

Docket Nos. TV-170293 and TV-180319
(Consolidated) - Vol. I

In the Matter of: Can't Stop Moving, LLC

June 1, 2018



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1 BEFORE THE WASHINGTON
2 UTILITIES AND TRANSPORTATION COMMISSION

4 In the Matter of a Penalty) DOCKET NO. TV-170293
Assessment Against) (Consolidated)
5 CAN'T STOP MOVING, LLC)
6 In the amount of \$51,900,)
7 In the Matter of the) DOCKET NO. TV-180319
8 Investigation of) (Consolidated)
9 CAN'T STOP MOVING, LLC)
10 For Compliance with)
WAC 480-15-560 and)
11 WAC 480-15-570)

12 BRIEF ADJUDICATIVE PROCEEDING, VOLUME I
13 Pages 1-30
14 ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

16 June 1, 2018
17 9:30 a.m.
18 Washington Utilities and Transportation Commission
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5 By Mr. O'Connell. 16
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Can't Stop Moving, LLC
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provided by Can't Stop Moving
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1 A P P E A R A N C E S
2 ADMINISTRATIVE LAW JUDGE:
3 LAURA CHARTOFF
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13 ALSO PRESENT:
14 JASON SHARP
15 Motor Carrier Safety Supervisor,
Transportation Safety
16
17 WAYNE GILBERT
18 Special Investigator, Motor Carrier
Safety
19 * * * * *
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21
22
23
24
25

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1 OLYMPIA, WASHINGTON; JUNE 1, 2018
2 9:30 A.M.
3 --o0o--
4 P R O C E E D I N G S
5
6 JUDGE CHARTOFF: Okay. Let's be on the
7 record. Good morning. This is Docket TV-170293, which
8 is captioned In the Matter of a Penalty Assessment
9 Against Can't Stop Moving, LLC in the amount of 51,900.
10 And Docket TV-180319, which is captioned In the Matter
11 of the Investigation of Can't Stop Moving, LLC for
12 Compliance with Washington Administrative Code
13 480-15-560 and 480-15-570.
14 My name is Laura Chartoff. I am an
15 administrative law judge presiding over today's brief
16 adjudicative proceeding. Today is Friday, June 1, 2018,
17 and the time is approximately 9:30.
18 I'll start with some background. On
19 May 2nd, 2017, the Commission issued a penalty
20 assessment to Can't Stop Moving, LLC in the amount of
21 \$51,500 for 529 critical violations of WAC 480-15-555
22 and 570. The company requested mitigation of the
23 penalty, and on June 19, 2017, the Commission entered
24 Order 1 reducing the penalty to \$25,400 and suspending a
25 \$15,400 portion of the reduced penalty for a period of

