

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Cuahutemoc Espinoza,	:	Case No.	21-822-TR-CVF
Notice of Apparent Violation and	:		(OH3209302315D)
Intent to Assess Forfeiture.	:		

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**SETTLEMENT AGREEMENT**

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**I. Introduction**

Pursuant to Ohio Adm. Code 4901:2-7-11, Cuauhtemoci I. Espinoza Ayala (“Respondent”) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (“Staff”) (collectively “Signatory Parties”) 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.

**II. Procedural History**

A. On May 5, 2021, a vehicle operated by Newman Carriers Inc., and driven by Respondent was inspected within the State of Ohio. The inspection

resulted in the discovery a violation of the federal motor carrier safety regulations. The violation was:

- Prohibited from performing safety sensitive functions per 382.501(a) in the Drug and Alcohol Clearinghouse.
- B. On May 6, 2021, Respondent was timely served with a notice of preliminary determination in accordance with Ohio Adm. Code 4901:2-7-12 for Case No. OH3209302315D. The preliminary determination assessed Respondent \$3,174.00.00 for the violation.
- C. On July 26, 2021, Respondent made a timely formal request for an administrative hearing pursuant to Ohio Adm. Code 4901:2-7-13.
- 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. §382.501(a) (Prohibited from Performing Safety Functions in the Drug and Alcohol Clearinghouse), and recognizes that it may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as it may be relevant for purposes of determining future penalty actions.
- B. Respondent demonstrated that he has since become compliant with the Drug and Alcohol Clearing House (DACH).

- C. Respondent agrees to pay a civil forfeiture of \$500.00 for the violation. Payment will be due thirty (30) days from Commission approval of this settlement agreement. Payment should be made by certified check or money order to "Treasurer State of Ohio," and mailed to: PUCO FISCAL, 180 East Broad St., Columbus, OH 43215-3793.
- D. 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.
- E. 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.

#### **IV. Procedural Matters**

- A. Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Signatory Party or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken if these issues had been fully litigated.
- B. This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the

Commission reject or materially modify all or any part of this Stipulation, the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. Should the Commission, in issuing an entry on rehearing, not adopt the Stipulation in its entirety and without material modification, any Signatory Party may withdraw from the Stipulation. Such withdrawal shall be accomplished by filing a notice with the Commission, including service to all Parties, in the docket within thirty days of the Commission's entry on rehearing. Prior to the filing of such a notice, the Signatory Party wishing to withdraw agrees to work in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Signatory Party wishing to withdraw, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all Signatory Parties to the present Stipulation, and a Signatory Party files a notice to withdraw from the Stipulation, then the Commission will convene an evidentiary hearing such that the withdrawing party will be afforded the opportunity to contest the Stipulation by presenting evidence through witnesses and cross-examination, presenting rebuttal testimony, and briefing all issues that the Commission shall decide based upon the record and briefs.

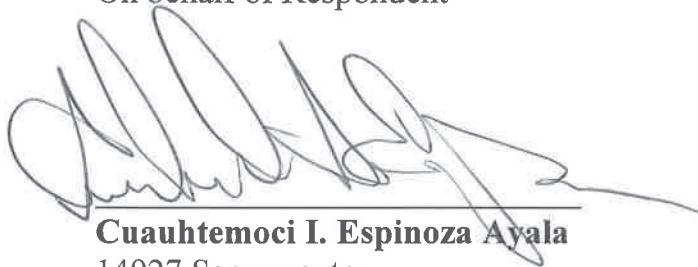
C. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation. If the Stipulation is adopted by the Commission, the Signatory Parties will support the Stipulation in any appeal of the decision.

**V. 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.

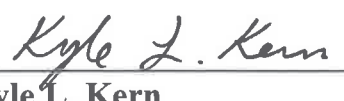

On behalf of Respondent



**Cuauhtemoci I. Espinoza Ayala**  
14927 Sacramento  
Posen, IL 60469

Date: 9/17/2021

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

   
**Kyle L. Kern**  
Assistant Attorney General  
Public Utilities Section  
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Date: 9/20/2021

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 21-0822-TR-CVF**

Summary: Agreement Settlement Agreement electronically filed by Mrs. Kimberly M. Naeder  
on behalf of PUCO