

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

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OWNER OPERATOR INDEPENDENT DRIVERS ASSOCIATION, et al.,	:	
Plaintiffs,	:	Index No.: 5551-13
v.	:	RJI No.: 01-13-111950
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.,	:	Hon. James H. Ferreira
Defendants.	:	
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SETTLEMENT AGREEMENT

This Settlement Agreement, dated September 21, 2016, memorializes the terms under which the pending litigation in the above captioned action ("Action") between and among the Owner Operator Independent Drivers Association, Inc. ("OODA"), and the Individual Class Representative Plaintiffs (Bryan Spoon, D/B/A Spoon Trucking, Steve Bixler, Jack McComb, and Lewie Pugh) ("Plaintiffs"), and the Defendants, New York State Department Of Taxation and Finance, and the State of New York ("Defendants"), (jointly "Parties"), has been resolved, subject to the approval of the Court. Specifically, the Parties agree as follows:

WHEREAS, on October 8, 2013, Plaintiffs commenced this Action as a class action challenging the constitutionality of the registration and decal fees set forth in Tax Law § 502(1)(a), and Tax Law § 502(6)(a), and seeking relief in the form of declaratory judgment, an injunction, and damages; and,

WHEREAS, on September 1, 2014, the Court granted Plaintiffs' motion for class certification, in which the Court certified the following class:

All interstate motor carriers as defined in Tax Law §502(5): (A) who reside outside the State of New York; and (B) who have paid the registration and decal fee ... and are now or may in the future become subject to the requirements of Tax Law §502(1)(A) and hence liable for the vehicle payment of the \$15.00

Plaintiffs

Defendants

registration fee and the decal fee imposed by Tax Law §§ 502(1)(A) and 502(6)(A); and,

WHEREAS, on January 22, 2016, the Court issued a Decision & Order & Judgment granting Plaintiffs' motion for summary judgment with respect to the issue of liability, in which the Court ordered and declared that "the fees set forth in Tax Law § 502(1)(a), and Tax Law § 502(6)(a) are unconstitutional under the Commerce Clause of the U.S. Constitution and therefore are invalid and cannot be enforced," and further permanently enjoined Defendants from "implementing or enforcing the unconstitutional taxes against plaintiffs"; and,

WHEREAS, Defendants did not appeal the Court's class certification or summary judgment rulings; and,

WHEREAS, Defendants complied with the Decision & Order & Judgment by stopping, on January 23, 2016, enforcement of the contested fees against class members; and

WHEREAS, the Decision & Order & Judgment did not contain a ruling on damages or costs; and

WHEREAS, the Parties have engaged in negotiations and now desire to settle all remaining matters among them on the terms and subject to the conditions of this Settlement Agreement;

NOW, THEREFORE, in exchange for and in consideration of the mutual promises, conditions, covenants, terms, and consideration set forth below, the Parties hereto, intending to be legally bound, agree as follows:

1. **Payment of Settlement Amount** – Defendants agree to deliver payment to Plaintiffs in the total sum of Forty-Four Million, Four-Hundred-Twenty-Nine-Thousand, Five-Hundred-Ninety-Six Dollars (\$44,429,596.00) ("Settlement Amount"), by check made payable to "The Cullen Law Firm, PLLC, Trustee, New York Registration Tax Class Action Refund Litigation," 1101 30th St., N.W., Suite 300, Washington, D.C., 20007. The Settlement Amount is

Plaintiffs

Defendants

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subject to any reduction that may be made necessary pursuant to Paragraph 8 of this Settlement Agreement. Defendants agree to pay the Settlement Amount within 120 days of the entry of an Order by the Supreme Court of the State of New York, County of Albany ("Trial Court"), granting final approval of the Settlement Agreement ("Final Order"). If payment is not made within that 120 day period, it is agreed that Plaintiffs may file a motion with the Trial Court for an award of post-judgment interest, as permitted by law, from the date of the Trial Court's Final Order. Defendants reserve the right to oppose any such motion.

2. Releases of Monetary and Damages Claims and Demands – Upon the approval of this Settlement Agreement by the Trial Court, and Defendants' payment of the Settlement Amount, and the satisfaction of all other terms and conditions of this Settlement Agreement, Plaintiffs, on behalf of themselves and the individual members of the class as certified by the Trial Court, for and in consideration of the payment of the Settlement Amount and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, shall fully release, remise and forever discharge Defendants from any and all monetary or damages claims which were asserted against Defendants in this action, and any monetary or damages claims that could have been asserted by reason of, or in connection with, any matter of fact alleged therein. Further, upon approval of this Settlement Agreement by the Trial Court, Plaintiffs, on behalf of themselves and the individual members of the class as certified by the Trial Court, for and in consideration of the payment of the Settlement Amount, shall fully release, remise and forever discharge Defendants from any and all future monetary, damages, or tax refund claims regarding the taxes which are the subject of the Action, including any claim to the New York State Department of Taxation and Finance for a tax refund.