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<p>1 two years subject to the conditions that the company not 2 incur any repeat critical violations and that the 3 company pay the remaining \$10,000 penalty. 4 The company requested a payment plan, and on 5 July 5th, 2017, the Commission entered Order 2 granting 6 a payment arrangement that required the company to make 7 20 monthly payments of \$500 each with a final payment 8 due February 2019. Then on April 24th, 2018, Commission 9 Staff completed a follow-up safety investigation of the 10 company and found many repeat critical violations 11 resulting in a proposed conditional safety rating. 12 So on April 27th of this year, Commission 13 Staff filed a motion to impose the suspended penalties 14 in Docket TV-170293 because the company has violated the 15 condition by incurring repeat critical violations. So 16 on May 1st, 2018, the Commission issued a complaint 17 seeking unspecified penalties for the violations 18 discovered in the 2018 investigation. 19 In addition, the Commission gave notice that 20 it intends to cancel the company's household goods 21 carrier permit effective June 22nd, 2018, for cause, 22 following a hearing on the factual allegations set out 23 in the notice unless the company obtains Commission 24 approval of a safety management plan prior to that date. 25 The Commission gave notice of this brief adjudicative</p>	<p>1 are done testifying, Staff's attorney will likely have 2 some questions for you, and then Staff will have an 3 opportunity to consider your testimony and make a final 4 recommendation. 5 So does anyone have any questions before we 6 get started? No, okay. Let's take an appearance from 7 Commission Staff. 8 MR. O'CONNELL: Thank you, Your Honor. 9 Andrew J. O'Connell, Assistant Attorney General 10 representing Staff. Seated to my right is Mr. Wayne 11 Gilbert. He will be testifying on behalf of Staff as to 12 his safety investigation and the violations that he 13 discovered through that investigation. Seated to his 14 right, on behalf of Staff, is Mr. Jason Sharp who will 15 be testifying about the safety management plan, Staff's 16 recommendation regarding that safety management plan, 17 and also the recommendations that Staff has as to 18 recommended penalty amount in this case. 19 JUDGE CHARTOFF: Thank you. 20 Okay. And the company? Please state your 21 name spelling your last name for the record. 22 MR. MICHELSON: Eric Michelson. 23 JUDGE CHARTOFF: Can you see if that is on? 24 MR. MICHELSON: Eric Michelson, 25 M-i-c-h-e-l-s-o-n.</p>
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<p>1 proceeding. 2 Finally, the Commission gave notice that it 3 has exercised its discretion to consolidate those 4 dockets and hear all matters today. 5 So in summary, this proceeding is to 6 determine whether the Commission should one, cancel 7 Can't Stop Moving, LLC's household goods carrier permit, 8 two, whether to assess penalties for violations in the 9 2018 investigation, and three, whether to impose the 10 suspended penalty amount of \$15,400 from the previous 11 docket. 12 Now I'll give some brief instructions for 13 today's proceeding. So when I call on each party to 14 testify, I will swear you in with an oath of witness so 15 that anything you tell the Court will be under oath and 16 can be considered sworn testimony. For the court 17 reporter's benefit, please speak slowly and clearly and 18 also please use the microphone on the table in front of 19 you. And once you are sworn in, you can present your 20 testimony. 21 And because Staff initiated this enforcement 22 action, Staff will go first this morning. Following 23 Staff's presentation, the company will have the 24 opportunity to ask Staff's witnesses any questions, and 25 then the company can present testimony. And once you</p>	<p>1 JUDGE CHARTOFF: And can you give your 2 address for the record? 3 MR. MICHELSON: Address, home address? 4 JUDGE CHARTOFF: No, business address. 5 MR. MICHELSON: The business address is 6 4253 - 22nd Avenue West, Seattle, Washington 98199. 7 JUDGE CHARTOFF: And your business phone and 8 email? 9 MR. MICHELSON: Business phone is 10 425-577-1524, email would be 11 e-r-i-c-j-m-i-c-h-e-l-s-o-n@yahoo.com. 12 JUDGE CHARTOFF: And what is your 13 relationship with the company? 14 MR. MICHELSON: I am a co-owner of the 15 company. 16 JUDGE CHARTOFF: Okay. Mr. O'Connell, you 17 can proceed when you're ready. 18 MR. O'CONNELL: Thank you, Your Honor. I do 19 have one preliminary issue I wanted to bring to your 20 attention. 21 JUDGE CHARTOFF: Okay. 22 MR. O'CONNELL: Let me first distribute to 23 the company and to Your Honor the exhibits. 24 MR. MICHELSON: Thank you. 25 MR. O'CONNELL: The preliminary matter I</p>

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1 wanted to bring to your attention, Your Honor, was that
 2 Staff would like to request permission to revise and
 3 update the exhibit list that it had submitted in to the
 4 Court -- or sorry, to the Commission to add an
 5 evaluation of the company's safety management plan.
 6 Now, the safety management plan that the
 7 company had been working on, had been collaborating with
 8 Staff, and there was a recent update to that safety
 9 management plan that Staff received earlier this week.
 10 To that end, Staff conducted an evaluation and wrote its
 11 evaluation in writing for ease of presentation including
 12 its recommendations.
 13 As it pertains to the safety management
 14 plan, the recommendation that Staff will testify to is
 15 that the company's permit or certificate not be
 16 cancelled, and the document that Staff is proposing to
 17 add to the exhibit list and to enter as an exhibit when
 18 we come to it pertains to the evaluation and explanation
 19 of that recommendation that the company's certificate
 20 not be cancelled.
 21 So in Staff's opinion, the addition of this
 22 exhibit does not prejudice the company in that it's in
 23 the company's favor to have that explanation. Thank
 24 you.
 25 JUDGE CHARTOFF: Do you have any objection

