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**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

September 12, 2022

Agenda ID #20938

**TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-425:**

This is the draft Resolution of Administrative Law Judge (ALJ) Margery Melvin resolving K.22-01-004. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution was mailed and published on the Commission's website [link], as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on ALJ Melvin at [mmv@cpuc.ca.gov](mailto:mmv@cpuc.ca.gov).

/s/ ANNE E. SIMON  
Anne E. Simon  
Chief Administrative Law Judge

AES:sgu

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-425  
Administrative Law Judge Division  
[Date]

**RESOLUTION**

RESOLUTION ALJ-425. Resolves K.22-01-004, the Appeal of Luke Wuellner (Taco Tours, LLC TCP 38185 A) of Citation No. T.21-12-003.

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**SUMMARY**

This resolution resolves the appeal of Citation No. T.21-12-003 issued to Luke Wuellner doing business as Taco Tours, LLC (Taco Tours) by the California Public Utilities Commission's Consumer Protection and Enforcement Division on December 24, 2021. Citation No. T.21-12-003 issues a fine of \$12,000 for violations of Pub. Util. Code §§ 5379, 5387(a)(c)(1)(A), 5391, 5414.5, and the Commission's General Order 115-G.

This resolution adopts a Settlement Agreement that reduces the \$12,000 fine to \$11,000 and provides that Taco Tours will take steps to obtain a new charter-party carrier license prior to engaging in future passenger transport operations, as detailed in the Settlement Agreement. Until that time, Taco Tours' operating permit/license remains revoked.

K.22-01-004 is closed.

**RESOLUTION OF THE APPEAL**

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act, Pub. Util. Code § 5351, et seq.<sup>1</sup> Pursuant to Resolution ALJ-187, Consumer Protection and Enforcement Division (CPED) is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-377.

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<sup>1</sup> Unless otherwise stated, all statutory references are to the California Public Utilities Code.

On December 24, 2021, CPED issued Citation T.21-12-003 to Luke Wuellner, doing business as Taco Tours, LLC (Taco Tours) for violations of Pub. Util. Code §§ 5379, 5387(a)(c)(1)(A), 5391, 5414.5, and the Commission's General Order (GO) 115-G. The underlying investigation period covered December 2, 2020 through August 19, 2021. The citation was issued for the following violations, for a total fine of \$12,000:

1. Operating as a charter-party carrier after revocation of its operating authority with the Commission in violation of Pub. Util. Code § 5379 [129 counts];<sup>2</sup>
2. Conducting operations as a charter-party carrier of passengers without evidence of Public Liability and Property Damage (PLPD) insurance coverage in effect and on file with the Commission in violation of Pub. Util. Code §§ 5387(a)(c)(1)(A), 5391 and GO 115-G [95 counts];<sup>3</sup>
3. Failing to obtain the required minimum level of public liability insurance coverage for one vehicle in violation of Pub. Util. Code § 5391 and GO 115-G for 16 passengers [1 count];<sup>4</sup> and
4. Advertising as a charter-party carrier without having a valid authority in violation of Pub. Util. Code § 5414.5 [4 counts].

Before the hearing on the citation appeal, CPED and Taco Tours entered into a Settlement Agreement under which Taco Tours agrees to pay the settled fine of \$11,000 instead of the original amount of \$12,000 dollars. The Settlement Agreement also provides that Taco Tours will pay the penalty in monthly installments of \$916.66 for the next eleven consecutive months and a twelfth installment of \$916.74 beginning 30 days from the date this Settlement Agreement is approved by the Commission. In addition, Taco Tours agrees to seek a new charter party carrier license prior to engaging in operations of passenger transport as detailed in, and in accordance with, the Settlement Agreement. Finally, Taco Tour agrees to admit all charged violations in

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<sup>2</sup> On June 5, 2020, the Appellant's charter-party certificate was suspended and subsequently revoked on December 2, 2020, for failure to maintain adequate PL&PD insurance coverage.

<sup>3</sup> From December 2, 2020, through at least August 19, 2021, Appellant operated as a charter-party carrier for a total of 129 days after revocation of its operating authority.

<sup>4</sup> From December 4, 2020, through at least June 19, 2021, the Appellant operated a charter-party carrier of passengers without evidence of PL&PD insurance coverage in effect and on file with the Commission.

T.12-12-003. The parties jointly filed a motion<sup>5</sup> for Commission Adoption of the Settlement Agreement on April 28, 2022.<sup>6</sup>

### **PROPOSED SETTLEMENT**

The Commission will not approve the settlement unless it is reasonable in light of the whole record, consistent with the law, and in the public interest.<sup>7</sup> The Commission set out factors for penalty analyses in Decision (D.) 98-12-075, incorporated into gas citation programs in D.16-09-055. These factors include the gravity of the offense, the conduct of the utility, the financial resources of the utility, the totality of the circumstances, and the role of precedent.

