

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

In the Matter of:

John I. Cunningham,

Respondent.

Docket Number: FMCSA-2008-0397  
Case No. AR-2008-0076-US0244  
(Southern Service Center)

**MOTION TO TERMINATE PROCEEDINGS AND CLOSE DOCKET**

NOW COMES the Field Administrator for the United States Department of Transportation, Federal Motor Carrier Safety Administration, Southern Service Center, by and through the undersigned, and respectfully states as follows:

1. On September 18, 2008, Notice of Claim was served upon Respondent, John I. Cunningham.
2. On December 16, 2008, Respondent filed a Petition for Reconsideration of Final Agency Order, pursuant to the provisions of 49 C.F.R. §386.14(c).
3. The parties have reached a settlement of the matter, and a formal Settlement Agreement was executed on December 30, 2008. A copy of the fully executed Settlement Agreement is attached hereto as Exhibit A. The execution of a Settlement Agreement resolves all disputes regarding docket number FMCSA-2008-0397.

WHEREFORE, the Field Administrator respectfully requests that the Chief Safety Officer terminate the above-captioned proceedings, and close docket number FMCSA-2008-0397.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Deborah Stanziano". The signature is written in black ink and is positioned above the typed name.

Deborah Stanziano  
Office of Chief Counsel  
FMCSA Southern Service Center  
1800 Century Blvd., NE  
Suite 1700  
Atlanta, GA 30345  
(404) 327-7375 (Telephone)  
(404) 327-7359 (Fax)

**CERTIFICATE OF SERVICE**

**Docket No. FMCSA-2008-0397**

This is to certify that on January 6, 2008, the undersigned mailed a copy of the "Motion to Terminate Proceedings and Close Docket" to the persons listed below:

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

Electronic Submission

John I. Cunningham  
2005 N. 9 ½ Street  
Paragould, AR 72450

U.S. Mail

  
Paula S. Smith, Paralegal Specialist

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of

**JOHN ICHIRO CUNNINGHAM  
2005 N. 9 1/2 STREET  
PARAGOULD, AR, 72450**

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**Case No. AR-2008-0076-US0244**

**SETTLEMENT AGREEMENT**

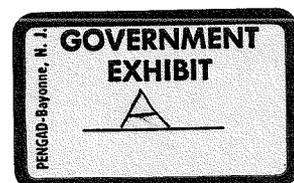
This Settlement Agreement ("Agreement") is made pursuant to 49 C.F.R. 386.16(c) by and between JOHN ICHIRO CUNNINGHAM, ("Respondent") and the United States Department of Transportation Federal Motor Carrier Safety Administration ("FMCSA").

**TERMS AND CONDITIONS**

The parties agree as follows:

1. Respondent is a Driver operating commercial motor vehicles (CMVs) in interstate commerce and/or intrastate commerce affecting interstate commerce subject to the jurisdiction of the FMCSA.
2. On **September 18, 2008** the FMCSA issued a Notice of Claim charging the Respondent with violations of the Federal Motor Carrier Safety Regulations (FMCSRs), Federal Motor Carrier Commercial Regulations (FMCCRs) and or Hazardous Material Regulations (HMRs) and assessing a combined civil penalty in the amount of **\$2,500.00** (hereinafter referred to as the "Notice of Claim"). The following violation(s) are resolved by this Agreement:  
  
