

266936

RECEIVED AND FORWARDED
2004 JUN 28 10 3:10

MARY HELEN DELGADO
Trial Attorney
United States Department of Transportation
Federal Motor Carrier Safety Administration
Western Service Center
201 Mission Street, Room 2100
San Francisco, California 94105
Telephone: (415) 744-3136
Fax: (415) 744-2665

Attorney for Claimant
Federal Motor Carrier Safety Administration

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
WASHINGTON, D.C.**

**Federal Motor Carrier Safety
Administration,**)
)
)
 Claimant,)
)
)
 v.)
)
 Orange Courier Inc.,)
)
)
 Respondent.)
)

Docket No. FMCSA-2003-16274 -5
(Western Service Center)

Agency Case #: CA-2003-0066-US0874

**NOTICE OF SETTLEMENT AND
MOTION TO DISMISS NOTICE
OF INTENT TO SUBMIT EVIDENCE
WITHOUT ORAL HEARING**

The Federal Motor Carrier Safety Administration (FMCSA), Western Service Center (WSC), by and through its undersigned attorney, hereby notifies the Chief Safety Officer that the parties have settled this matter and further moves the Chief Safety Officer, pursuant to 49 U.S.C. §521(b)(4) and 49 C.F.R. § 386.35, to approve the settlement and dismiss the Notice of Intent to Submit Evidence Without Oral hearing served by respondent.

Evell Stanley, President of Orange Courier, Inc., signed a settlement agreement and returned it to the FMCSA on January 20, 2004. Orange Courier neglected to date the document. The FMCSA signed the settlement agreement on January 20, 2004. This motion is based on the

parties having signed a settlement agreement to dispose of the case. A copy of the settlement agreement is attached. See Declaration of Manuel Dames, attached to this motion.

WHEREFORE, the Federal Motor Carrier Safety Administration respectfully requests that the Chief Safety Officer dismiss the Respondent's Notice of Intent to Submit evidence Without Oral Hearing, accept the settlement agreement as the Final Order, and close the docket.

Respectfully submitted,

Federal Motor Carrier Safety Administration
Western Service Center

Dated: January 23, 2004

By:



MARY HELEN DELGADO
Trial Attorney

MARY HELEN DELGADO
Trial Attorney
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Western Service Center
201 Mission Street, Room 2100
San Francisco, California 94105
Telephone: (415) 744-3136
Fax: (415) 744-2665

Attorney for Claimant
Federal Motor Carrier Safety Administration

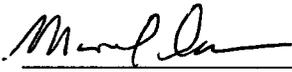
**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

Federal Motor Carrier Safety Administration)	Docket #FMCSA-2003-16274
Claimant,)	
v.)	Declaration of Manuel Dames,
Orange Courier, Inc.,)	Enforcement Program Specialist,
Respondent.)	Federal Motor Carrier Safety
)	Administration, Western Service Center

I, MANUEL DAMES, hereby declare under penalty of perjury, as follows:

1. I currently serve as an Enforcement Program Specialist for the Western Service Center of the Federal Motor Carrier Safety Administration (FMCSA), U.S. Department of Transportation (USDOT), in San Francisco, California, and have personal knowledge of the facts herein.
2. I have reviewed the official file regarding the respondent and have determined the following: The parties have reached an agreement and have settled this case. Respondent signed a settlement agreement and faxed it to the FMCSA's Western Service Center on January 20, 2004. The FMCSA signed the agreement on January 20, 2004.
3. A copy of the Settlement Agreement is attached to the Notice of Settlement and Motion to Dismiss and it is a true and accurate copy of the Agreement signed by the parties.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 23, 2004.



MANUEL DAMES

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of)
)
ORANGE COURIER, INC.) **Case No. CA-2003-0066-US0874**
3731 West Warner Avenue)
Santa Ana, CA 92704)
)

SETTLEMENT AGREEMENT

The parties to this agreement are:

ORANGE COURIER, INC., (hereinafter called the **RESPONDENT**), a motor carrier of property by motor vehicle in interstate commerce

and

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

The parties agree as follows:

1. The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** has a claim for **\$12,030.00** against the **RESPONDENT** for the following violations:
 - 49 CFR § 382.301(a) – Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
 - 49 CFR § 391.51(a) – Failing to maintain driver qualification file on each driver employed.
 - 49 CFR § 395.8(k)(1) – Failing to preserve driver's record of duty status for 6 months.
 - 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.
 - 49 CFR § 396.11(a) – Failing to require driver to prepare driver vehicle inspection report.

This claim letter was served on or about October 20, 2003.

2. Pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. Chapter 37, Subchapter II, and the regulations of the FMCSA in 49 C.F.R. § 386, the parties desire to settle the claim. This agreement for settlement of the claim is made pursuant to 49 CFR § 386.16(c).
3. In consideration of the settlement of the claim, the RESPONDENT agrees to pay the FMCSA, and the FMCSA agrees to accept as full settlement, the negotiated amount of \$6,015.00, in *twelve (12)* consecutive monthly installment payments.
4. The RESPONDENT will pay all payments by cashier's check, certified check or money order, made 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
Western Service Center
Attn: Nelly Chan
201 Mission Street, Suite 2100
San Francisco, California 94105

Alternatively, RESPONDENT may pay electronically through the Department of Transportation's Do-It-Yourself website at <http://diy.dot.gov> by selecting "Federal Motor Carrier Safety Administration," then "FMCSA Fine Payments."

5. The first payment of \$502.00 is due no later than January 26, 2004. The second payment of \$502.00 is due no later than February 26, 2004. The third payment of \$502.00 is due no later than March 26, 2004. The fourth payment of \$502.00 is due no later than April 26, 2004. The fifth payment of \$502.00 is due no later than May 26, 2004. The sixth payment of \$502.00 is due no later than June 26, 2004. The seventh payment of \$502.00 is due no later than July 26, 2004. The eighth payment of \$502.00 is due no later than August 26, 2004. The ninth payment of \$502.00 is due no later than September 26, 2004. The tenth payment of \$502.00 is due no later than October 26, 2004. The eleventh payment of \$502.00 is due no later than November 26, 2004. The twelfth and final payment of \$493.00 is due no later than December 26, 2004.
6. Failure to pay in accordance with the terms of this agreement, which has been adopted as a Final Order, will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately. For example, if any payment is not received by the due date, the payment plan set out above will be void and the FMCSA will take steps to immediately collect the entire remaining original debt. In addition, interest, penalties and administrative charges will be assessed on the total amount of the debt remaining at the maximum allowable rate and in accordance with FMCSA procedures. If the entire amount is not paid within 90 days of the missed due date, RESPONDENT will be prohibited from operating in interstate commerce and RESPONDENT's registration will be suspended or revoked, in accordance with 49 C.F.R. §§ 386.83 and 386.84.

- 7. This settlement agreement is to be executed by the **RESPONDENT** and returned to the **FMCSA**. This settlement agreement is not binding upon the **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**.
- 8. The **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.
- 9. 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.

ORANGE COURIER, INC.
TAX # 33-0543963

BY: *Evell Stanley* President Date: _____
EVELL STANLEY
PRESIDENT

****RETURN THE SIGNED AGREEMENT TO: MOTOR CARRIER
DOCKET CLERK, FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION, WESTERN SERVICE CENTER, 201 MISSION
STREET, SUITE 2100, SAN FRANCISCO, CALIFORNIA 94105.****

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

BY: *David B. Martin* Date: 01/20/2004
DAVID B. MARTIN
FIELD ADMINISTRATOR

CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of January 2004, the undersigned mailed as specified, the designated number of copies of the **NOTICE OF SETTLEMENT AND MOTION TO DISMISS NOTICE OF INTENT TO SUBMIT EVIDENCE WITHOUT ORAL HEARING** to the persons listed below.

U. S. DOT Dockets
U. S. Department of Transportation
400 7th Street, SW, Room PL-401
Washington, DC 20590

Original
U.S. Mail

Evell Stanley, President
Orange Courier, Inc.
3731 West Warner Avenue
Santa Ana, CA 92704

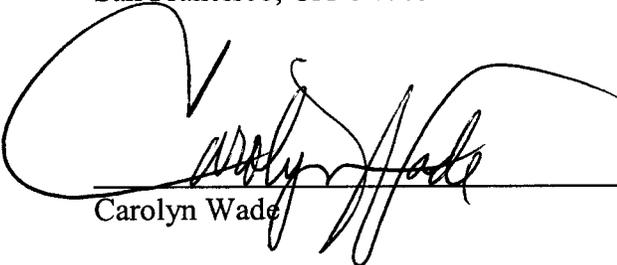
Copy
U.S. Mail

Terry Wolf, Division Administrator
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1325 "J" Street, Suite 1540
Sacramento, California 95814

One Copy
U.S. Mail

Mary Helen Delgado, Trial Attorney
Federal Motor Carrier Safety Administration
201 Mission Street, Suite 2100
San Francisco, CA 94105

One Copy
Personal Delivery



Carolyn Wade