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6 Attorneys for Plaintiffs

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9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR CARSON CITY
11

12 THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
13 THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
14 THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
15 THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
16 in their official capacities as members of the
Senate of the State of Nevada and individually;
17 GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
18 liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
19 to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
20 corporation; KEYSTONE CORP., a Nevada
nonprofit corporation; NATIONAL FEDERATION
21 OF INDEPENDENT BUSINESS, a California
nonprofit corporation qualified to do business
22 in the State of Nevada; NEVADA FRANCHISED
AUTO DEALERS ASSOCIATION, a Nevada
23 nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
24 corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

25 Plaintiffs,

26 vs.

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REC'D & FILED
2021 OCT -7 PM 3:12
AUDREY ROWLATT
CLERK
BY C. COOPER
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

**STIPULATION REGARDING
DMV REFUNDS**

1 STATE OF NEVADA *ex rel.*; NEVADA
2 DEPARTMENT OF TAXATION;
3 NEVADA DEPARTMENT OF MOTOR
4 VEHICLES; and DOES I-X, inclusive,

5 Defendants.

6 and

7 THE LEGISLATURE OF THE
8 STATE OF NEVADA,

9 Defendant-Intervenor.
10

11 **STIPULATION REGARDING DMV REFUNDS**

12 Plaintiffs above named and their attorneys, ALLISON MacKENZIE, LTD., and Defendant,
13 State of Nevada *ex rel.* the Nevada Department of Motor Vehicles ("DMV"), and its attorneys
14 AARON D. FORD, Attorney General of the State of Nevada, and CRAIG A. NEWBY, Deputy
15 Solicitor General, of the Office of the Attorney General, do hereby stipulate and agree as follows
16 regarding DMV refunds:

17 1. Plaintiffs and Defendant DMV agree to present the plan and information contained in
18 **Exhibit "1"** attached hereto to the Court and Interim Finance Committee to refund DMV Technology
19 Fees collected pursuant to Senate Bill 542 (2019) found unconstitutional by the Nevada Supreme
20 Court in *Legislature v. Settlemeyer*, 137 Nev. Adv. 9 Op. 21, 486 P.3d 1276 (2021).

21 2. Plaintiff Senator James Settlemeyer and Defendant DMV have conferred and discussed
22 numerous options and alternatives to refund the DMV technology fee. The plan set forth by DMV in
23 **Exhibit "1"** is the most cost effective and provides for the most timely and immediate refund of the
24 DMV technology fee of the various options and alternatives presented by DMV and discussed with
25 Plaintiffs.

26 3. At a meeting on September 24, 2021, Defendant DMV presented Plaintiff Senator
27 James Settlemeyer with a confidential DMV Technology Fee Refund Project document which forms
28 the basis for and contains the more specific terms of the plan set forth in **Exhibit "1"**. At the
September 24 meeting, certain terms of the confidential project document were agreed to be modified.

1 Defendant DMV agrees those modifications will be incorporated by DMV into the refund plan if
2 Exhibit "1" is approved by the Court and Interim Finance Committee.

3 4. The individual signatories below have the authority to bind the Plaintiffs and Defendant
4 DMV to this Stipulation.

5 5. Defendant DMV shall provide a periodic status report of the technology refunds to the
6 Interim Finance Committee and the Legislative Commission at each meeting commencing from the
7 date of any Court Order approving this Stipulation and approval of the Interim Finance Committee
8 until September 15, 2023. A copy of each DMV periodic status report provided to the Interim Finance
9 Committee and the Legislative Commission shall be provided to the Court and Plaintiffs.

10 **AFFIRMATION**

11 The undersigned does hereby affirm that the preceding document DOES NOT contain the
12 social security number of any person.

13 DATED this ____ day of October, 2021.

14 **HONORABLE JAMES A. SETTELMAYER**
15 Minority Leader
16 Nevada Senate
401 South Carson Street, Room 2160
Carson City, NV 89701

17 By: 
18 SENATOR JAMES A. SETTELMAYER

19
20 DATED this 7th day of October, 2021.

