

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES**

PENALTY ASSESSMENT: TV-190514

PENALTY AMOUNT: \$8,600

Safe-To-Go-Movers, LLC,
d/b/a James & John Movers
8012 153rd St. Ct. E
Puyallup, WA 98375

The Washington Utilities and Transportation Commission (Commission) believes Safe-To-Go-Movers, LLC, d/b/a James & John Movers (Safe-To-Go-Movers or Company) committed violations of Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (CFR) Part 393 – Parts and Accessories Necessary for Safe Operation, and Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts Title 49 CFR Part 391 – Qualifications of Drivers, and Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On June 13, 2019, Commission motor carrier investigator Sandra Yeomans completed a follow-up safety investigation of Safe-To-Go-Movers to assess the Company's compliance with Order 02 in Docket TV-170233, and documented the following violations:

- **Thirty-four violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire.** The Company failed to acquire criminal background checks for 34 prospective employees: Dartaniun Cox, Saguto, Rilo, Carlos, Tyler, Jus, Tasi, Alfred, Jacob, Zane, Randy, Edwin, June, Jeremias, Rodney, Jordan, Tioti, Jones, Tasof, Omar, Alex, Josef, Darron, Don, Robert, Dennis G., D'Angelo, Alex, Paul, Josh, Rob, Zach, Josef, and M. Kameron.
- **Forty-two violations of Title 49 CFR 391.15(a) – Using a disqualified driver.** Safe-To-Go-Movers allowed its drivers Dartaniun Cox and Trevaughn Jackson to drive with suspended driver's licenses on 42 occasions between August 3, 2018, and March 5, 2019.
- **One violation of Title 49 CFR 391.23(c) – Failing to investigate driver's background within 30 days of employment.** The Company failed to obtain a driver's abstract for John Wagura within 30 days of hire.
- **Two violations of Title 49 CFR 391.25(a) – Failing to make an inquiry into the driving record of each driver at least once every 12 months.** Safe-To-Go-Movers failed to acquire a driver record for its drivers James Mwangi and Dartaniun Cox at least once every 12 months.

- **One violation of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified.** The Company allowed its driver Dartaniun Cox to drive without having been medically examined and certified on March 27, 2019. Dartaniun Cox had a lapse in medical certification between March 10, 2019, and April 2, 2019.
- **One violation of Title 49 CFR 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner’s listing on the National Registry of Certified Medical Examiners required by Title 49 CFR 391.23(m) in driver qualification file.** Safe-To-Go-Movers failed to note verification of the medical examiner in the driver qualification file for John Wagura.
- **Four violations of Title 49 CFR 393.9(a) – Inoperable lamps and turn signals.** Commission staff (Staff) discovered a commercial motor vehicle with inoperable brake lights and turn signals. This vehicle was placed out-of-service.¹ Staff discovered a second commercial motor vehicle with inoperable reverse lights and an inoperable left turn signal on the fender;² however, these violations did not meet Federal Motor Carrier Safety Administration’s “out-of-service” criteria.
- **One hundred twenty violations of Title 49 CFR 395.8(a)(1) – Failing to require driver to make a record of duty status using the appropriate method.** Safe-To-Go-Movers allowed drivers Dartaniun Cox, James Mwangi, John Wagura, and Trevaughn Jackson to drive without making a record of duty status on 120 occasions.
- **One violation of Title 49 CFR 396.3(a)(1) – Brake system pressure loss.** Staff discovered a commercial motor vehicle with a brake system that failed an air loss rate test.³ This vehicle was placed out-of-service.
- **Two violations of Title 49 CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected.** The Company failed to have an annual inspection performed on its two commercial motor vehicles.
- **Two violations of Title 49 CFR 396.21(b) – Failing to retain periodic inspection report for 14 months from date of inspection.** Safe-To-Go-Movers failed to retain periodic inspection reports for two commercial motor vehicles.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Companies that: 1) fail to conduct criminal background checks on their employees, 2) use disqualified drivers, 3) fail to review driving records, 4) use drivers that are not medically examined and certified, 5) fail to create records of duty status, 6) use commercial motor vehicles without annual inspections, and 7) use commercial motor vehicles that are in need of repairs put their

¹ Equipment Identification Number 93.

² Equipment Identification Number 05.

³ *Id.*

customers as well as the traveling public at risk. These violations present serious safety concerns.

