

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation on the Commission's Own Motion Into the Operations and Practices of Andy's Ultimate Limousines, Inc., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P), and A.L.S., a California Corporation, doing business as Andy's Limousine Service Transportation (PSG 16218-B) and its President Andrew Wagner, and Vice President Dannette Wagner, to determine whether they have violated the laws, rules and regulations governing the manner in which charter-party carriers conduct operations and whether they are no longer fit to continue to conduct passenger transportation service.

Respondents.

Investigation 04-07-004
(Filed July 8, 2004)

SETTLEMENT

The Parties to the Settlement Agreement (Agreement) are as follows

- CONSUMER PROTECTION AND SAFETY DIVISION (CPSD) of the CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)
- ANDY'S ULTIMATE LIMOUSINES, INC., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P)("Ultimate Limo")
- A.L.S., a California Corporation, doing business as Andy's Limousine Service Transportation (PSG 16218-B)("Andy's Limo.")

- ANDREW WAGNER, President of Ultimate Limo and Andy's Limo.

1. INTRODUCTION AND BACKGROUND

Pursuant to Article 13.5 of the Commission Rules of Practice and Procedure, the Respondents named above and the Consumer Protection and Safety Division (CPSD) hereby agree to settle (without having an evidentiary hearing), the Order Instituting Investigation (I.) 04-07-004. A summary of the background is as follows:

- Staff began investigating Respondent Ultimate in August 2002 after receiving complaints that Ultimate engaged employee-drivers without evidence of workers' compensation insurance coverage; failed to enroll drivers in an alcohol and controlled substance certification-testing program; failed to report all vehicles to the Commission; and failed to comply with vehicle licensing, insurance and registration requirements.
- Between September and October 2002, Staff conducted an extensive review of Ultimate Limo's operations, which included interviews with President Andrew Wagner and Operations Manager Rosemary Brun.
- Staff's audit revealed numerous violations of the Passenger Charter-Party Carriers' Act, and of Commission rules and regulations. These violations are detailed fully in Staff's report that is a proposed Exhibit in this proceeding.
- Following the completion of the audit, Staff issued Citation Forfeiture #F-5121 on Andrew Wagner on July 18, 2003. The Citation Forfeiture listed all of the violations found during the audit and presented a \$10,000 fine.

- On July 18, 2003, Andrew Wagner signed Form 2 denying the Citation Forfeiture after reviewing the alleged violations with Staff.
- On October 28, 2003, Staff began a follow-up investigation on Ultimate Limo.
- On or around October 28, 2003 Staff expanded its investigation to the newly-formed Andy's Limo.
- The follow-up investigation into Andy's Limo and Ultimate Limo revealed similar violations as the earlier audit of Ultimate Limo, including employing drivers that did not have the proper California driver license, failing to enroll drivers in the DMV pull notice program, failing to conduct pre-employment testing or timely enrollment in an alcohol and controlled substance certification program, and failing to report vehicles to the Commission. The violations are fully detailed in Staff's supplemental report that is a proposed Exhibit in this proceeding.
- On July 8, 2004, the Commission voted out the OII that detailed Respondents' violations of the Passenger Charter-Party Carriers' Act and Commission regulations.
- On September 16, 2004, a Telephonic Prehearing Conference (PHC) was held.
- On September 30, 2004 Mr. Wagner, on behalf of himself and the other Respondents, contacted Gregory Heiden, attorney for CPSD, by telephone and spoke extensively on the issues of the investigation. The parties agreed to hold settlement talks over the phone on October 7, 2004.
- On October 7, 2004 Mr. Wagner, on behalf of himself and the other Respondents, held settlement talks over the phone with Suong Le of CPSD and Gregory Heiden, attorney for CPSD.

- On October 19, 2004, Mr. Wagner and Mr. Heiden had additional settlement discussion and came to an oral agreement on a Settlement proposal for the Commission.

