

IN RE: HORSELESS CARRIAGE
CARRIER INC.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND
WORKFORCE DEVELOPMENT

AGENCY NO. GE-408-0722-CRA

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is hereby entered into between the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance (“NJDOL”), Horseless Carriage Carrier, Inc. (“HCC”), and Frank Malatesta¹, in his official and individual capacity, (collectively, the “Parties”), in which all Parties agree to be bound by the following terms and conditions:

WHEREAS, NJDOL administers and enforces, among other laws, the New Jersey Wage and Hour Law (“WHL”), N.J.S.A. 34:11-56a to -56a38, Wage Payment Law (“WPL”), N.J.S.A. 34:11-4.1 to -4.14, and Earned Sick Leave Law (“ESLL”), N.J.S.A. 34:11D-1 to -11, and all respective implementing regulations (collectively, “NJ Wage and Hour Laws”);

WHEREAS, HCC offered transportation and logistics services for exotic and luxury automobiles, became incorporated in the State of New Jersey in 1974, and was headquartered at 61 Iowa Avenue, Paterson, New Jersey 07503 during all relevant time periods;

WHEREAS, at all relevant times hereto, Frank Malatesta, was an officer of HCC;

WHEREAS, HCC engaged certain individuals (herein, “the Drivers”) to provide transportation and logistics services to HCC’s clients;

WHEREAS, HCC classified at least eight of the Drivers as independent contractors;

WHEREAS, NJDOL commenced an audit of HCC concerning HCC’s compliance with NJ Wage and Hour Laws on or about September 23, 2019, covering the period of 2017 to 2019;

¹Collectively, HCC and Frank Malatesta are referred herein as the “HCC Parties.”

WHEREAS, NJDOL concluded that HCC misclassified eight Drivers as independent contractors when such Drivers were employees of HCC under NJ Wage and Hour Laws;

WHEREAS, NJDOL issued an assessment based on its findings and conclusions to HCC and to Frank Malatesta, individually and as President of HCC, on or about November 22, 2022, (“the Assessment”) for the following:

- a. Gross back-wages of \$1,083,406, resulting from unlawful deductions and withholdings from Drivers’ pay, in violation of N.J.S.A. 34:11-4.4;
- b. A penalty of \$11,500 for failure to maintain records of wages paid and hours worked for the Drivers, in violation of N.J.S.A. 34:11-56a20;
- c. A penalty of \$5,000 for failure to maintain records of earned sick leave for the Drivers, in violation of N.J.S.A. 34:11D-6;
- d. A penalty of \$5,000 for failure to post notice of the Drivers’ right to earned sick leave, in violation of N.J.S.A. 34:11D-7;
- e. A penalty of \$4,000 for failure to pay full wages owed to the Drivers, in violation of N.J.S.A. 34:11-4.2;
- f. A penalty of \$4,000 for deducting and withholding monies from the Drivers’ pay, in violation of N.J.S.A. 34:11-4.4; and
- g. An administrative fee of \$270,851.45, pursuant to N.J.S.A. 34:11-4.9;

WHEREAS, HCC maintains that the Drivers were independent contractors, disputes the NJDOL’s determination that the Drivers were HCC’s employees, disputes the legality and correctness of the Assessment, and continues to object to and does not admit to NJDOL’s conclusions in the Assessment;

WHEREAS Frank Malatesta maintains that he is not personally liable for any alleged violation by HCC of the NJ Wage and Hour Laws;

WHEREAS, HCC represents that it sold its operating assets to McCollister’s Global Services, Inc. (“McCollister’s”) in or about October 2022 (“the HCC-McCollister’s Sale”), it no longer engages in the transportation and logistics industry, and it no longer engages with, remunerates, or otherwise has any involvement with the Drivers in any capacity;

WHEREAS, Frank Malatesta represents that he does not direct, control, or otherwise supervise any of McCollister’s operations as a provider of transportation or logistics services, and that he is not an “officer” of McCollister’s or an “agent having the management” of any portion of McCollister’s operations as those terms are used under N.J.S.A. 34:11-4.1;