#### A. Reasonableness in light of the record

Based upon the evidentiary record we find the Settlement Agreement to be reasonable. The Settlement Agreement makes only a small reduction in the amount of the penalty and provides Taco Tours the ability to pay the fine over a 12-month period after consideration of the company's financial circumstances. The penalty imposed is reasonable for a company of Taco Tour's financial condition and the corrective actions Taco Tours agreed to meet under the Settlement Agreement should prevent future lapses that might result in violations. The \$11,000 fine should specifically deter Taco Tours and generally deter other regulated charter-party carriers from future violations of Pub. Util. Code §§ 5379, 5387(a)(c)(1)(A), 5391, 5414.5 and GO 115-G. Furthermore, the Settlement Agreement benefits the parties by removing the uncertainty of future litigation.

#### B. Consistent with law

The Settlement Agreement is consistent with the statutes, law, applicable rules and regulations governing the Commission. As discussed below, the Settlement Agreement also meets the criteria set out in D.98-12-075 by presenting a reasonable penalty amount and remedies that protect the public interest.

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<sup>5</sup> The Joint Motion and Settlement Agreement contain two key typographical errors, which we take note of here. First, the Joint Motion refers to the correct CPED citation number (No. T.21-12-003) that is the subject of the Settlement Agreement, but the Settlement Agreement refers to an incorrect citation number. For purposes of this decision, we read both the Motion and Settlement Agreement as settling CPED Citation No. T.21-12-003. Second, the Motion refers to appellant as "Taco Tour" instead of "Taco Tours," as stated in the citation. Our approval of the Settlement Agreement is based on our corrections of these typographical errors.

<sup>6</sup> The Settlement Agreement is provided as Attachment A to the joint motion, and is also attached to this decision as Attachment A.

<sup>7</sup> Commission's Rules of Practice and Procedure 12.1(d).

### C. Five Factors under D.98-12-075

We find that the Settlement Agreement is consistent with Commission precedent concerning the reasonableness of the penalty amount. D.98-12-075 sets forth five factors to consider in assessing a penalty: (1) severity of the offense, (2) the conduct of the utility, (3) financial resources of the utility, (4) the role of precedent, and (5) the totality of the circumstances in furtherance of the public interest.

The severity of the offense is determined by the nature and extent of physical harm, economic harm, harm to the regulatory process, and the number and scope of the violations. Although the violations at issue caused no physical or economic harm to the public, the requirement to hold proper insurance and comply with regulatory obligations directly impacts public safety. Further, the Commission views compliance with its rules as absolutely necessary to the integrity and proper functioning of the regulatory process and believes a high degree of severity should be attached to violation of Commission rules, which often address public safety.

The Commission also looks to the conduct of the utility. With respect to its conduct, CPED stated that Taco Tours worked cooperatively with CPED to reach this settlement and specifically that Taco Tours was willing to work to correct deficiencies and comply with applicable regulations.

With respect to its financial resources, Taco Tours is a smaller entity regulated by the Commission, whose operations were disrupted by COVID-19. The \$11,000 penalty should serve as a deterrent to future violations by Taco Tours and other charter-party carriers.

With respect to the role of precedent, CPED represents that it considered the range of fines assessed in several other settlements and believes the penalty in the case is reasonable in this light.<sup>8</sup> In Section D below, we conclude that the Settlement Agreement is in the public interest, thus finding that the totality of the circumstances concerning the Settlement Agreement are in the public interest.

For the above reasons, we find the Settlement Agreement's penalty to be reasonable in light of the factors set forth in D.98-12-075.

### D. Public Interest

We find that the Settlement Agreement furthers the public interest by encouraging compliance with our regulations through the imposition of a reasonable penalty by allowing All Taco Tours to pay a substantial fine on a monthly payment plan. It also supports compliance with regulatory obligations by requiring the company to obtain

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<sup>8</sup> See Joint Motion at 8.

Commission authority and meet all relevant Commission requirements should it choose to engage in charter-party carrier transportation in the future. The Settlement Agreement is also consistent with the Commission's policy favoring settlement of disputes to avoid costly and protracted litigation. Therefore, we find the Settlement Agreement to be in the public interest.

For the above reasons, we find that the Settlement Agreement is reasonable in light of the record, consistent with the law and consistent with the public interest, and approve it as corrected in the Ordering Paragraphs below.

### **SAFETY**

The Commission has broad authority to regulate charter-party carriers, particularly regarding safety concerns. (*See* for example, Pub. Util. Code §§ 451, 5382 and 5387.) The Commission is mindful that the statutory schemes under which this citation was issued in this case are intended to secure the safety of charter-party carrier passengers and the general public. The Settlement Agreement supports the Commission's authority to ensure charter party carriers meet their regulatory obligations.