In consideration of the mutual covenants contained in this Settlement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

2. TERMS AND CONDITIONS

- 2.1 **Fines.** Within 30 calendar days after the Commission issues a decision adopting and approving this Settlement, the Respondents will pay the Commission as a fine the amount of \$5,000, and within every 90 calendar day period thereafter, pay an amount of \$5,000, until the Respondent has paid in total to the Commission \$20,000. Each of the payments must be in the form of a cashier check made payable to the order of the Commission and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave, San Francisco, CA 94102.
- 2.2 **Probation.** Respondents agree to a one-year Probation. The Probation period shall begin on the date when the Commission orders adoption of this Settlement. If additional violations are found by Staff during the Probation period, Staff will recommend the Commission open another Order Instituting Investigation (OII) to assess whether additional fines and other penalties are appropriate.
- 2.3 **Compliance.** Respondents acknowledge all violations contained in Staff's testimony, which has been served on Respondents as proposed Exhibits in this proceeding. Respondents take full responsibility for past violations of laws, rules and regulations governing charter-party carriers and agree to be in full compliance with these regulations, and all other applicable rules in the future.

3. DEFAULT AND REMEDIES

- 3.1 If the Respondents violate or fail to comply with any provision of this Settlement, Commission rules and regulations, or any Commission judicial decision, CPSD may petition to reopen this or initiate another Commission proceeding for purposes of, but not limited to, imposing fines and penalties and possible suspension or revocation of operating authorities pursuant to Pub. Util. Code § 5378(a)

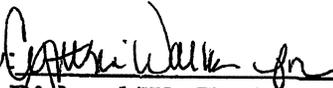
4. MISCELLANEOUS PROVISIONS

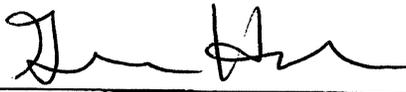
- 4.1 The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.
- 4.2 The Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Parties have signed this Settlement, CPSD will file a Motion requesting Commission adoption. The Parties must furnish such additional information, documents, and/or testimony as the Commission may require in granting said Motion and adopting this Settlement.
- 4.3 The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded.
- 4.4 The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Respondents further acknowledge full understanding of their right to

discuss this Settlement with their legal counsel, and have availed themselves of that right to the extent deemed necessary. In executing this Settlement, each Party declares that the provisions herein are fair, adequate, reasonable, and mutually agreeable. Respondents further acknowledge that as set forth in this Settlement, no promise or inducement has been made or offered them.

- 4.5 Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. Respondents agree to cooperate fully with such inquiries. However, it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Settlement notwithstanding such discovery.
- 4.6 This Settlement constitutes the Parties' entire Settlement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.
- 4.7 This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, agents, or corporations (e.g., parent, subsidiaries, affiliates, divisions, units, officers, directors, and/or shareholders).
- 4.8 This Settlement shall become effective and binding on the Parties as of the date it is fully executed.

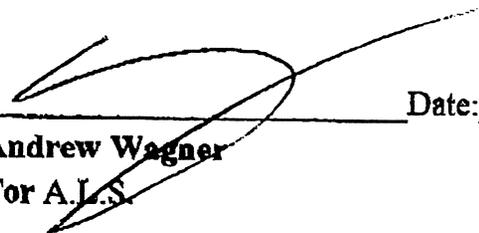
IN WITNESS WHEREOF, the Parties, hereto have set their hands on the day and in the year indicated below:

By:  Date: 11/5/04
Richard W. Clark
Director
Consumer Protection and Safety Division

By:  Date: 11/5/04
Gregory Heiden
Staff Counsel
Attorney for the Consumer Protection and Safety Division

By:  Date: 11-5-04
Andrew Wagner

By:  Date: 11-5-04
Andrew Wagner
For Andy's Ultimate Limousines

By:  Date: 11-5-04
Andrew Wagner
For A.L.S.

CERTIFICATE OF SERVICE

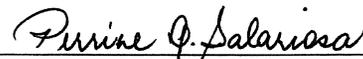
I hereby certify that I have this day served a copy of the foregoing document “**JOINT MOTION OF CONSUMER PROTECTION AND SAFETY DIVISION AND RESPONDENTS FOR ADOPTION OF THE SETTLEMENT AGREEMENT (ATTACHED)**” to all known parties to **I.04-07-004.**

A copy was served as follows:

BY E-MAIL: I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

BY MAIL: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the 5th day of November, 2004.



Perrine D. Salariosa

(END OF APPENDIX A)