WHEREAS, the Parties desire to settle all claims in lieu of litigation; and

WHEREAS, the Parties individually and collectively acknowledge the existence of good and valuable consideration for this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. **Settlement Amount.** HCC shall pay the total gross amount of \$455,000 to resolve, settle, close, and waive any and all claims and matters related to the Assessment as defined in Paragraph 6.
2. **Effective Date.** The Effective Date shall be the date that this Agreement is fully executed by all Parties.
3. **Payment Terms.**
 - a. *Distribution of Payment to NJDOL.* HCC shall pay the total sum of \$91,000 to be issued within 60 days after the Effective Date in satisfaction of all penalties, administrative fees, and costs due under the Assessment. Any and all payments due to NJDOL under this Agreement shall be issued by check made payable to “Commissioner, New Jersey Department of Labor and Workforce Development” and delivered to Director David Biglin, Division of Wage and Hour Compliance, P.O. Box 289, Trenton, NJ 08625-0389.
 - b. *Distribution of Payment to the Drivers.* Within 14 days after the Effective Date, HCC shall make at least two attempts to issue payments to all eligible Drivers, who are listed on the attached Appendix A, by certified mail, return receipt requested. HCC shall issue to each respective Driver, or their next of kin pursuant to N.J.S.A. 34:11-4.5: (a) payment in the amount of \$45,500 by check made payable to the respective Driver; and (b) a cover letter, attached as Appendix B.
 - c. *Records and Reporting.* HCC shall maintain a Claims Ledger, that documents: (a) each Driver’s contact information and the contact attempts made by HCC, (b) certified mail return receipts for each respective Driver; and (c) the payments made to and cashed by the Drivers. Within 90 days after the Effective Date, or within 7 days after all issued checks to Drivers have been cashed, whichever occurs sooner, HCC shall produce the Claims Ledger to NJDOL.
 - d. *Undistributed Funds.* The term “Undistributed Funds” shall refer to any monies due under Paragraph 3(b) that are: (a) undeliverable by certified mail, or (b) any check issued that remains uncashed within 60 days of the Driver’s receipt. HCC shall notify NJDOL of the amount of Undistributed Funds within 120 days after the Effective Date, to the extent not already notified by the Claims Ledger. HCC shall make a payment to the NJDOL in the amount of the Undistributed Funds within 120 days after the Effective Date. Following the submission of all documentation and Undistributed Funds to NJDOL in accordance with the requirements of Paragraph 3, NJDOL will provide the HCC Parties with written confirmation that

NJDOL is in receipt of the same and that HCC need take no further action to meet its obligations under Paragraph 3 of this Agreement.

4. **Breach.** HCC agrees and understands that its failure to comply with any of the terms or provisions of this Agreement shall constitute a Breach of this Agreement, which shall include any material misrepresentation or material omission with respect to any information provided to NJDOL in connection with the resolution of this matter.
5. **Individual Liability.** Frank Malatesta shall be personally liable for any unpaid portion of this Agreement and shall be bound under this Agreement in his individual capacity.
6. **Release.** In exchange for valuable consideration and compliance with the foregoing terms, NJDOL will provide the HCC Parties, and any and all of the HCC Parties' current or formal principals, owners, shareholders, members, partners, officers, directors, executives, parents, predecessors, subsidiaries, successors, affiliates, divisions, employees, attorneys, agents, their payroll processors, and its subsidiaries, along with HCC Parties' underwriters, insurers, co-insurers, re-insurers, assigns, members, and representatives, as well as heirs, executors, administrators, representatives, estates, and assigns (collectively "Releasees") a full release of all claims between the Parties related to NJ Wage and Hour Laws from 2016 through the HCC-McCollister's Sale in or about October 2022 ("the Term"). The HCC Parties acknowledge that NJDOL has a statutory obligation to investigate all NJ Wage and Hour Law claims it receives notice of; however, for any complaint against HCC arising or occurring during the Term, NJDOL shall waive any penalties or other remedies it would be entitled to seek on behalf of the State, including, but not limited to, liquidated damages, fees, costs, penalties, assessments, or remuneration of any kind. NJDOL and HCC agree and acknowledge that this Agreement does not settle or impair the rights of any non-Party to seek appropriate relief for violations of NJ Wage and Hour laws against HCC, or HCC to defend against such claims.
7. **Non-Admission of Liability.** Nothing in this Agreement shall constitute any admission by either of the HCC Parties of legal liability on the part of HCC or Frank Malatesta, and nothing in this Agreement shall be construed as acceptance by either of the HCC Parties of the accuracy or correctness of any allegation or determination made by NJDOL in connection with either its audit of, or assessments against, HCC.
8. **Agreement for Settlement Purposes Only.** This Agreement is entered into by the Parties for settlement purposes only. Neither the fact of this Agreement nor any provision contained herein shall constitute an approval, sanction, or authorization by any governmental unit of the State of any act or practice referenced herein.
9. **Submissions to NJDOL.** For any provisions in this Agreement that require HCC to furnish any documentation to NJDOL, HCC shall furnish such documents in electronic copy to Director David Biglin at David.Biglin@dol.nj.gov, or by hard copy to the Division of Wage and Hour Compliance, P.O. Box 289, Trenton, NJ 08625-0389. HCC shall also provide an electronic copy of all submissions to Deputy Attorney General Marc D. Peralta, at Marc.Peralta@law.njoag.gov.