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EXAMINATION OF GILBERT / O'CONNELL

1 to that?
 2 MR. MICHELSON: No, I do not, Your Honor.
 3 JUDGE CHARTOFF: Okay. I'll allow it.
 4 MR. O'CONNELL: Thank you, Your Honor. With
 5 that, I would like to start by calling Mr. Wayne Gilbert
 6 to testify.
 7 (Wayne Gilbert sworn.)
 8
 9 E X A M I N A T I O N
 10 BY MR. O'CONNELL:
 11 Q. Would you please state your name and spell it
 12 for the record?
 13 **A. Wayne Gilbert, G-i-l-b-e-r-t.**
 14 Q. What is your occupation?
 15 **A. Motor carrier safety investigator.**
 16 Q. And who is your employer?
 17 **A. Utilities and Transportation Commission.**
 18 Q. And how long have you been employed by the
 19 Commission?
 20 **A. Just over three years.**
 21 Q. What are your duties as a safety investigator?
 22 **A. Duties is to conduct safety investigations,**
 23 **compliance reviews with organizations that we regulate,**
 24 **to include household good companies, solid waste**
 25 **companies, and passenger moving, passenger companies.**

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EXAMINATION OF GILBERT / O'CONNELL

1 Q. Did you recently conduct a safety investigation
 2 of Can't Stop Moving's operations?
 3 **A. Yes, I did.**
 4 Q. When?
 5 **A. It began on March 1st and ended on April 24th.**
 6 Q. Okay. I would like to direct your attention to
 7 the document marked for identification as Exhibit WG-1.
 8 Can you please identify that document?
 9 **A. Yes, it is the assignment report to include the**
 10 **entire report of the recent investigation.**
 11 Q. And does it also include documentation about the
 12 closing interview with the company?
 13 **A. That is correct.**
 14 Q. Okay. Is this a true and accurate copy of that
 15 assignment report and the closing interview
 16 documentation?
 17 **A. Yes, it is.**
 18 MR. O'CONNELL: Staff offers Exhibit WG-1.
 19 JUDGE CHARTOFF: Mr. Michelson, do you have
 20 any objection to admitting this?
 21 MR. MICHELSON: No, I do not.
 22 JUDGE CHARTOFF: Okay. Exhibit WG-1 is
 23 admitted.
 24 (Exhibit WG-1 admitted.)
 25 MR. O'CONNELL: Thank you, Your Honor.

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EXAMINATION OF GILBERT / O'CONNELL

1 BY MR. O'CONNELL:
 2 Q. Mr. Gilbert, during your investigation, did you
 3 find any violations?
 4 **A. Yes, I did. I found approximately nine total**
 5 **violations.**
 6 Q. And were any of those violations critical
 7 violations?
 8 **A. Yes, they were. Four of them were identified as**
 9 **critical violations.**
 10 Q. Can you please explain the violations that you
 11 discovered?
 12 **A. Yes, the four -- the four critical violations,**
 13 **beginning with the first one, was a violation of 391.51,**
 14 **which is failing to maintain inquiries into drivers'**
 15 **driving record in the driver qualification file. This**
 16 **is the initial drivers abstract that is required to be**
 17 **pulled within 30 days of employment.**
 18 **Violation No. 2 was 395.08, which is failing to**
 19 **require a driver of their record of duty status using**
 20 **the appropriate method. This one occurred on 30**
 21 **different -- 30 separate occasions that an individual**
 22 **under the employment of Can't Stop Moving did not have**
 23 **an appropriate driver duty status.**
 24 **The third one was a violation of 396.03, which**
 25 **is failing to keep minimum records of inspection of**