21 **DEPARTMENT OF MOTOR VEHICLES**
22 JULIE BUTLER, Director
23 Directors Office
555 Wright Way
Carson City, NV 89711

24 By: 
25 JULIE BUTLER

26
27 (Signatures continued on next page)

28 ///

1 DATED this 7th day of October, 2021.

2 **ALLISON MacKENZIE, LTD.**

3 402 North Division Street

4 Carson City, NV 89703

5 Telephone: (775) 687-0202

6 By: 

7 **KAREN A. PETERSON, ESQ.**

8 Nevada State Bar No. 366

9 **JUSTIN M. TOWNSEND, ESQ.**

10 Nevada State Bar No. 12293

11 Email: kpeterson@allisonmackenzie.com

12 Email: jtownsend@allisonmackenzie.com

13 Attorneys for Plaintiffs

14 DATED this 7th day of October, 2021.

15 **AARON D. FORD**

16 Attorney General

17 Office of the Attorney General

18 100 North Carson Street

19 Carson City, NV 89701

20 Telephone: (775) 684-1100

21 By:  #13829

22 

23 **CRAIG A. NEWBY, ESQ.**

24 Deputy Solicitor General

25 Nevada State Bar No. 8591

26 Email: CNewby@ag.nv.gov

27 Attorneys for Defendant, Nevada Department
28 of Motor Vehicles

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,
3 MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be
4 served on all parties to this action by:

5 _____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States
6 Mail in Carson City, Nevada

7 _____ Hand-delivery - via Reno/Carson Messenger Service

8 X Electronic Transmission

9 _____ Federal Express, UPS, or other overnight delivery

10 _____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
11 fully addressed as follows:

12 Kevin C. Powers, Esq.
13 Legislative Counsel Bureau, Legal Division
kpowers@lcb.state.nv.us

14 Aaron D. Ford, Esq.
15 Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

16 DATED this 7th day of October, 2021.

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19 NANCY FONTENOT
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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	DMV Technology Fee Refunds	05

4823-9983-1806, v. 1

EXHIBIT “1”

EXHIBIT “1” TO STIPULATION REGARDING DMV REFUNDS

DMV Technology Fee Refunds September 24, 2021

On September 24, 2021, DMV Director Julie Butler and Deputy Solicitor General Craig Newby of the Attorney General’s Office met with Senator James Settlemeyer and his attorney, Karen Peterson, Allison MacKenzie Law Firm, and agreed to present the following plan to the Court and the Interim Finance Committee for approval to refund DMV Technology Fees unconstitutionally collected from 7/1/2020 – 8/31/2021. The plan, called the *Manual Approach* by DMV, has two components:

1. Individuals will be refunded \$1.00/transaction, upon presentation of a valid receipt, for transactions that occur in a field office, via kiosk, online, or at a DMV partner location. The interest amounts will be combined with the refund monies and the public will receive \$1.00 per transaction when the receipt is presented to a DMV official.

Assuming approval by Judge Russell and approval by the Interim Finance Committee on October 21, 2021, refund monies combined with interest amounts will be available on a first-come, first-serve basis in DMV field offices from approximately December 6, 2021 – June 30, 2023 or until the refund monies are fully distributed, whichever occurs earlier. Any funds remaining after June 30, 2023 will revert to the Highway Fund pursuant to Section 4.7 of Senate Bill 457 of the 2021 Legislative Session.

The Department will put into place various internal controls to safeguard these funds and ensure a proper and accurate accounting.

2. Business and fleet customers will be refunded in the form of a check for technology fees they paid, plus interest, from 7/1/2020 – 8/31/2021. Assuming the approvals mentioned above, business check distribution will commence approximately mid-December 2021 and will conclude once all 67,914 businesses have been issued their refunds. It is anticipated this will take a matter of a few weeks for full distribution.

This option was the best of several options considered by the Department for the following reasons:

- Cost savings of \$5,558,491 to the Highway Fund from the Department’s original estimates prepared for SB 457. This money can be repurposed for road maintenance or other needs consistent with statute rather than spent on Technology Fee refunds.
- Would be available to approximately 80% of DMV individual customers, based on the number of customers who paid the Technology Fee in FY 20 compared with FY 21. The Department believes this is “substantially compliant” with the intent of the Court’s decision, particularly given the amount of savings involved with this option.
- Ease and speed of implementation.
- Relatively minimal internal computer programming effort (estimated 1,512 hours) for an extremely old and very fragile DMV computer system.

EXHIBIT “1” TO STIPULATION REGARDING DMV REFUNDS

Other Options Considered, but Deemed Not Viable

1. Opt-In/Opt-Out

The plan presented to the Interim Finance Committee on August 18, 2021, and upon which the cost estimates for SB 457 were developed, was based on a class-action lawsuit model, whereby the DMV would notify individuals that they were due a Technology Fee refund and ask them to opt-in or opt-out of receiving their refund.