10. **Governing Law.** This Agreement, and the enforcement thereof, shall be governed and interpreted in all respects in accordance with the laws of New Jersey, without regard to principles of conflicts of law.
11. **Modification.** This Agreement may only be amended or modified in writing executed by the Parties.
12. **Merger.** Once executed, this Agreement shall operate as a complete and final disposition of this matter and contains the entire agreement between the Parties, including all material terms, and is binding on the Parties. This Agreement sets forth all the promises, covenants, agreements, conditions, and understandings between the Parties, and it supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed herein, incorporated by reference, or attached hereto. Each Party specifically warrants that this Agreement is executed without reliance upon any statement or representation by any other Party hereto, except as expressly stated herein, incorporated by reference, or attached hereto.
13. **No Waiver.** Failure by any Party to seek enforcement of any provision of this Agreement shall not be construed as a waiver of such provision, or a waiver of any other provision of this Agreement.
14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, predecessors, successors, and assigns.
15. **Knowing and Voluntary.** This Agreement is entered into by all Parties freely and voluntarily and with full knowledge and understanding of the obligation and duties imposed by this Agreement.
16. **Severability.** If any clause, provision, or paragraph of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or paragraph of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph or other provision had not been contained therein.
17. **No Inference Against the Drafter.** No Party shall be considered the drafter of this Agreement, or of any of its provisions, for the purpose of any statute, caselaw, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
18. **Counterparts.** This Agreement may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document.

One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

WHEREFORE, the Parties, intending to be bound by this Agreement, through their signatories below, certify that they are fully authorized to enter into this Agreement and execute this document on behalf of NJDOL, HCC, and Frank Malatesta, to bind NJDOL, HCC, and Frank Malatesta, to the terms and conditions of this Agreement.

[SIGNATURES ON NEXT PAGE]

For NJDOL:

Joseph Petrecca

Joseph Petrecca, Assistant Commissioner
New Jersey Department of Labor, Division of
Wage and Hour Compliance

7/3/2024

Dated

For HCC:

DocuSigned by:

Frank Malatesta

1DD7D5712C7749A

Frank Malatesta
President of Horseless Carriage Carrier, Inc.

06/27/2024

Dated

For Frank Malatesta:

DocuSigned by:

Frank Malatesta

1DD7D5712C7749A

Frank Malatesta
President of Horseless Carriage Carrier, Inc.

06/27/2024

Dated

APPENDIX A

<u>Eligible Driver</u>	<u>Last Known Mailing Address</u>	<u>Money Due</u>
Isaac Avila	935 Washington Ave. Paterson, NJ 07503	\$ 45,500
Paul Bubar	86 High St. Houlton, ME 04730	\$ 45,500
Leonard Conforti	3550 Galt Ocean Dr. Ft. Lauderdale, FL 33308	\$ 45,500
Donald Kramer	88 Parkway View Dr. Waynesville, NC 28786	\$ 45,500
Dominic Hall	155 Central Ave. Wolcott, CT 06716	\$ 45,500
John Smedile	60 Atwood Pl. Wayne, NJ 07470	\$ 45,500
Paul Starr	1936 Rt. 254 Orangeville, PA 17859	\$ 45,500
Kenneth Zell	3371 Mill Rd. Elizabeth Town, PA 17022	\$ 45,500
Grand Total		\$ 364,000

APPENDIX B

[Horseless Carriage Carrier, Inc.'s Representative Letterhead]

[Date Check Is Mailed]

[Driver's Name]

[Driver's Street Address]

[Driver's City, State, Zip]

Dear [Driver's Name],

The New Jersey Department of Labor and Workforce Development, Wage and Hour Division conducted an investigation of Horseless Carriage Carrier, Inc., concerning Horseless Carriage Carrier, Inc's compliance with New Jersey Wage and Hour Laws. Pursuant to a Settlement Agreement between the New Jersey Department of Labor and Workforce Development and Horseless Carriage Carrier, Inc.—that can be found at [publicly available shortened URL of press release to be provided by NJDOL]—a check is enclosed in the amount of \$45,500 payable to you. Please deposit or cash the enclosed check within 60 days. After that time, Horseless Carriage Carrier, Inc. may cancel the check.

Sincerely,

[HCC Representative Name]

[HCC Representative Title]

[HCC Representative Contact Info]