3. Dismissal of Monetary and Damages Claims and Demands – The Parties agree to the Dismissal of all monetary and damages claims and demands in the Action, with prejudice, within fifteen (15) business days after Defendants' payment of the Settlement Amount, or fifteen

Plaintiffs

Defendants

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(15) business days after the Trial Court's approval of this Settlement Agreement becomes final and non-appealable, whichever is later. Within such time, the Parties will file a Stipulation of Dismissal with Prejudice, in the form annexed hereto, subject to the further stipulation that the provisions in this Settlement Agreement do not vacate, release, waive, or modify the Court's permanent injunction or declaratory judgment rulings in any respect. The Parties agree to the Trial Court's ongoing jurisdiction over the provisions of the Plaintiffs' Class Distribution Plan as set forth in Paragraph 7 below.

4. Attorneys' Fees and Expenses – As a condition of this Settlement Agreement, Plaintiffs will seek an award by the Trial Court of Attorneys' Fees and Expenses to be paid out of the Settlement Amount prior to distribution of tax refunds to class members from the class common fund ("Common Fund"), which is comprised of the entire Settlement Amount. Plaintiffs will request the Trial Court to award attorneys' fees on a percentage of recovery basis in the sum of twenty-five percent (25%) of the Common Fund, or \$11,107,399.00, plus previously incurred expenses and currently estimated future expenses of \$500,000.00, for a total award of \$11,607,399.00. Plaintiffs will not separately seek attorneys' fees from Defendants. Defendants take no position on the foregoing request by Plaintiffs for an award of Attorneys' Fees and Expenses.

5. Incentive Awards – As a condition of this Settlement Agreement, Plaintiffs will further request that the Court approve Incentive Awards to the Individual Named Plaintiffs, to be paid out of the Settlement Amount prior to distribution of refunds to class members from the Common Fund, in order to compensate them for the time and expense associated with their initiation, investigation and participation in this litigation. The specific awards sought are as follows: Bryan Spoon—\$1,500; Steve Bixler—1,500; Jack McComb—\$1,500; Lewie Pugh—\$1,500. Defendants agree that they will not object to the foregoing Incentive Award request by Plaintiffs.

Plaintiffs 

Defendants 

6. **Undeliverable Funds** – On or before sixty (60) days from the date upon which the provisions of the Class Distribution Plan have been satisfied, any undeliverable or unclaimed settlement funds shall be used to pay, in the following priority: (1) any previously unreimbursed expenses incurred by Plaintiffs; (2) attorneys' fees expended after the Court's final approval of the Settlement Agreement; (3) a *cy pres* distribution to the OOIDA Foundation, Inc., a not-for-profit charitable organization subject to the provisions set forth in IRS Section 501(c)(3). Defendants agree that they will not object to the foregoing provisions regarding Undeliverable Funds.

7. **Class Distribution Plan** – Within twenty (20) business days of the Parties' execution of this Settlement Agreement, Plaintiffs shall file a Motion for Preliminary Approval of Settlement Agreement, Class Notice and Class Distribution Plan, seeking the Court's preliminary approval of: (1) the fairness of the proposed Settlement Agreement, (2) the sufficiency of proposed class notice; (3) the fairness of the computation of tax refunds to class members from the Common Fund; and, (4) the reasonableness of attorneys' fees and expenses, proposed incentive awards, and disposition of undeliverable funds, or *cy pres* distributions. The Motion will also propose a schedule for the expiration of a class notice/opt-out period, and a date for the Fairness Hearing for Final Approval of the Settlement Agreement and Class Distribution Plan. Defendants shall reasonably support Plaintiffs' efforts in obtaining court approval of the foregoing provisions, including attending hearings and making filings as necessary. The Parties agree to the Trial Court's ongoing jurisdiction over the Class Distribution Plan, as approved by the Trial Court, notwithstanding the Release and Dismissal provisions set forth in Paragraphs 2 and 3 above.

8. **Opt-Outs** – The Parties agree that if any class member chooses to opt out of the class, the portion of the Settlement Amount allocated for each such class member, such being

Plaintiffs

Defendants

determined by the taxpayer database Defendants produced to Plaintiffs, shall be deducted from the Settlement Amount and withheld by Defendants, subject to any further court order[s]. The name of any such class member who opts out of the class shall be disclosed to Defendants.