<p style="text-align: right;">Page 13</p> <p>EXAMINATION OF GILBERT / O'CONNELL</p> <p>1 vehicle maintenance. Can't Stop Moving had very minimal 2 records relating to the vehicle maintenance of their 3 fleet, which was basically just a couple of pieces of 4 paper. 5 Violation No. 4 was a violation of 396.17, and 6 this occurred three different times. Three of the four 7 vehicles that Can't Stop Moving was operating had no 8 proof of periodic inspection being done on them, and 9 that was also a critical violation. 10 And I need to back up and say that violations 11 No. 2, 3, and 4 were all repeat violations from the 2017 12 investigation that was conducted. 13 Violation No. 5 was failing to investigate a 14 driver's background within 30 days of employment. So 15 they did have an abstract on them. They did acquire an 16 abstract, driver's abstract; however, it just wasn't 17 done within that 30 days. 18 Violation No. 6 was using a driver that was not 19 medically examined and certified. This individual drove 20 a total of ten times, so it was ten occurrences of that 21 one violation. And that was also a repeat violation 22 from the 2017 review. 23 Violation No. 7 was 391.51, was failing to 24 maintain a driver's employment application, the driver's 25 qualification file. This occurred three separate times.</p>	<p style="text-align: right;">Page 15</p> <p>EXAMINATION OF GILBERT / O'CONNELL</p> <p>1 Q. Now, throughout your investigation, was the 2 company cooperative? 3 A. Very cooperative, yes. 4 Q. And did they offer any explanation to you for 5 why these violations might have occurred? 6 A. Yes, they did, in their safety management plan. 7 Q. And can you elaborate based upon your 8 investigation and their response? 9 A. Their was response was -- to summarize, it was 10 an oversight on the company's -- company's policy and a 11 little bit of a lack of understanding with the co-owner, 12 Mr. Michelson, on the regulations. 13 MR. O'CONNELL: Your Honor, I have no more 14 questions for Mr. Gilbert. 15 JUDGE CHARTOFF: Okay. I have no questions. 16 You can call your next witness. 17 MR. O'CONNELL: Okay. Then Staff would -- 18 JUDGE CHARTOFF: Oh, hold on, I'm sorry. 19 Do you have any questions for Mr. Gilbert? 20 MR. MICHELSON: No, I do not. 21 JUDGE CHARTOFF: Okay. 22 MR. O'CONNELL: Thank you, Your Honor. Then 23 I would like to call Mr. Jason Sharp to testify on 24 behalf of Staff. 25 (Jason Sharp sworn.)</p>
<p style="text-align: right;">Page 14</p> <p>EXAMINATION OF GILBERT / O'CONNELL</p> <p>1 Violation No. 8 was failing to maintain a note 2 relating to the verification of the medical examiners 3 listed on the National Registry. This was also -- this 4 also occurred three separate times. 5 And then lastly, violation No. 9 was a violation 6 of local law, RCW 46.20.005, operating a motor vehicle 7 in accordance with laws when one driver, Michael 8 Salsado, did not have a valid driver's license. It was 9 only an ID card that was presented. This individual was 10 allowed to operate a commercial motor vehicle a total of 11 32 times. And this was also a repeat violation. 12 Q. Did you meet with the company to explain these 13 violations that you discovered? 14 A. Yes, I did on April 24th. 15 Q. Did you also inform them of their proposed 16 conditional safety rating? 17 A. That I did. 18 Q. Did you give the company information about their 19 conditional safety rating and what was needed in a 20 safety management plan? 21 A. Yes, I did. 22 Q. Is -- and just to confirm, is a copy of that 23 information that you shared with the company included in 24 Exhibit WG-1? 25 A. That is correct, it is.</p>	<p style="text-align: right;">Page 16</p> <p>EXAMINATION OF SHARP / O'CONNELL</p> <p>1 EXAMINATION 2 BY MR. O'CONNELL: 3 Q. Would you please state your name and spell it 4 for the record? 5 A. Jason Sharp, S-h-a-r-p. 6 Q. And what is your occupation? 7 A. I am the motor carrier safety supervisor. 8 Q. And who is your employer? 9 A. Utilities and Transportation Commission. 10 Q. How long have you been employed by the 11 Commission? 12 A. Just over a year and a half. 13 Q. And what are your responsibilities in your role 14 with the Commission? 15 A. My responsibilities include supervising the 16 safety investigation staff as well as reviewing their 17 investigative reports and issuing recommendations based 18 on the outcome of their investigation. 19 Q. Okay. And how were you involved in this matter 20 concerning Can't Stop Moving? 21 A. I did the initial review of Mr. Gilbert's 22 investigative report and issued a recommendation based 23 on the outcome. 24 Q. So you're aware that Staff found violations 25 through its investigation?</p>

