

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

FLAVIO BORGES PRADO
DBA GOLDEN EAGLE DELIVERY
USDOT NO. 2290193
MC NO. 797772

)
) Order No.: MA-2016-5001-IMH
)
) Service Date: June ____, 2016
) Service Time: _____
)

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“Order”) issued by the Secretary of the United States Department of Transportation (“the Secretary”) pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31133(a)(10), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Regional Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), United States Department of Transportation (“USDOT”). This Order applies to **Flavio Borges Prado currently operating under the name of Golden Eagle Delivery (USDOT No. 2290193), as a motor carrier, and to any agents, and employees** (hereinafter collectively referred to as “you” and/or “your”) and to all commercial motor vehicles owned or operated by or on your behalf, including those commercial motor vehicles identified in Appendix A attached hereto.

The Secretary and the FMCSA find your operations and continued operation of any commercial motor vehicle¹ in the United States constitute an **imminent hazard**.

¹ Under 49 C.F.R. § 390.5, a commercial motor vehicle includes any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—(1) has a gross vehicle weight rating or gross combination

This finding means that based upon your present state of unacceptable safety compliance, your operation of any commercial motor vehicle substantially increases the likelihood of serious injury or death if not discontinued immediately.

EFFECTIVE IMMEDIATELY YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS INCLUDING ALL INTERSTATE AND INTRASTATE TRANSPORTATION.

Your vehicles and drivers now in interstate or intrastate commerce may proceed to their next immediate destination. *See* 49 C.F.R. § 386.72(b)(4) and (5). You may not load or transport any additional freight or property while this order is in effect.

YOU MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL CARGO OR OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

“Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. Your commercial motor vehicles may not be operated in interstate or intrastate commerce by any other motor carrier or any driver, even without freight. Any movement of your commercial motor vehicles, including its trailers, to any storage, repair, or other location for the purposes of repair, sale, storage, or final destination must be accomplished only by towing, such that the truck tractor is not driven or operated. Your commercial motor vehicles may be moved, including by tow, only upon the prior written approval of the

weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation

Regional Field Administrator for FMCSA's Eastern Service Center.

Within eight hours of your receipt of this Order, you must deliver to the Regional Field Administrator for the Eastern Service Center, a list which: (1) identifies all tractors and power units in your control by year, make, model, and vehicle identification number (VIN); (2) includes a copy of the current registration for each identified vehicle; and (3) identifies the street address, city, and state where each vehicle is located; (4) identifies the driver who last operated the vehicle. You may deliver your submission in person, or by fax to 443-703-2253.

You cannot avoid this Order by continuing operations under the name of another person or company. If you intend to sell, lease, loan or otherwise transfer or allow the use of any commercial motor vehicle, including any trailer, to any other person, motor carrier, or business, you must provide written notice to the Regional Field Administrator no less than five business days before any such sale, lease, loan, transfer or use.

I. JURISDICTION

Because you are a motor carrier engaged in interstate commerce using commercial motor vehicles, you are subject to the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, and the alcohol and controlled substances regulations at 49 C.F.R. Part 40, as well as the Orders of the USDOT and FMCSA. See 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136, and 31144. You are required to comply, and to ensure your drivers comply, with the FMCSRs and Orders of the USDOT and FMCSA. 49 C.F.R. § 390.11.

This Order has the force and effect of any other Order issued by FMCSA and is binding upon you as well as any and all of your owners, officers, members, directors,

successors, assigns, and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by you.

II. BASIS FOR ORDER

Your motor carrier operations pose an imminent hazard to the public because of serious and ongoing non-compliance with the Federal statutes and regulations including the FMCSRs relating to commercial motor vehicle maintenance. These violations result in a condition which substantially increases the likelihood of serious injury or death if not discontinued immediately. A motor carrier is prohibited from operating commercial motor vehicles in such a condition as to likely cause an accident or break down.²

On April 29, 2016, the parking brake on one of your commercial motor vehicles failed causing the vehicle to roll down a hill and into a residential house causing significant damages to the house and a serious injury to your driver.