Individuals opting in would receive their refunds via Zelle or paper check. Refunds would be based on the amount of technology fees each individual paid, plus interest, from 7/1/2020 – 8/31/2021. Customers declining their refunds would make a “donation” to the Highway Fund. Refunds claimed, but then not cashed, would go to the Controller’s Office’s Unclaimed Property Fund. Businesses and fleets would be issued a check for Technology Fees they paid from 7/1/2020 – 8/31/2021, plus interest.

This option was presented but rejected by the Interim Finance Committee. This plan would have required \$7,840,974 in allocated Highway Funds to implement (see SB 457). Had IFC approved this plan on August 18, 2021, the DMV anticipated starting the refunds in early calendar year 2022. The project would have continued until all funds had been distributed or until 6/30/2023 in accordance with SB 457.

2. Everyone Gets a Check

Under this scenario, all customers who paid the Technology Fee from 7/1/2020 – 8/31/2021 would receive a check for the amount they are owed plus interest. While this option would cost significantly less in internal programming hours, it would cause additional work for the DMV Mail Room and the Administrative Services Division, making this option less attractive.

Since the start of FY 22, the Department’s revenue office has mailed 968 customer refund checks for various reasons unrelated to the Technology Fee. Of those, 3% have required a customer address change, and 12% have been returned as undeliverable, as customers are not always diligent about updating their addresses when they change residences. If we extrapolate those percentages to the 2.35M individuals owed a Technology Fee refund, we can conservatively expect 70,500 address changes and 282,000 undeliverable checks returning to DMV¹.

This influx of additional mail will place a burden on the DMV Mail Room to sort and distribute, in addition to handling the Department’s regular daily mail. This could cause backlogs to accumulate in the Mail Room, which impacts all DMV customers and generates customer complaints. Once routed and sorted, the Administrative Services Division staff and temporary workers hired for the Technology Fee refund process would

¹ 2.35M x 3% = 70,500 and 2.35M x 12% = 282,000

EXHIBIT "1" TO STIPULATION REGARDING DMV REFUNDS

have to manually research each customer's address one-by-one to determine if there is an alternative address on file or if there is some other way to locate the customer.

Address changes require multiple levels of approval in the state's financial system. As this is a secure system, temporary workers would not have access to approve these changes, thereby placing the burden on the Administrative Services Division staff in addition to their daily workloads.

The checks would then be re-mailed to the customers. If they come back a second time as undeliverable, the checks would be treated as "stale." The Department's current process for stale checks is to revert the funds to the Highway Fund after six (6) years. However, the Department could explore treating these stale checks as Unclaimed Property if sending a check to everyone is Plaintiffs' preferred option.

Finally, mailing a check to everyone doesn't consider that some individuals may not want their refund, and some of these checks will remain un-cashed. The Department's call center reports some customers have called indicating they do not want their refund. The Department would then have to work with the Controller's Office and Treasurer's Office to figure out what to do with those.

3. \$1.00 off a Future Transaction

Plaintiff Senator James Settelmeyer proposed to the Department that everyone should get \$1.00 off a future transaction to issue the required refunds. Under this scenario, businesses would be refunded one-for-one and individuals would get \$1.00 off a future transaction until the money was expended.

The Department's analysis of this proposal showed it would be significantly more programming hours than the preferred manual option (estimated 3,855 hours), and the Department could not implement this proposal until July 2022. This timeline was unacceptable to the Senator.

4. Credits toward a Future Transaction

The Department analyzed giving everyone a credit for a future transaction based upon the technology fees they paid from 7/1/2020 – 8/31/2021, plus interest. This option would require an estimated 3,514 programming hours, and the Department could not implement this proposal until July 2022. This timeline is unacceptable to the Senator.

5. Outsource the Entire Refund Process

Instead of managing in-house the Department could outsource the refund process. Under this scenario the Department would provide a vendor a list of eligible customers and the amounts they are owed, and the vendor would be responsible to administer the refunds. Given the dollar amount, this option would require a Request for Proposals process, which typically takes 4 – 6 months from issue to contract execution.

EXHIBIT "1" TO STIPULATION REGARDING DMV REFUNDS

The risk here is proposals could come back at a higher cost than the \$7.8M the Department was appropriated pursuant to SB 457 to issue the refunds.

Interest accrues until the obligation is satisfied. Therefore, further delays will not only delay the time period to make the customers whole but will end up costing more, as the Department was not funded to pay back the interest in the first place.