**395.13(d) - Operating a commercial motor vehicle after having been declared out-of-service before the prescribed off-duty time has been accumulated.**
3. Pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. § 3711 et seq., 49 U.S.C. §§ 521, 31133, 31136, 31502, 31301 et seq. 14122 and the regulations of the FMCSA in 49 C.F.R. Section 386, the parties desire to settle the claim(s). All violations described in the Notice of Claim and not set forth in this Agreement are hereby withdrawn.
4. Execution of this Settlement Agreement will constitute admission of the violations set forth in this Agreement; and these violations shall constitute prior offenses under 49 U.S.C. § 521(b)(2)(D), which will lead to higher penalties in future enforcement actions, and adverse future SafeStat rankings.
5. RESPONDENT agrees to pay the FMCSA, and the FMCSA agrees to accept as full payment, the entire amount of \$2,500.00, to be paid as outlined below in Paragraph 6. **Respondent may pay electronically through the SAFER website at <http://safer.fmcsa.dot.gov> and then click on the link "Online Fine Payment" listed under FMCSA Services.** Alternatively, Respondent may make payment by **certified check, cashier's check or money order** made payable to the Federal Motor Carrier Safety Administration. To expedite processing and to ensure proper credit, checks should be annotated with the FMCSA Case No. **AR-2008-0076-US0244**. Payments are to be mailed to:

Federal Motor Carrier Safety Administration  
Southern Service Center



1800 Century Boulevard, Suite 1700  
Atlanta, GA 30345

6. Payment is due on the date indicated below:

The first payment of \$212.00 is due no later than 01/15/2009.  
The second payment of \$208.00 is due no later than 02/15/2009.  
The third payment of \$208.00 is due no later than 03/15/2009.  
The fourth payment of \$208.00 is due no later than 04/15/2009.  
The fifth payment of \$208.00 is due no later than 05/15/2009.  
The sixth payment of \$208.00 is due no later than 06/15/2009.  
The seventh payment of \$208.00 is due no later than 07/15/2009.  
The eighth payment of \$208.00 is due no later than 08/15/2009.  
The ninth payment of \$208.00 is due no later than 09/15/2009.  
The tenth payment of \$208.00 is due no later than 10/15/2009.  
The eleventh payment of \$208.00 is due no later than 11/15/2009.  
The twelfth payment of \$208.00 is due no later than 12/15/2009.

7. Any payment not received by the due date shall be considered late and will not be accepted. Failure to make timely payments shall subject Respondent to the penalties set forth in this Agreement in addition to any other penalties or remedies available by law.
8. When executed by the Field Administrator, this Agreement is a Final Order of the FMCSA. Failure to pay in accordance with the terms of this Agreement will result in the loss of any reductions in penalties for all valid claims, and the full amount of **\$2,500.00** will be immediately due and payable (less any payments made). Thus, if 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 **\$2,500.00**, less any payment made by Respondent. In addition, interest, penalties and administrative charges will be assessed on the remaining balance 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 a CMV in interstate commerce and, if applicable, Respondent's registration will be suspended or revoked, in accordance with 49 C.F.R. §§ 386.83 and 386.84. By signing this Agreement, Respondent admits that all claims set forth in the Agreement are valid and that it may not subsequently challenge the validity of such claims.
9. This Agreement is to be executed by Respondent and returned to the FMCSA Southern Service Center. This 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 will be considered an offer in compromise by the Respondent and may not be withdrawn for a period of thirty (30) days after the Respondent signs it.
10. 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 violations set forth in the Notice of Claim. Respondent expressly acknowledges that the FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claims against Respondent.
11. This Agreement shall be considered jointly drafted by the parties. Prior to signing the Agreement, Respondent or Respondent's representatives had an opportunity to consult with counsel, and has read and understood this Agreement. The person signing on Respondent's behalf represents that he/she has full authority to sign this Agreement on Respondent's behalf and to bind Respondent to the terms of this Agreement.
12. If any provision of this Agreement is held invalid or illegal, such illegality shall not invalidate the whole Agreement. Instead, the 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.

JOHN ICHIRO CUNNINGHAM  
SSN #: 415-98-5494

BY: *John I. Cunningham* *Owner* Date: *30 Dec 08*  
COMPANY REPRESENTATIVE & TITLE

\* RETURN THE SIGNED AGREEMENT TO: Federal Motor Carrier Safety Administration;  
Southern Service Center: 1800 Century Boulevard, Suite 1700; Atlanta, GA 30345.\*

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

BY: *Darrell L. Ruban* Date: *12/30/08*  
Darrell L. Ruban  
Field Administrator