Service Date: July 13, 2016

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Penalty Assessment Against KUSH TOURISM, LLC in the amount of $4,500	DOCKET TE-160713 ORDER 01 INITIAL ORDER APPROVING SETTLEMENT AGREEMENT

BACKGROUND

1 On June 3, 2016, the Washington Utilities and Transportation Commission (Commission), assessed a penalty of $4,500 (Penalty Assessment) against Kush Tourism, LLC (Kush Tourism or Company) for 45 violations of Washington Administrative Code (WAC) 480-30-221, which adopts by reference 49 C.F.R. Part 391 related to driver qualifications, and 49 C.F.R. Part 395 related to driver hours of service.

2 On June 10, 2016, Kush Tourism responded to the Commission's penalty assessment, admitting the violations and requesting a hearing. The Company provided the following information to support its request: "We committed the penalties mentioned in this letter, but we were under the impression that our drivers did not need medical certificates due to confusing regulations regarding vehicles under 8 passengers and 10,001 GVWR. We would like to discuss the confusion through mitigation."

3 On July 12, 2016, Commission staff (Staff)[1] filed with the Commission a settlement agreement on behalf of the parties (Settlement Agreement).

4 The Company admits to each of the 45 violations of WAC 480-30-221 cited in the Penalty Assessment. The parties agree that the Commission should assess a total penalty of $2,100 for these violations. Staff is satisfied that Kush Tourism has revised its business practices to correct the violations documented in Staff's compliance review, as evidenced by the Company's safety management plan. Kush Tourism is satisfied that the

[1] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Commission has made changes to the language in its documents that led the Company to believe it was not subject to all of the Commission's motor carrier safety rules.

5 Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff. Charles Nobles, Chief Operating Officer, Seattle, Washington, represents Kush Tourism.

DISCUSSION AND DECISION

6 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

7 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Kush Tourism admits that its conduct violated WAC 480-30-221 and agrees to pay a $2,100 penalty for the violations. In addition, the Company has since corrected the business practices that gave rise to the violations and submitted a satisfactory safety management plan. The Settlement Agreement permits the Company to pay a reduced penalty while allowing Staff to achieve its goal of bringing the Company into compliance by ensuring the Company has implemented measures designed to prevent recurring violations.

8 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find the

Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

9 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.

10 (2) Kush Tourism, LLC is assessed a penalty of $2,100, which is due and payable within 10 days of the effective date of this Order.

11 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective July 13, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Exhibit A
Settlement Agreement

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment Against KUSH TOURISM LLC In the Amount of $4,500	))))))))	DOCKET TE-160713 SETTLEMENT AGREEMENT

1 This settlement agreement (Agreement) is entered into by both parties to this proceeding for the purpose of resolving all issues raised in the above docket.

I. PARTIES

2 The parties to this Agreement are Kush Tourism LLC ("Kush Tourism" or "Company"), and the Staff of the Washington Utilities and Transportation Commission (Staff) (collectively, "the Parties").

II. RECITALS

3 Kush Tourism is a limited liability corporation that holds charter and excursion carrier authority from the Washington Utilities and Transportation Commission (Commission) under Certificate No. Ch-65467. The Commission regulates charter party and excursion carriers under chapter 81.70 RCW. Pursuant to RCW 81.70.020, "motor vehicle" is defined as "every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver."

4 The Commission issued charter and excursion carrier authority to Kush Tourism in July 2014 in Docket TE-141322. Kush Tourism is located in Seattle and provides charter party service in the Puget Sound region in one Chevrolet van that seats eight—a driver and

seven other passengers. For the year ending December 31, 2015, Kush Tourism's gross revenues (regulated and unregulated) totaled $269,000.

5 At the new entrant visit with Kush Tourism, in July 2014, Commission motor carrier safety staff (Staff) went over safety and other regulations with the Company. At this meeting, Staff provided Kush Tourism with informational materials, including "Your Guide to Achieving a Satisfactory Safety Record" (Safety Guide) which is a bound, soft-cover publication produced by the Commission, last updated March 2014.

6 Staff scheduled Kush Tourism's first compliance review for March 15, 2016. Among other records, Staff examined driver qualification files for drivers used within the past 12 months and hours of service records from the previous six months. Staff identified violations of motor carrier safety rules associated with these records, violations that are considered to be "critical." Specifically, Staff found that Kush Tourism had used drivers that were not medically examined and certified, in violation of 49 C.F.R. § 391.45(a) ("medical certification violations"), and failing to require drivers to make a record of duty status, a violation of 49 C.F.R. § 395.8(a) ("hours of service violations"). The medical certification violations occurred between October 19, 2015, and March 12, 2016. The hours of service violations occurred primarily in the fall of 2015. Staff proposed a safety rating of "conditional" for Kush Tourism.

7 Kush Tourism engaged a consultant to review its compliance with applicable laws and rules and took swift steps to correct its business practices. The Company provided Staff with a safety management plan. Based on the safety management plan as well as on the Company's actions and its full cooperation with Staff in addressing the violations, Staff is

satisfied that Kush Tourism has revised its business practices to correct the violations documented in the compliance review.