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EXAMINATION OF SHARP / O'CONNELL

1 **A. Yes.**
 2 Q. And so you're also aware that the company
 3 received a proposed conditional safety rating?
 4 **A. Yes.**
 5 Q. As part of your responsibilities in your role,
 6 do you evaluate safety management plans?
 7 **A. Yes, I do.**
 8 Q. What is a safety management plan?
 9 **A. In summary, a safety management plan is a**
 10 **process that takes place from the company when they're**
 11 **seeking an upgrade to their safety rating in which they**
 12 **are identifying violations listed on their most previous**
 13 **safety investigation and how they plan to correct them.**
 14 Q. And in general, when you are evaluating safety
 15 management plans, what are you looking for?
 16 **A. In evaluating a safety management plan, we're**
 17 **looking to see that the company identified each**
 18 **violation discovered during the most recent safety**
 19 **investigation, discussed why they were allowed, why the**
 20 **violations were permitted to occur, what steps they've**
 21 **taken to correct those violations, and also looking for**
 22 **the measures put into place to ensure that those**
 23 **violations do not reoccur in the future.**
 24 Q. Now, did the company submit a safety management
 25 plan in this case?

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EXAMINATION OF SHARP / O'CONNELL

1 **A. Yes.**
 2 Q. And did the company submit an updated version of
 3 that safety management plan?
 4 **A. Yes, the company submitted a finalized safety**
 5 **management plan earlier this week.**
 6 Q. So I'd like to direct your attention to the
 7 document marked as Exhibit JS-1. Will you please
 8 identify that document?
 9 **A. This is the most current safety management plan**
 10 **we received from the company.**
 11 Q. And is it a true and accurate copy of the
 12 company's most updated safety management plan?
 13 **A. Yes, it appears to be.**
 14 MR. O'CONNELL: Staff offers Exhibit JS-1.
 15 JUDGE CHARTOFF: Mr. Michelson, do you have
 16 any objection?
 17 MR. MICHELSON: No, I do not.
 18 JUDGE CHARTOFF: Okay. Exhibit JS-1 is
 19 admitted.
 20 (Exhibit JS-1 admitted.)
 21 MR. O'CONNELL: Thank you, Your Honor.
 22 BY MR. O'CONNELL:
 23 Q. Mr. Sharp, do you think the company's updated
 24 safety management plan is acceptable?
 25 **A. Yes, I do.**

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EXAMINATION OF SHARP / O'CONNELL

1 Q. Can you please explain how you evaluated the
 2 company's plan and your recommendation?
 3 **A. Yes, so in review of the company's safety**
 4 **management plan, the company checked all the boxes for**
 5 **the requirements; they identified each area they were**
 6 **found to be in violation of during the most recent**
 7 **review; they explained why the violations were permitted**
 8 **to occur; they issued corrective action for each**
 9 **violation and included documentation to back up their**
 10 **claim such as driver qualification files and vehicle**
 11 **maintenance files as well as a new hire checklist that**
 12 **they've created. And also, they included the fact that**
 13 **they have hired -- they've created a new position within**
 14 **their company for safety manager to be in charge of**
 15 **their compliance. The company also addresses the**
 16 **measure that it's taken to prevent a reoccurrence of the**
 17 **violations in the future.**
 18 Q. So as in regards to the safety management plan,
 19 what is your recommendation for the Commission?
 20 **A. Recommendation for the Commission is that we**
 21 **approve the plan and that the company be able to**
 22 **continue operating at a provisional status until they**
 23 **are able to secure a satisfactory safety rating.**
 24 **Commission Staff intends to follow up with the carrier**
 25 **within the next year to determine if they are able to**

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EXAMINATION OF SHARP / O'CONNELL

