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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Mark DeBaer, Notice : Case No. 14-1589-TR-CVF  
of Apparent Violation and Intent to : (OH3240004605D)  
Assess Forfeiture. :

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SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Mark A. DeBaer (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (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. The Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) business days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from this agreement by filing a

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notice with the Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

## **II. Procedural History**

- A. On July 8, 2014, a vehicle driven by Respondent was inspected within the State of Ohio. The inspection resulted in the discovery of an out-of-service violation of the federal motor carrier safety regulations. The violation was a failure to wear corrective lenses as required on the drivers' medical certificate in violation of 49 C.F.R. §391.11(b)(4).
- B. On August 29, 2014, Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12, O.A.C. for Case No. OH3240004605D. The notice of preliminary determination notified respondent that Staff intended to assess a civil forfeiture of \$250.00 against Respondent for the violation.
- C. On September 10, 2014, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.

- D. The parties have negotiated this settlement agreement which the parties believe resolves all the issues raised in the notice of preliminary determination.

### **III. Settlement Agreement**

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

- A. Respondent agrees to a violation of 49 C.F.R. §391.41(b)(4), and recognizes that it may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. Staff has agreed to waive the civil forfeiture of \$250.00 for the violation. Respondent has provided proof sufficient to Staff that the medical certificate was in error, and that he did not require the use of corrective lenses at the time of inspection. Respondent acknowledges that the medical certificate produced at the time of the inspection indicated that he required corrective lenses, but did not realize the error on the medical certificate until this inspection occurred. Respondent has further demonstrated that he has since secured a medical certificate that correctly reflects that he does not require corrective lenses.
- C. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.

D. 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.

### III. Conclusion

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 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 26<sup>th</sup> day of October, 2014.

On behalf of Respondent



**Mark A. DeBaer**  
246 25<sup>th</sup> St. N.W.  
Barberton, OH 44203

On behalf of the Staff of the Public  
Utilities Commission of Ohio



**Werner L. Margard III**  
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