



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SOUTHERN SERVICE CENTER
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

(404) 327-7400
(404) 327-7349 (Fax)

November 3, 2009

THE ANIMAL SANCTUARY OF THE UNITED STATES, INC. dba THE WILD ANIMAL
ORPHANAGE
9488 LESLIE ROAD
SAN ANTONIO, TX, 78269

Re: Case No. TX-2009-2662-US0562
US DOT#: 1933655

Dear Sir or Madam:

Enclosed please find a Settlement Agreement ("Agreement") prepared in response to the discussions between you and the Southern Service Center regarding the civil penalty assessed against THE ANIMAL SANCTUARY OF THE UNITED STATES, INC. dba THE WILD ANIMAL ORPHANAGE, in Case Number TX-2009-2662-US0562, for violations of the Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Carrier Commercial Regulations (FMCCRs), and/or Hazardous Material Regulations (HMRs). The Agreement constitutes an offer to settle the charges against THE ANIMAL SANCTUARY OF THE UNITED STATES, INC. dba THE WILD ANIMAL ORPHANAGE, and is not effective until it has been received in the Service Center and signed by the Field Administrator.

This Agreement was drafted in consideration of the information provided by you or your representatives to the Southern Service Center and contains the terms and conditions upon which the Federal Motor Carrier Safety Administration (FMCSA) is willing to resolve the violations set forth in the above-referenced case. These terms and conditions include, but are not limited to:

- Total amount claimed
- Total amount to be paid
- Payment terms (number of payments and amount of payments)
- Date, time, form, and place of payment
- Consequences for failure to comply with the terms of the Agreement

Before signing the Agreement make sure that you have read and understand the terms and conditions it contains. Once signed by the Field Administrator, the Agreement becomes a final order of the FMCSA and is enforceable against you. If any payment is not received by the due date, the payment plan provided in this Agreement will be voided and the original penalty

amount will be reinstated (less any payments made). The FMCSA will take immediate steps to collect the entire original remaining debt up to and including prohibiting your company from operating in interstate commerce pursuant to 49 C.F.R. § 383.83 and suspending your registration pursuant to 49 C.F.R. § 386.84 (if applicable).

YOU MUST SIGN THE SETTLEMENT AGREEMENT AND SEND IT TO (404) 327-7349 (Fax) AND THEN MAIL IT TO THE SERVICE CENTER ADDRESS LISTED ABOVE BY November 18, 2009.

THE AGREEMENT IS NOT EFFECTIVE UNTIL IT IS SIGNED BY YOU, RETURNED TO THE SERVICE CENTER AND SIGNED BY THE FIELD ADMINISTRATOR. FAILURE TO RETURN THE SIGNED SETTLEMENT AGREEMENT BY November 18, 2009 WILL CAUSE THIS OFFER OF SETTLEMENT TO BE AUTOMATICALLY WITHDRAWN AND APPROPRIATE ACTION WILL BE TAKEN TO IMMEDIATELY COLLECT THE FULL PENALTY OF \$3,550.00. IT IS IMPERATIVE THAT YOU RETURN THE SIGNED SETTLEMENT AGREEMENT TO THIS OFFICE BY THE ABOVE-REFERENCED DATE.

If you need any additional information or have any questions, please call an Enforcement Program Specialist at (404) 327-7400.

Sincerely,

A handwritten signature in black ink, appearing to read "L.A. Johnson". The signature is fluid and cursive, with the first name "L.A." written in a stylized, overlapping manner.

L.A. Johnson
Enforcement Coordinator
Enclosures

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of)	
)	
The Animal Sanctuary of the United States, Inc., dba, The Wild Animal Orphanage 9488 Leslie Rd. San Antonio, TX 78269)))))	Case No. TX-2009-2662-US0562 USDOT No. 1933655

SETTLEMENT AGREEMENT

The Parties to this agreement are:

The Animal Sanctuary of the United States, Inc., dba, The Wild Animal Orphanage (hereinafter called the **RESPONDENT**);

and

The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** of the Department of Transportation (hereinafter called the **FMCSA**).

The Parties agree as follows:

1. A. The **FMCSA** has a pending claim against the **RESPONDENT** for violations of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations, (hereinafter referenced as **FMCSRs**), Hazardous Materials Regulations (hereinafter referenced as the **HMRs**) and/or the Federal Motor Carrier Commercial Regulations (hereinafter referenced as the **FMCCRs**) as follows:

In Case Number TX-2009-2662-US0562 the **FMCSA** has a claim for **\$3,550** against the **RESPONDENT** for the following violations:

Five (5) violations of 49 CFR § 395.8(a) – Failing to require driver to make a record of duty status.