9. General Provisions

A. Upon Final Approval by the Trial Court, this Settlement Agreement shall be binding upon and inure to the benefit of the parties, class members, and their respective heirs, assigns and successors in interest.

B. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York and without regard to the conflict of law rules of that State or any other jurisdiction.

C. All parties to this Settlement Agreement hereby consent to the jurisdiction of the Trial Court with respect to all matters relating to the enforcement or interpretation of this Agreement.

D. The parties shall execute in a timely way such other documents and/or take such other steps as may be necessary to effectuate the transactions contemplated by this Settlement Agreement.

E. Original, faxed, or emailed signatures shall be equally valid. This Settlement Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

10. **Complete Agreement** – This Settlement Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein, and replaces and supersedes any prior understandings and agreements, oral or written, between them regarding the subject matter of this Settlement Agreement. This Settlement Agreement may be amended only in a writing signed by all Parties.

Plaintiffs



Defendants



11. **Effective Date** - This Agreement shall become effective as of the date last signed by any Party.

PLAINTIFFS:

Owner-Operator Independent Drivers Association, Inc., Individually and as class representative

By [Signature]
James Johnston, President

Date: 9/26/16

Steve Bixler

Date: _____

Jack McComb

Date: _____

Bryan Spoon

Date: _____

Lewie Pugh

Date: _____

APPROVED AS TO FORM:

[Signature]
Daniel E. Cohen, Esq.

Date: September 21, 2016

Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class

DEFENDANT:

New York State Department of Taxation and Finance

By [Signature]
Amanda Hiller, Deputy Commissioner and Counsel

Date: 9/21/16

APPROVED AS TO FORM:

[Signature]
Helena Lynch, Esq.

Date: 9/21/2016

Counsel for Defendants

Plaintiffs [Signature]

Defendants [Signature]

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Bryan Spoon

Date: _____

Lewie Pugh

Date: _____

APPROVED AS TO FORM:

Daniel E. Cohen, Esq.

Date: September 21, 2016


Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class


DEFENDANT:

New York State Department of Taxation and Finance

By 
Amanda Hiller, Deputy Commissioner and Counsel

Date: 9/21/16

APPROVED AS TO FORM:


Helena Lynch, Esq.

Date: 9/21/2016

Counsel for Defendants

FINAL: SEPTEMBER 21, 2016

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Owner-Operator Independent Drivers Association, Inc., individually and as class representative

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Date: _____

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Steve Bixler

Date: 9/21/16

Jack McComb

Date: _____

Bryan Spoon

Date: _____

Lewie Pugh

Date: _____

APPROVED AS TO FORM:

Daniel E. Cohen, Esq.

Date: September 21, 2016

Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class

DEFENDANT:

New York State Department of Taxation and Finance

By Amanda Hiller
Amanda Hiller, Deputy Commissioner and Counsel

Date: 9/21/16

APPROVED AS TO FORM:

Helena Lynch, Esq.
Helena Lynch, Esq.

Date: 9/21/2016

Counsel for Defendants

Plaintiffs [Signature]

Defendants [Signature]

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Date: _____

Jack McComb

Date: 9/21/2016

Bryan Spoon

Date: _____

Lewie Pugh

Date: _____

APPROVED AS TO FORM:

Daniel E. Cohen, Esq.

Date: September 21, 2016

Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class

DEFENDANT:

New York State Department of Taxation and Finance

By _____
Amanda Hiller, Deputy Commissioner and Counsel

Date: 9/21/16

APPROVED AS TO FORM:

Helena Lynch, Esq.

Date: 9/21/2016

Counsel for Defendants

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Jack Mccomb

Date: _____

Bryan Spoon

Date: 9/21/16

Lewie Pugh

Date: _____

APPROVED AS TO FORM:

Daniel E. Cohen, Esq.

Date: September 21, 2016

Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class

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Helena Lynch, Esq.

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Counsel for Defendants

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Date: _____

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Date: _____

Jack McComb

Date: _____

Bryan Spoon

Date: _____

Lewie Pugh

Date: 21 Sept 2016

~~APPROVED AS TO FORM:~~

Daniel E. Cohen, Esq.

Date: September 21, 2016

Thomas R. Fallati, Esq.

Date: _____

Counsel for Plaintiffs and the Class

DEFENDANT:

New York State Department of Taxation and Finance

By _____
Amanda Hiller, Deputy Commissioner and Counsel

Date: 9/21/16

~~APPROVED AS TO FORM:~~

Helena Lynch, Esq.

Date: 9/21/2016

Counsel for Defendants