. 382.303(a)

Failing to conduct post accident alcohol testing on a driver following a recordable crash;

1. 382.303(b)

Failing to conduct post accident testing on driver for controlled sub­stances;

1. 395.3(b)(2)

Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days;

1. 395.8(e)

False reports of records of duty status;

1. 395.8(k)

Failing to preserve driver’s record of duty status supporting documenta­tion for 6 months.

1. The Staff timely served the Respondent with a notice of preliminary deter­mination in accordance with Rule 4901:2-7-12, O.A.C., assessing a civil forfeiture of $13,500 for the violations.
2. The Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.
3. The parties have negotiated this Settlement Agreement, which the parties believe resolves all of the issues raised in the notice of preliminary deter­mination.

# Settlement Agreement

The parties hereto agree and recommend that the Commission find as follows:

1. The Staff and the Respondent agree to a civil forfeiture of $6,700 for the alleged violations. Shortly after this compliance review, Respondent filed a petition for a change in safety rating based on corrective action and a sub­sequent review was conducted by the Federal Motor Carrier Safety Administration. As a result of that review, the Respondent’s safety rating was upgraded from Conditional to Satisfactory. Staff accepts this as evi­dence that appropriate corrective measures have been undertaken by the Respondent, thereby warranting a reduction of the civil forfeiture.
2. The civil forfeiture shall be paid by check or money order made paya­ble to "Treasurer State of Ohio", and it shall be mailed to PUCO Fiscal, 180 E. Broad St., 4th floor, Columbus, OH 43215-3793; the case number (CR12H009) should appear on the face of the check.
3. For purposes of settlement, and not as an admission or evidence that the vio­lation occurred, the Staff and the Respondent agree that the citations identified in paragraph II, subparagraphs (A)(1) through (5) may be included in the Respondent’s Safety-Net record and history of violations insofar as it may be relevant for purposes of determining future penalty actions.
4. This Settlement Agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission adopting the Settlement Agreement shall be considered the effective date of the Settlement Agreement.
5. This Settlement Agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

# Conclusion

This Settlement Agreement, which is subject to the rules of the Commission, con­stitutes the entire agreement of the parties. The signatory parties agree that this Settle­ment Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respect­fully request that the Commission issue an entry or order in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 13th day of November, 2012.

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| On behalf of the Respondent:  /s/ Lennie R. Glass (per telephone authorization)  **Lennie R. Glass**  Vice-President, Regulatory Affairs  Five Star Trucking, Inc.  4380 Glenbrook Road  Willoughby, Ohio 44094  (440) 953-9300 | On behalf of the Staff of the Public  Util­ities Commission of Ohio:  /s/ Stephen A. Reilly  **Stephen A. Reilly**  Assistant Attorney General  Public Utilities Section  180 East Broad Street, 9th Floor  Columbus, Ohio 43215-3793  (614) 466-4396 |