

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**DELIRIOUS J TRANSPORT, INC.
USDOT # 1412394**

Respondent

**Docket No. FMCSA-2013-0406¹
(Western Service Center)**

INTERIM ORDER

1. Background

On July 16, 2013, the California Division of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Delirious J Transport, Inc. (Respondent). The NOC charged Respondent with one count of violating 49 CFR 396.17(a) – using a commercial motor vehicle not periodically inspected. The NOC proposed a total civil penalty of \$2,000.²

On or about August 12, 2013, Respondent served a timely reply to the NOC requesting a monthly payment plan.³ In its reply Respondent did not deny the violation, did not request administrative adjudication, and did not specifically request binding arbitration.⁴ On October 3,

¹ The prior case number of this matter was CA-2013-0451-US1360.

² Field Administrator's Consent to Binding Arbitration or Alternatively Motion for Final Order of Default (FA Consent), Attachments A. B.

³ FA Consent, Attachment C.

⁴ *Id.*

2013, the Field Administrator⁵ (Claimant) served his consent to what he interpreted as a request for binding arbitration as to the length of time to pay the civil penalty or alternatively moved for a final order of default.

2. Decision

Under 49 CFR 386.14(b), a respondent must reply to a notice of claim by electing one of three options: (1) paying the full amount of the proposed penalty; (2) contesting the claim by requesting administrative adjudication pursuant to 49 CFR 386.14(d)(1)(iii); or (3) requesting binding arbitration.⁶ Respondent did not elect any of these options. Respondent's failure to deny the violation is an admission of the violation.⁷ Because Respondent admitted the violation, the only possible remaining issue is the amount of the civil penalty and the amount of time to pay the civil penalty. Because Respondent requested a payment plan but did not otherwise indicate its intended course of action in response to the NOC, Respondent may have intended to request binding arbitration as to the length of time to pay the civil penalty.⁸ Respondent's reply did not request any relief as to the amount of the civil penalty.⁹

Although the Agency's binding arbitration guidance provides that a case may be designated for binding arbitration when appropriate, referral to binding arbitration requires the

⁵ FMCSA's Field Administrator for the Western Service Center.

⁶ The options for administrative adjudication are: (A) submission of written evidence without a hearing; (B) an informal hearing; or (C) a formal hearing. However, informal hearings are not currently available to respondents. 75 Fed. Reg. 32242 (June 7, 2010).

⁷ 49 CFR 386.14(d)(1)(i).

⁸ *Cool Line, Inc.*, FMCSA-2009-0092 (Order on Binding Arbitration, Nov. 13, 2009).

⁹ FA Consent, Attachment C.

consent of both parties.¹⁰ Inasmuch as Respondent has not specifically requested binding arbitration, it has not yet consented to the binding arbitration process. While it is not necessary for Respondent to use the words “binding arbitration” to request binding arbitration, it is necessary to assure participation in the binding arbitration process. Such assurance will be provided by requiring Respondent to specifically consent to binding arbitration.

Accordingly, it is ORDERED Respondent must serve its consent to binding arbitration as to the length of time to pay the civil penalty within 15 days from the service date of this Order to each person and entity identified on the Certificate of Service. **A sample binding arbitration consent is attached to this Order.** Because Claimant has already consented to binding arbitration, if Respondent consents to binding arbitration, no additional consent from Claimant is necessary. I will thereafter issue an order setting forth the binding arbitration procedures.

Because Respondent admitted the violation and did not request administrative adjudication, it will be deemed in default if it fails to serve its consent to binding arbitration in accordance with this Order.¹¹ Therefore, if Respondent does not serve its consent to binding arbitration in accordance with this Order, it will be in default and the Notice of Claim will become the final agency order in these proceedings on the 20th day following the service date of this Order.¹²

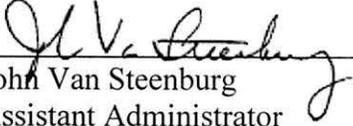
If Respondent does not serve its consent in accordance with this Order, Respondent must therefore pay a total civil penalty of \$2,000 within 25 days of the service date of this

¹⁰ See *Notice of Final Revision to Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 77 Fed. Reg. 34249 (June 11, 2012).

¹¹ *Cool Line* at Page 4. 49 CFR 386.14(c).

¹² *Id.*

Order. Payment may be made electronically through FMCSA's registration site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order payable to FMCSA should be sent to the Western Service Center at the address shown in the Certificate of Service.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

12/30/13

Date

CERTIFICATE OF SERVICE

This is to certify that on this 31 day of December, 2013, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

| | |
|---|---------------------------------------|
| <p>Felix Delira, President Delirious J Transport Inc. 216 Anita Road, Apt. 6 Burlingame, CA 94010</p> <p>and</p> <p>285 Naples St. San Francisco, CA 94112 <i>Respondent</i></p> | <p>One Copy U.S. Mail</p> |
| <p>Nancy Jackson Office of Chief Counsel Enforcement and Litigation Division Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, Colorado 80215 <i>Claimant's Attorney</i></p> | <p>One Copy U.S. Mail</p> |
| <p>U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor Room W12-140 1200 New Jersey Avenue, S.E. Washington, D.C. 20590</p> | <p>Original Personal Delivery</p> |



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Respondent

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(Western Service Center)**

CONSENT TO BINDING ARBITRATION

Respondent, having admitted the violations alleged in the Notice of Claim, consents to binding arbitration as to the length of time to pay the proposed civil penalty.

By: _____

Signature of Authorized Officer, Agent, or Representative

Printed Name and Title

**YOU MUST SEND THE ORIGINAL OF THE SIGNED CONSENT AND SIGNED
CERTIFICATE OF SERVICE TO THE DEPARTMENT OF TRANSPORTATION DOCKET
OPERATIONS AND SEND A COPY TO THE ATTORNEY FOR THE SERVICE CENTER
IDENTIFIED ON THE CERTIFICATE OF SERVICE ATTACHED TO THIS CONSENT.**

¹ The prior case number of this matter was CA-2013-0451-US1360.

CERTIFICATE OF SERVICE

This is to certify that on this ____ day of _____, 2013, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

| | |
|---|-------------------------------|
| Nancy Jackson Office of Chief Counsel Enforcement and Litigation Division Federal Motor Carrier Safety Administration Western Service Center 12600 West Colfax Avenue, Suite B-300 Lakewood, Colorado 80215 <i>Claimant's Attorney</i> | One Copy U.S. Mail |
| U.S. Department of Transportation Docket Operations, M-30 West Building Ground Floor Room W12-140 1200 New Jersey Avenue, S.E. Washington, D.C. 20590 | Original Personal Delivery |

Signature of Person Serving Consent