### **COMMENTS**

Cal. Pub. Util. Code §311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the interested parties on September 12, 2022.

### **FINDINGS OF FACT**

1. On June 5, 2020, the Appellant's charter-party certificate was suspended and subsequently revoked on December 2, 2020, for failure to maintain adequate PL&PD insurance coverage in violation of Pub. Util. Code § 5387(c)(1).
2. From December 2, 2020, through at least August 19, 2021, the Appellant operated as a charter-party carrier for a total of 129 days after revocation of its operating authority in violation of Pub. Util. Code § 5379.
3. From December 4, 2020, through at least June 19, 2021, the Appellant operated a charter-party carrier of passengers without evidence of PL&PD insurance coverage in effect and on file with the Commission in violation of Pub. Util. Code §§ 5387(a)(c)(1)(A), 5391, and GO 115-G.

4. Appellant failed to obtain the minimum level of public liability insurance coverage for one vehicle in violation of Pub. Util. Code § 5391 and GO 115-G for 16 passengers or more.
5. Appellant operated a 22-seat capacity vehicle without obtaining evidence of public liability coverage of \$5 million as required.
6. On August 5 and December 10, 2021, the carrier was observed advertising on the Appellant's website as a charter-party carrier without valid authority in violation of Pub. Util. Code § 5414.5.
7. On April 28, 2022, the parties filed a joint motion for the Commission to approve their Settlement Agreement, resolving all claims related to CPED Citation No. T-21-12-003 and proceeding K.22-01-004.
8. The Settlement Agreement reduces the \$12,000 fine previously imposed to \$11,000 and provides that Taco Tours will take steps to obtain a new charter-party carrier license prior to engaging in future passenger transport operations, as detailed in the Settlement Agreement.
9. Appellant's operating permit license remains revoked unless and until the Appellant submits to the Commission a new application as detailed in the Settlement Agreement.

## CONCLUSIONS OF LAW

1. The Settlement Agreement should be adopted because it is reasonable, making only a small reduction in amount of the initial citation penalty in light of Taco Tours' financial condition, and in light of the corrective actions Taco Tours agreed to meet and the deterrent the Settlement Agreement poses for future violations.
2. The Settlement Agreement should be adopted because it is consistent with the law.
3. The Settlement Agreement should be adopted because the agreed penalty amount is reasonable under an analysis pursuant to D.98-12-075.
4. The Settlement Agreement should be adopted because it is in the public interest, imposing a reasonable penalty and payment plan, and supporting compliance with the Commission's regulatory obligations and the Commission's policy favoring settlement of disputes to avoid costly and protracted litigation.

Therefore, **IT IS ORDERED** that:

1. The April 28, 2022 Joint Motion for Commission adoption of the Settlement Agreement, Attached to the Motion and to this Decision as Attachment A, is granted, as corrected in Ordering Paragraph 2 below. The Settlement Agreement for Citation No. T.21-12-003 and Case No. K.22-01-004, which is attached to this resolution as Attachment A, is approved.
2. The Commission's approval of the Settlement Agreement corrects two typographical errors in the Parties' Joint Motion and Settlement Agreement and settles Consumer Protection and Enforcement Division Citation No. T-21-12-003 regarding Appellant Taco Tours, LLC.
3. Pursuant to the terms of the Settlement Agreement, Luke Wuellner, doing business as Taco Tours, LLC shall pay the penalty in monthly installments of \$916.66 for eleven consecutive months and a twelfth installment of \$916.74 beginning 30 days from the date this Settlement Agreement is approved by the Commission. Payment shall be made by check or money order payable to the State of California's General Fund and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Monthly payments must be mailed or delivered each month within 30 days of the effective date of this order. Taco Tours, LLC shall write on the face of check or money order "For deposit to the General Fund per Resolution ALJ-425."
5. Pursuant to Sections I.C, D, and E of the Settlement Agreement in Attachment A, Luke Wuellner, doing business as Taco Tours, LLC, 's operating permit license remains revoked unless and until Taco Tours submits to the Commission a new application.



6. K.22-01-004 is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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Rachel Peterson  
Executive Director

ALJ/MMV/sgu

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

RESOLUTION ALJ-425. Resolves K.22-01-004, the Appeal of Luke Wuellner (Taco Tours, LLC TCP 38185 A) of Citation No. T.21-12-003.

**INFORMATION REGARDING SERVICE**

I have electronically served all persons on the attached official service list who have provided an e-mail address for K.22-01-004.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

Dated September 12, 2022, at San Francisco, California.

\_\_\_\_\_  
/s/ SHANE GUTTO  
Shane Gutto

**N O T I C E**

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

Resolution ALJ-425 ALJ/MMV/sgu

\*\*\*\*\* PARTIES \*\*\*\*\*

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Last Updated on 12-SEP-2022 by: KB3  
K2201004 LIST

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