1 receive that rating. In addition to that, Staff also
 2 recommends that the company be required, company owner
 3 and safety -- new safety manager be required to attend
 4 the household goods training that will be occurring here
 5 in Olympia this coming August.
 6 Q. Okay. Have you prepared a written evaluation
 7 detailing your evaluation and recommendation?
 8 **A. Yes.**
 9 Q. I'd like to direct your attention to what has
 10 been marked as Exhibit JS-2. Can you please identify
 11 that document?
 12 **A. This is the evaluation on the safety management**
 13 **plan provided by Can't Stop Moving.**
 14 Q. And did you author this evaluation?
 15 **A. Yes.**
 16 Q. Does it also contain a recommendation as to -- a
 17 summary and recommendation as to the violations and what
 18 penalty amount Staff believes is appropriate?
 19 **A. Yes.**
 20 MR. O'CONNELL: Staff offers Exhibit JS-2,
 21 Your Honor.
 22 JUDGE CHARTOFF: Mr. Michelson, do you have
 23 any objection?
 24 MR. MICHELSON: No, Your Honor.
 25 JUDGE CHARTOFF: Okay. Exhibit JS-2 is

<p style="text-align: right;">Page 21</p> <p>EXAMINATION OF SHARP / O'CONNELL</p> <p>1 admitted.</p> <p>2 (Exhibit JS-2 admitted).</p> <p>3 BY MR. O'CONNELL:</p> <p>4 Q. Mr. Sharp, I would like to turn to the penalties</p> <p>5 that Staff is seeking for the violations discovered in</p> <p>6 its investigation. Does Staff have a recommended</p> <p>7 penalty amount?</p> <p>8 A. Yes, Staff recommends a penalty for the</p> <p>9 violations discovered during the April 2018, the most</p> <p>10 current investigation, to total \$28,600 and also</p> <p>11 recommend that the suspended portion totaling \$15,400</p> <p>12 that was suspended from the 2017 investigation be</p> <p>13 enforced.</p> <p>14 Q. And returning to the penalties for the</p> <p>15 violations Staff discovered in its investigation, why</p> <p>16 does Staff believe that penalty amount is reasonable?</p> <p>17 A. Looking at both investigations and the fact that</p> <p>18 we have repeat critical violations, it is clear to Staff</p> <p>19 that the initial penalties weren't enough of a deterrent</p> <p>20 to the company to come into compliance, therefore, we've</p> <p>21 weighted them a little bit heavier this time around.</p> <p>22 Q. Now, are you recommending that the same penalty</p> <p>23 amount be enforced for each occurrence of each violation</p> <p>24 or is there any difference?</p> <p>25 A. There is a difference. Staff took into</p>	<p style="text-align: right;">Page 23</p> <p>1 a provisional status.</p> <p>2 MR. O'CONNELL: I have no more questions for</p> <p>3 Mr. Sharp, Your Honor.</p> <p>4 JUDGE CHARTOFF: Mr. Michelson, do you have</p> <p>5 any questions for Mr. Sharp?</p> <p>6 MR. MICHELSON: No, I do not.</p> <p>7 JUDGE CHARTOFF: So the last time for the</p> <p>8 2017 investigation, Mr. Michelson presented -- did a</p> <p>9 safety management plan, and there were still some repeat</p> <p>10 violations. I guess what gives you more confidence that</p> <p>11 he'll be able to make the corrections this time around?</p> <p>12 MR. SHARP: Following the 2017</p> <p>13 investigation, I'm unaware of the requirement for the</p> <p>14 safety management plan. I do realize that the company</p> <p>15 had --</p> <p>16 JUDGE CHARTOFF: Oh, okay.</p> <p>17 MR. SHARP: -- entered into a request for</p> <p>18 mitigation and through that process, but I believe this</p> <p>19 is the first time we've required the company to submit a</p> <p>20 safety management plan.</p> <p>21 JUDGE CHARTOFF: Okay. Do you -- I don't</p> <p>22 know if this is for you or for who, but does Staff have</p> <p>23 a recommendation on the payment plan?</p> <p>24 MR. O'CONNELL: Excuse me. Yes. Do you --</p> <p>25 are you asking about the payment plan for any penalties</p>