2. **Whether the violations were intentional.** Considerations include:

- Whether the company ignored Staff's previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

On September 28, 2015, the Commission received the Company's application for household goods moving authority. In the application, James Mwangi, general manager and owner of Safe-To-Go-Movers, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules.

On November 18, 2015, James Mwangi attended household goods training provided by Staff and acknowledged receiving training regarding motor carrier safety regulations. On March 17, 2016, an employee representing Safe-To-Go-Movers attended household goods training provided by Staff. The attendee, Dartaniun Cox, acknowledged that training was received pertaining to motor carrier safety regulations.

On March 22, 2017, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Safe-To-Go-Movers, wherein violations were identified and technical assistance was provided to the Company.

The Company knew or should have known about these requirements.

3. **Whether the company self-reported the violations.** The Company did not self-report these violations.
4. **Whether the company was cooperative and responsive.** Safe-To-Go-Movers was cooperative and responsive throughout the investigation.
5. **Whether the company promptly corrected the violations and remedied the impacts.** The Company corrected the violations as they were identified by Staff.
6. **The number of violations.** Staff identified 20 violation types with a total of 223 individual occurrences.
7. **The number of customers affected.** Safe-To-Go-Movers employs four drivers and operates five commercial motor vehicles. The Company reported traveling 33,900 miles in 2018. A significant number of customers, as well as members of the traveling public, were potentially affected by these safety violations.
8. **The likelihood of recurrence.** The Commission does not know if Safe-To-Go-Movers is likely to repeat these safety violations; however, past performance can be an indicator of future violations. Due to the number of repeat violations from the 2017 safety investigation, there is a moderate chance of recurrence.

9. **The company's past performance regarding compliance, violations, and penalties.** This is Safe-To-Go-Movers' second safety investigation. The Company was penalized \$5,200 in Docket TV-170233 for safety violations of WAC 480-15-570.
10. **The company's existing compliance program.** James Mwangi is responsible for the Company's safety compliance program.
11. **The size of the company.** Safe-To-Go-Movers is a small company that employs four drivers and operates five commercial motor vehicles. The Company reported \$146,171 in gross revenue for 2018.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.⁴ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Safe-To-Go-Movers \$8,600, calculated as follows:

- Thirty-four violations of WAC 480-15-555 – Failing to complete a criminal background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for each occurrence of this critical violation, for a total of \$3,400.
- Forty-two violations of Title 49 CFR 391.15(a) – Using a disqualified driver. The Commission assesses a penalty of \$100 for each occurrence of this acute violation, for a total of \$4,200.
- One violation of Title 49 CFR 391.23(c) – Failing to investigate driver's background within 30 days of employment. The Commission assesses a penalty of \$100 for this repeat violation.
- Two violations of Title 49 CFR 391.25(a) – Failing to make an inquiry into the driving record of each driver at least once every 12 months. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of Title 49 CFR 391.45(a) – Using a driver not medically examined and certified. The Commission assesses a penalty of \$100 for this repeat violation.
- One violation of Title 49 CFR 391.51(b)(9) – Failing to place a note related to the verification of the medical examiner's listing on the National Registry of Certified

⁴ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Medical Examiners required by Title 49 CFR 391.23(m) in driver qualification file. The Commission assesses a penalty of \$100 for this repeat violation.

- Four violations of Title 49 CFR 393.9(a) – Inoperable lamps and turn signals. The Commission assesses a penalty of \$100 for each occurrence of these out-of-service violations, for a total of \$200.
- One hundred twenty violations of Title 49 CFR 395.8(a)(1) – Failing to require driver to make a record of duty status using the appropriate method. The Commission assesses a “per category” penalty of \$100 for 120 occurrences of this critical violation.
- One violation of Title 49 CFR 396.3(a)(1) – Brake system pressure loss. The Commission assesses a penalty of \$100 for this out-of-service violation.
- Two violations of Title 49 CFR 396.17(a) – Using a commercial motor vehicle not periodically inspected. The Commission assesses a “per category” penalty of \$100 for two occurrences of this critical violation.
- Two violations of Title 49 CFR 396.21(b) – Failing to retain periodic inspection report for 14 months from date of inspection. The Commission assesses a penalty of \$100 for this repeat violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of any or all of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission’s web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are

unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Olympia, Washington, and effective July 9, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TV-190514

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$8,600 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”