On May 23, 2016, an inspection of your vehicles discovered that six of your seven vehicles were in such a state of disrepair as to be declared out-of-service under the North American Vehicle Out-of-Service Criteria.³ The defects which led to the imposition of the out-of-service orders were all related to vehicle maintenance, and the majority of these violations were brake related.

On May 28, 2016, one of your commercial motor vehicles was found broken down in the travel lanes because of a brake failure and required towing.

² 49 CFR 396.7.

³ The North American Standard Out-of-Service Criteria (OOSC) are the pass-fail criteria for North American Standard Inspections. Their purpose is to identify those violations that are an imminent hazard and which, when discovered, render the driver, vehicle and/or cargo "out of service" until such time that the condition(s) or defect(s) can be corrected or fixed.

During roadside inspections over the past 12 months, your vehicles have been placed out-of-service at a rate of 73%. This out-of-service rate is over 3 times the national average.

49 C.F.R. Part 396 requires every motor carrier to systematically inspect, repair, and maintain or cause to be systematically inspected, repaired, and maintained all motor vehicles subject to your control. You do not have any preventative or ongoing maintenance program to inspect, repair, or maintain your vehicles, and this failure has resulted in you operating commercial motor vehicles in an unsafe condition.

Additionally, you failed to require your drivers to make driver vehicle inspection reports as required under 49 CFR 396.11. The driver vehicle inspection report is an important tool designed to ensure that there is a record of defects within the vehicle noted by the driver operating the vehicle. Because you did not require drivers to prepare a driver vehicle inspection, you repeatedly operated commercial motor vehicles in an unsafe condition.

You did not repair vehicle defects discovered during roadside inspections before you dispatched the vehicle again. Therefore these vehicles were operated in an unsafe condition.

Individually and cumulatively, these violations and conditions of operation substantially increased the likelihood of serious injury or death to your drivers and/or the motoring public if not discontinued immediately. Your specific deficiencies and violations supporting the issuance of this Order are set forth more specifically in the Background portion of this Order which is incorporated by reference herein.

III. BACKGROUND

On or about April 4, 2016, FMCSA began conducting an investigation into your

motor carrier operations as a result of your violation of an order to cease operations. During this investigation, you admitted to the FMCSA investigator that you have no knowledge of the FMCSRs. Regulations require that every employer be knowledgeable of and comply with all FMCSRs which are applicable to that motor carrier's operations.⁴

On April 29, 2016, the parking brake on one of your commercial motor vehicles failed causing the vehicle to roll down a hill and into a residential house causing significant damages to the house and a serious injury to your driver.

On May 28, 2016, one of your commercial motor vehicles was found broken down in the travel lanes because of a brake failure and required towing.

You are required to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to your control.⁵ FMCSA inspected six of the seven vehicles you operated (the seventh vehicle was not inspected because it had been in an accident and was inoperable). These seven vehicles are listed in Appendix A. Each of the six vehicles inspected had out-of-service (OOS) defects:

- Your 2004 truck with VIN 2FZACFAK84AM07544 was cited for defective/missing axle positioning parts because the right rear spring hanger was broken and separated. This could cause your vehicle to veer off the roadway or into other vehicles and has the potential to cause serious injury or death.
- Your 2004 truck with VIN 1FVABSAK04HM25885 had four out-of-service defects: the right axle front brake was unable to maintain air

⁴ 49 C.F.R. § 390.3(e)(1).

⁵ 49 C.F.R. § 396.3

pressure, a spring was exposed in the spring brake housing section, the brakes in general were unable to maintain air pressure, and the axle 2 on the left side had a quick valve leaking. Failing to maintain air pressure can result in brakes not functioning properly when required to come to a stop and has the potential to cause serious injury or death.