- B. This claim was served to the **RESPONDENT** on October 23, 2009.
2. The statutory basis for the claim as set forth and detailed in the above-referenced civil penalty proceeding is found in 49 USC Subtitle III, General and Intermodal Programs; 49 USC Subtitle IV, Interstate Transportation, Part B, Motor Carriers, Water Carriers,

TX-2009-2662-US0562

Brokers, and Freight Forwarders; 49 USC Subtitle VI, Motor Vehicle and Driver Programs, Part B, Commercial; including, but not limited to, 49 USC § 521 ("Civil Penalties"); 49 USC § 5123(c) ("Civil Penalty"); and 49 USC § 14901 ("General Civil Penalties"). Pursuant to the Federal Claims Collection Act of 1966, 31 USC Chapter 37, Subchapter II, and the regulations of the Federal Motor Carrier Safety Administration in 49 CFR Part 386, the parties desire to settle the claim. This agreement for settlement of the claims is made pursuant to 49 C.F.R. § 386.22.

3. In consideration of the settlement of the above-described claim, and subject to the terms and conditions of this settlement agreement, **RESPONDENT** agrees to pay the FMCSA, and FMCSA agrees to accept the unsuspended amount of \$3,550, in five (5) payment(s). The Parties stipulate this settlement agreement resolves only the claim set forth in Paragraph 1 of this settlement agreement. Further, the parties stipulate nothing in this settlement agreement shall be construed to relieve or limit **RESPONDENT's** duty to comply with all applicable United States Department of Transportation statutes and implementing regulations, including the FMCSRs, HMRs, and the FMCCRs.
4. Payment may be made electronically through the SAFER website at <http://safer.fmcsa.dot.gov/> by selecting the "Online Fine Payment" option under the FMCSA Services section. Alternatively, payments may be made by mailing a cashier's check, certified check or money order payable to the Federal Motor Carrier Safety Administration. To expedite processing and ensure proper credit, checks should be annotated with the FMCSA Case Number. Payments are to be mailed to:

Federal Motor Carrier Safety Administration
Southern Service Center
1800 Century Blvd., NE, Suite 1700
Atlanta, GA 30345

Payment is due on the dates indicated below:

- The first payment of \$710.00 is due no later than 12/03/2009.
- The second payment of \$710.00 is due no later than 01/03/2010.
- The third payment of \$710.00 is due no later than 02/03/2010.
- The fourth payment of \$710.00 is due no later than 03/03/2010.
- The fifth payment of \$710.00 is due no later than 04/03/2010.

5. Failure to pay in accordance with the terms of this settlement agreement and/or failure to comply with the terms and conditions of this settlement agreement shall be considered a breach of this settlement agreement and may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reduction in civil penalties asserted in the Notice of Claim, in which case the original amount asserted in the Notice of Claim (less any payments previously made) will be due immediately. Failure to make an installment payment on schedule voids any payment plan set forth in this settlement agreement and the entire debt is payable immediately. **If the entire amount is not paid**

within ninety (90) days of the missed due date for the installment payment, **RESPONDENT** will be prohibited from operating in interstate commerce and, if applicable, **RESPONDENT'S** registration will be suspended or revoked in accordance with 49 CFR §§ 386.83 and 386.84. In addition, the remaining debt is subject to interest, penalties, and administrative charges at the maximum allowable rate and in accordance with FMCSA procedures. Any payment(s) made after a breach of any term and/or condition of this settlement agreement, including failure to pay in accordance with the terms of this settlement agreement, will be applied toward the balance of the original amount claimed, and shall not affect any right of FMCSA to pursue any remedy for breach of this settlement agreement

6. The Parties stipulate the claim set forth in the above-described Notice of Claim is valid. By signing this settlement agreement, **RESPONDENT** waives any right it may have to subsequently challenge the validity of such claim. The Parties further stipulate this settlement agreement is a contract voluntarily entered into by the Parties which may be enforced. FMCSA may pursue any action for violations of the FMCSRs, HMRS, and/or the FMCCRs and/or for enforcement of this settlement agreement, and/or for recovery of the full penalty asserted in the Notice of Claim. Any forbearance by FMCSA in exercising any right or remedy under this settlement agreement or provided by law, including, without limitation, FMCSA's acceptance of late payment(s) or payment(s) in amounts less than the amount due, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this settlement agreement or any part thereof.
7. This settlement agreement is to be executed by the **RESPONDENT** and returned to FMCSA. This settlement agreement is not binding upon FMCSA until executed by the Field Administrator. Prior to the execution of this agreement by the Field Administrator, this agreement is an offer in compromise by the **RESPONDENT** and may not be withdrawn for a period of thirty (30) days after it is executed by the **RESPONDENT**. Upon execution of this settlement agreement by the Field Administrator, the settlement agreement will become the Final Agency Order in this proceeding. If this settlement agreement requires approval by the Assistant Administrator or the Administrative Law Judge, neither party may withdraw its consent to the settlement agreement for a period of thirty (30) days from the date the Field Administrator signs the Agreement, and the Settlement Agreement becomes the Final Agency Order in this proceeding as provided by 49 CFR § 386.22(c)-(e).
8. **RESPONDENT** acknowledges that it has received adequate notice of the FMCSA's claim and waives any and all rights it may have to further notice or to further details of the allegations that gave rise to the claim. Further, **RESPONDENT** expressly acknowledges that FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claim against **RESPONDENT**.
9. Execution of this settlement agreement will constitute admission of the violation(s) set forth in this agreement and these violations shall constitute prior offenses under 49 USC