8 The Commission assessed a penalty of $4,500 against Kush Tourism on June 3, 2016, for forty-four violations of 49 C.F.R. § 391.45(a), which requires a driver to be medically examined and certified prior to driving, and one violation of 49 C.F.R. § 395.8(a), which requires a driver to make a record of duty status. Violations of both of these rules are "critical" safety violations.

9 On June 10, 2016, Kush Tourism timely filed an application for mitigation of the penalty and a request for hearing. The Company admitted to the violations but requested mitigation based on "confusing regulations regarding vehicles under 8 passengers and 10,001 GVWR," which led Kush Tourism to believe "that our drivers did not need medical certification."

10 Kush Tourism points to language in the Safety Guide as well as in the standard compliance review appointment letter it received as sources of confusion regarding whether certain rules applied to the operation of the Kush Tourism van. The Safety Guide states that vehicles operating as charter carriers are excepted from the general definitions of a commercial motor vehicle, which is defined in the Safety Guide as "a vehicle that is designed or used to transport more than 8 passengers, including the driver." The appointment letter states that a company should have available for inspection, among other items, "driver qualification files for all drivers used in the past 12 months, including copies of medical certificates on drivers operating commercial motor vehicles with GVWR of 10,001 pounds or more *or* more than 8 passengers." Kush Tourism believed that operating its van, which transports a total of eight people, including a driver and seven other

passengers, did not subject the Company to all of the motor vehicle safety requirements. Staff has since changed the language at issue in its standard appointment letter to refer to "8 or more occupants" and plans to clarify the language in the printed Safety Guide, as well, the next time it is updated.

11 The Parties concluded negotiations and reached an agreement in principle. On July 6th, 2016, the parties informed the Commission of their settlement. The settlement is memorialized in this Agreement.

III. AGREEMENT

12 The Parties have reached agreement on the issues raised in the above docket and present their agreement for the Commission's consideration and approval. The Parties therefore adopt the following Agreement, which the Parties enter into voluntarily, to resolve the matters in dispute between them and to expedite the orderly disposition of this proceeding.

13 The Parties agree that Kush Tourism will pay to the Commission penalties of $2,100.

IV. GENERAL PROVISIONS

14 The Parties agree that this Agreement is in the public interest. The Parties further agree that this Agreement reflects the settlement of all contested issues between them in this proceeding. The Parties understand that this Agreement—including the admissions contained herein—is not binding unless and until accepted by the Commission. If the Commission does not accept this Agreement, including all of its terms and conditions without change, then the Parties shall be free to assert their pre-settlement positions and

agree that neither this Agreement nor any statements or admissions contained herein shall be admissible or used for any purpose in this docket or any other proceeding for any purpose.

15 The Parties agree to cooperate in submitting this Agreement promptly to the Commission for acceptance. The Parties agree to support adoption of this Agreement in proceedings before the Commission. No party to this Agreement or its agents, employees, consultants, or attorneys will engage in advocacy contrary to the Commission's adoption of this Agreement.

16 The Parties agree (1) to provide each other the right to review in advance of publication any and all announcements or news releases that the other party intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that the Staff's recommendation to approve the settlement is not binding on the Commission itself.

17 Nothing in this Agreement shall limit or bar any other entity from pursuing legal remedies against Kush Tourism or Kush Tourism's ability to assert defenses to such claims.

18 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty, and delay. The Parties recognize that this Agreement represents a compromise of the Parties' positions. As such, conduct, statements, and documents disclosed during negotiations of this Agreement shall not be admissible as evidence in this or any other proceeding, except in any proceeding to enforce the terms of this Agreement or any Commission order fully adopting those terms. This Agreement shall not be construed against either party because it was a drafter of this Agreement.

19 By executing this Agreement, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed in arriving at the terms of this Agreement, nor shall any Party be deemed to have agreed that any provision of this Agreement is appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in the Agreement.

20 The Parties have negotiated this Agreement as an integrated document to be effective upon execution. This Agreement supersedes all prior oral and written agreements on issues addressed herein. Accordingly, the Parties recommend that the Commission adopt this Agreement in its entirety.

21 The Parties may execute this Agreement in counterparts and as executed shall constitute one agreement. A signed signature page sent by facsimile or email is as effective as an original document.

22 The Parties shall take all actions necessary as appropriate to carry out this Agreement.

23 In the event that the Commission rejects all or any portion of this Agreement, or accepts the settlement upon conditions not proposed in this Agreement, each party reserves the right to withdraw from this Agreement by written notice to the other party and the Commission. Written notice must be served within 10 business days of the Order rejecting part or all of this Agreement or imposing conditions not proposed in this Agreement. In such event, neither party will be bound or prejudiced by the terms of this Agreement, and the Parties agree to request the prompt reconvening of a prehearing conference and to cooperate in developing a procedural schedule.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ROBERT W. FERGUSON
Attorney General

_____
JENNIFER CAMERON-RULKOWSKI
Assistant Attorney General
Counsel for the Washington Utilities and Transportation Commission

Dated: _____, 2016.

KUSH TOURISM LLC

_____
CHARLES NOBLES

Chief Operating Officer

Dated: _____, 2016.