- Your 2005 truck with VIN 1FVACWDC25HU35473 had twenty percent of the service brakes out of service. This increases your stopping distance and can result in your vehicle colliding into other vehicles and has the potential to cause serious injury or death.
- Your 2007 truck with VIN 1FVACWD27HZ41338 had five out-of-service defects: air suspension pressure loss, an audible air leak at the connection of the front distribution valve, brakes were unable to maintain air pressure, on the left axle 2, a push rod failed to return after releasing service brakes, and inoperative/defective brakes on left axle 2 wherein there was an absence of effective braking action upon application of the service brake. This increases your stopping distance and can result in your vehicle colliding into other vehicles and has the potential to cause serious injury or death.
- On your 2004 truck with VIN 1FVABSAK44HM58310 the brakes were out of service and the steering system components were worn, welded, or missing. This could cause your vehicle to swerve off the roadway or into other vehicle and has the potential to cause serious injury or death.
- Your 2004 truck with VIN 1HTMMAAM24H612918 had an audible air leak at the quick release valve and a liquid fuel system with a dripping

leak. Failing to maintain air pressure can result in brakes not functioning properly when required to come to a stop and has the potential to cause serious injury or death.

You also could not produce a preventative maintenance schedule for your vehicles.⁶ You were also unable to produce records indicating that you have any sort of vehicle maintenance program, and you do not maintain vehicle files for the commercial motor vehicles you operate as required.⁷ You also were unable to produce any records of driver vehicle inspection reports for the vehicles you operate, and you admitted that drivers are not required to complete driver vehicle inspection reports as required.⁸ These inspection reports are used to list any defect or deficiency discovered by your driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown.

On at least two occasions you dispatched a commercial motor vehicle before correcting an out-of-service defect. Between June 2015 and May 28, 2016, your vehicles have been inspected sixteen times which consisted of five Level I inspections, four Level II inspections, one Level III inspection, and six Level V inspections.⁹ These inspections revealed that your commercial motor vehicles had 82 violations, 28 of which were out-

⁶ Preventative maintenance is accomplished through periodic inspections and daily driver inspections in accordance with 49 C.F.R. §§ 396.13 and 396.17.

⁷ 49 C.F.R. § 396.3(b)

⁸ 49 C.F.R. 396.11

⁹ The North American Standard Inspection is comprised of seven levels. Level I is a comprehensive inspection that inspects the vehicle and the driver; Level II is a walk-around driver/vehicle inspection that includes only those items, which can be inspected without physically getting under the vehicle; Level III is a driver/credential inspection; Level IV is a special inspection that typically includes a one-time examination of a particular item; Level V is a vehicle only inspection; Level VI is an inspection involving radioactive materials, and Level VII is an inspection that is a jurisdictional mandated inspection program that does not meet the requirements of any other level of inspection.

of-service violations¹⁰. Of the 82 violations, 23 pertained to brakes.

Your continual and blatant disregard for our regulations including operating vehicles declared out-of-service based on unsafe conditions, all your vehicles having an out-of-service defect as reflected in the six vehicle inspections on May 23, 2016¹¹, and operating two vehicles after they were placed out-of-service), repeated citations for brake issues, and the fact that you have no vehicle maintenance program substantially increases the risk of death or serious injury if not discontinued immediately.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before you will be permitted to resume operations placed out of service by this Order, you must take specific steps to ensure and demonstrate compliance with the FMCSRs, including the following:

1. You must ensure and demonstrate that each and every commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, is in a safe operating condition and in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operation) and Part 396 (Inspection, Repair and Maintenance), and that all defects and deficiencies have been corrected and repaired.

2. You must establish safety management controls and procedures that ensure that each and every commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

3. You must ensure that each commercial motor vehicle you operate or intend to operate, whether owned, rented, leased or otherwise used, has been and is periodically inspected as required by 49 C.F.R. Part 396 and Appendix G to Subchapter B of Chapter III, and that such periodic inspections are conducted by qualified inspectors.