§ 521(b)(2)(D), and/or 14901(c), and/or 5123(c), which will lead to higher penalties in future enforcement actions and adverse future SafeStat rankings

10. This settlement agreement, including all enumerated conditions, shall apply to, be binding upon, and enforceable against **RESPONDENT** and **RESPONDENT**'s successors and assigns, including but not limited to, subsequent purchasers, transferees, and/or successor entity(ies).

11. This settlement agreement may be executed in counterparts, all of which when taken together shall constitute a fully executed original. A facsimile signature on this settlement agreement shall constitute an original signature for purposes of execution.
12. This settlement agreement shall be considered jointly drafted by the Parties, and constitutes the final and exclusive agreement between the Parties in this proceeding. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded. Notwithstanding this provision, the Notice of Claim, as referenced in Paragraph 1 of this settlement agreement, is incorporated by reference.
13. **RESPONDENT** hereby acknowledges, represents, and warrants that he or she or its representative has carefully read and understands this settlement agreement, all of its terms and conditions, and its final and binding effect, and has been afforded sufficient time and opportunity to review this settlement agreement with advisors or attorneys of his, her, or its choice, has had an opportunity to negotiate with regard to the terms of this settlement agreement, is fully competent to enter into this settlement agreement, and has signed this settlement agreement knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind the entity in the signing of this settlement agreement.
14. Should any provision of this settlement agreement be held invalid or illegal, such illegality shall not invalidate the whole settlement agreement, but, rather, the settlement agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.
15. **RESPONDENT**, through this settlement agreement, specifies the facsimile number by which it will accept service of documents by facsimile, and agrees and consents to service by facsimile by FMCSA of any and all documents, including but not limited to correspondence, motions, pleadings, and orders, in, and related to the above-described civil penalty proceeding. **RESPONDENT** agrees that service of any document in, or related to the above-described matter by FMCSA to the facsimile number specified by **RESPONDENT** in this settlement agreement shall constitute valid service pursuant to 49 CFR § 386.6(b). **RESPONDENT** further agrees nothing in this settlement agreement shall require FMCSA to use facsimile service. FMCSA, at its discretion, may serve any document by any method set forth in 49 CFR § 386.6.

The Animal Sanctuary of the United States, Inc., dba, The Wild Animal Orphanage
CASE # TX-2009-2662-US0562

By: _____ Date: _____
COMPANY REPRESENTATIVE & TITLE

Facsimile number for service to RESPONDENT: (210) 892-1610

PLEASE FAX THE SIGNED AGREEMENT TO: (404) 327-7349

Kelly Gassett, Enforcement Technician
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SOUTHERN SERVICE CENTER
1800 CENTURY BLVD., NE, SUITE 1700
ATLANTA, GA 30345

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SOUTHERN SERVICE CENTER**

By: _____ Date: _____
**Darrell L. Ruban
FIELD ADMINISTRATOR**

CERTIFICATE OF SERVICE

This is to certify that on November 3, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the Settlement Agreement to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

THE ANIMAL SANCTUARY OF THE UNITED STATES, INC. dba THE WILD ANIMAL ORPHANAGE 9488 LESLIE ROAD SAN ANTONIO, TX, 78269	FAXED
Joanne Cisneros, Division Administrator Federal Motor Carrier Safety Administration Southern Service Center 903 San Jacinto Blvd., Suite 101 Austin, TX 78701	One Copy Internal Mail
Trial Attorney Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Boulevard, Suite 1700 Atlanta, GA 30345	One Copy Personal Delivery
Motor Carriers Docket Clerk Federal Motor Carrier Safety Administration Southern Service Center 1800 Century Boulevard, Suite 1700 Atlanta, GA 30345	One Copy Personal Delivery

JMS