<p style="text-align: right;">Page 22</p> <p>EXAMINATION OF SHARP / O'CONNELL</p> <p>1 consideration that there were first-time critical</p> <p>2 violations discovered and consistent with the motor</p> <p>3 carrier enforcement policy, for first-time occurrences,</p> <p>4 we've issued a hundred dollar -- or we recommend a</p> <p>5 hundred dollar per occurrence violation for those</p> <p>6 first-time violations.</p> <p>7 Q. Now, what about for the repeat violations?</p> <p>8 A. For the repeat violations pertaining to hours of</p> <p>9 service and vehicle maintenance documentation, Staff</p> <p>10 recommends a \$200 penalty per occurrence.</p> <p>11 And in regards to the driver fitness violations</p> <p>12 directly associated with using a driver not medically</p> <p>13 certified and using a driver without a driver's license,</p> <p>14 we recommend a penalty of \$500 per occurrence for those</p> <p>15 violations.</p> <p>16 Q. And is that recommendation and the breakdown of</p> <p>17 those recommended penalty amounts, is that included in</p> <p>18 Exhibit JS-2, your evaluation?</p> <p>19 A. Yes, they are.</p> <p>20 Q. Okay. So a couple final questions.</p> <p>21 Does the Staff recommend cancelling the</p> <p>22 company's certificate?</p> <p>23 A. No, not at this time. We believe that by the</p> <p>24 company's supplying an accepted safety management plan,</p> <p>25 they be given the opportunity to continue to operate in</p>	<p style="text-align: right;">Page 24</p> <p>1 arising out of this investigation?</p> <p>2 JUDGE CHARTOFF: I'm asking about the</p> <p>3 payment plan for the TV -- for TV-170293 that's in</p> <p>4 effect for the --</p> <p>5 MR. O'CONNELL: Yes, I did -- I did intend</p> <p>6 to bring to Your Honor's attention at this point, and so</p> <p>7 I'm glad that you're also bringing it up. Staff noticed</p> <p>8 that the company still has an unsuspended penalty that</p> <p>9 it has been paying via payment plan. \$4,350 still</p> <p>10 remains. If the company -- I think there are two</p> <p>11 points. First, if the company to -- were to request a</p> <p>12 payment plan going forward for any penalties arising out</p> <p>13 of this investigation, Staff would support placing all</p> <p>14 amounts into a single payment plan.</p> <p>15 The second point, I believe that there was a</p> <p>16 recent letter that went out about the unsuspended</p> <p>17 penalty amount payment plan, and there was also a</p> <p>18 recent, I believe -- I would defer to the Commission's</p> <p>19 records center -- that there was a recent payment made</p> <p>20 in that payment plan. Those were very close in time,</p> <p>21 and perhaps it might be the best to hear from the</p> <p>22 company about the timing of that payment and when all of</p> <p>23 that happened for -- in order for Your Honor and the</p> <p>24 Commission to use its discretion to decide what to do</p> <p>25 with that.</p>

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<p>1 JUDGE CHARTOFF: Okay. Okay. Do you have 2 anything further? 3 MR. O'CONNELL: I have nothing further, Your 4 Honor. 5 JUDGE CHARTOFF: Okay. Thank you. 6 So, Mr. Michelson, please stand and raise 7 your right hand. 8 (Eric Michelson sworn.) 9 JUDGE CHARTOFF: Thank you. Please be 10 seated. So I did not receive any exhibits from you in 11 advance of the hearing, so we can proceed with your 12 testimony whenever you're ready. 13 MR. MICHELSON: Okay. I do understand 14 everything that was presented thus far and Mr. Gilbert 15 has presented to me before. At this point what we're 16 asking for is leniency from the Staff and from yourself 17 in that we understand that we made mistakes. I think 18 personally, I've been in charge of handling all of this 19 on my own. We have hired a safety manager who I'm in 20 the process of trying to bring up to speed, and also we 21 do plan on attending the next training course in August, 22 I guess it is, when it comes in. We are looking to, I 23 guess, maintain the safety standards that the federal 24 government and the state of Washington do require of us, 25 and it is something we are looking to move forward with</p>	<p>1 business. 2 JUDGE CHARTOFF: And with regard to the 3 payment plan that's in place, Commission records show 4 that you only made three timely payments and the rest 5 were -- were delinquent to an extent, although I think 6 he's caught up -- you're caught up at this point. But 7 what's going on with that? 8 MR. MICHELSON: That is something where, 9 again, it's entirely on me where I would just realize 10 it. And most of them were, I believe, one to two days 11 late until these most recent where, until it was brought 12 to my attention, I thought that we had been current. 13 The day that I was made aware of that, it was, I 14 believe, just before 5 o'clock and I was already gone 15 from the office. I made sure that literally the second 16 that I walked in the next morning I caught up with both 17 of those payments. And just in the last couple days, I 18 have spoken with my bank, and we're going to be setting 19 up an automated check to be sent every month instead of 20 myself doing it manually through the website every 21 month. So moving forward in the future, there should be 22 no delinquent payments 23 JUDGE CHARTOFF: Mr. O'Connell, do you have 24 any questions for Mr. Michelson? 25 MR. O'CONNELL: No. Thank you, Your Honor.</p>
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<p>1 in the future. 2 JUDGE CHARTOFF: So following the 2007 [sic] 3 investigation when you got the first set of penalties, 4 in the -- in your mitigation request, you committed to 5 making process improvements or process changes so there 6 would be no repeat violations, so what happened? 7 MR. MICHELSON: I wish I had a great answer 8 for you. A lot of these things I can just chalk it up 9 to just myself not doing a very good job of maintaining 10 accurate records. As far as some of these things, and I 11 do list it in the management plan as well, I have made 12 significant progress moving forward with this, but like 13 I mentioned in there, progress does not equal 14 compliance, and I didn't handle all of these things the 15 way that I should have. 16 And that's why, partly because of 17 Mr. Gilbert's advice and also knowing that it's 18 something that I can't realistically do on my own, we 19 have brought in a safety manager. And we are actually 20 in the process of bringing on an additional manager 21 hopefully sometime in the next month or two that will be 22 helping with the filing, with ensuring all the paperwork 23 is valid, accurate, and up-to-date, and just helping 24 along with this process so I'm not dealing with it on my 25 own on top of running all the day-to-day aspects of the</p>	<p>1 JUDGE CHARTOFF: Okay. Does Staff want 2 to -- does Staff have anything further? You've 3 already -- have you already made your recommendation? 4 MR. O'CONNELL: Yes, Your Honor. I believe 5 Staff has covered all the recommendations it has. And 6 briefly what those are is that to not cancel the 7 company's certificate, to -- also Staff believes there 8 is good cause to keep the company in a provisional 9 status until they receive a satisfactory safety -- 10 safety rating, and Staff can commit to doing a follow-up 11 review within a year. 12 Staff would also like to see the condition 13 be added that the company attends the August training 14 session here in Olympia. Sounds like the company is 15 agreeable to that, and Mr. Sharp already summarized the 16 penalty amounts, but in total, the penalty amount being 17 recommended by Staff for the violations of this 18 investigation are \$28,600 and the insubmission of the 19 suspended \$15,400 amount. 20 JUDGE CHARTOFF: Okay. Do you have anything 21 further? 22 MR. MICHELSON: I do not, Your Honor. 23 JUDGE CHARTOFF: Okay. Okay. All right. 24 Thank you all for coming here today. I will be issuing 25 an order within the next ten days reflecting my</p>

1 decision. Is there anything else before we go off the
2 record? Okay. We are adjourned. Thank you.

3 MR. O'CONNELL: Thank you, Your Honor.

4 MR. MICHELSON: Thank you, Your Honor.

5 (Adjourned at 10:10 a.m.)
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1 CERTIFICATE

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3 STATE OF WASHINGTON
4 COUNTY OF THURSTON
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6 I, Tayler Garlinghouse, a Certified Shorthand
7 Reporter in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and
9 accurate to the best of my knowledge, skill and ability.
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11 Tayler Garlinghouse, CCR 3358
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