¹⁰ An out-of-service defect is an imminent hazard that renders vehicle "out of service" until such time that the condition(s) or defect(s) can be corrected or fixed.

¹¹ The only reason the seventh vehicle was not placed out-of-service is because it was already rendered inoperable based on its prior involvement the April 29, 2016 accident.

4. You must ensure that employees, contractors and/or agents used to inspect and maintain each commercial motor vehicle you operate and/or intend to operate are trained and qualified to conduct such inspections, maintenance and repairs, and documentation of training and qualifications is maintained in accordance with 49 C.F.R. Part 396.

5. You must require drivers to conduct pre-trip and post-trip commercial motor vehicle inspections, and must require drivers to prepare Driver Vehicle Inspection Reports in accordance with 49 C.F.R. § 396.11 at the end of each day and establish procedures to ensure that reported safety defects and/or discrepancies are corrected before the vehicle is again operated as required by 49 C.F.R. Part 396.

6. You must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of your commercial motor vehicles are repaired prior to the vehicle being operated. You must ensure that no commercial motor vehicle that fails, or has failed, a safety inspection is used prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

V. RESCISSION OF ORDER

Your motor carrier operations are subject to this Order unless and until this Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as you have a valid and active USDOT number and operating authority registration (if applicable), you are prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Regional Field Administrator for FMCSA's Eastern Service Center has determined that the Remedial Action requirements specified in Paragraph V of this Order have been fully satisfied and acceptable documentation submitted.

Before this Order will be rescinded, you must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that your operations pose, and adequately demonstrate to the Regional Field Administrator for the FMCSA's Eastern Service Center the actions taken to eliminate the safety problems. You cannot

avoid this Order by continuing operations under the name of another person or company.

Any sale, lease, or other agreements involving your commercial motor vehicles or motor carrier operations require five business days written notice to the Regional Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Prior to rescission of the Order, you will be required to institute adequate measures to ensure proper vehicle maintenance. Your measures/plan is subject to the verification and approval of the Regional Field Administrator.

Any request to rescind this Order and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Regional Field Administrator, Eastern Service Center, with a copy to the Division Administrator, Massachusetts Division, at the following addresses:

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

Division Administrator, Massachusetts Division
Federal Motor Carrier Safety Administration
50 Mall Road, Suite 212
Burlington, MA 01803

Rescission of this Order does not constitute a reinstatement of your USDOT Number or operating authority registration. In order for you to resume motor carrier operations transporting property in interstate or intrastate commerce, you will be required to apply to reactivate your USDOT number registration, and if your operations require Federal operating authority, apply for new operating authority registration and demonstrate that you are fit and willing and able to comply with: 1) the statutory and

regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49 U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

VI. ENFORCEMENT OF ORDER

This Order, issued pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1) and (5), § 31133, and § 31134 and 49 C.F.R. § 386.72(b)(1), is an Order of, and enforceable by, the Secretary. Violation of this Order may subject you to civil penalties and may also result in an action in the United States District Court for equitable relief and punitive damages. You may be assessed civil penalties of up to \$25,000 for each violation of this Order. 49 U.S.C. §§ 507, 521(b)(2)(F) and 521(b)(4) and 49 C.F.R. Part 386 App. A. § IV(g). You may also be assessed civil penalties of not less than \$10,000 for providing transportation requiring registration, including operating a commercial motor vehicle in interstate commerce, without operating authority registration and up to \$16,000 for operating a commercial motor vehicle in interstate commerce without USDOT number registration. *See* 49 U.S.C. §§ 14901, 14702-03, 507, 521(b)(2)(F) and 31134. If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and imprisonment for a term not to exceed one year. 49 U.S.C. §§ 521(b)(6)(A).

VII. PENALTIES FOR VIOLATIONS OF FEDERAL REQUIREMENTS

Any motor carrier or driver that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal

statutes and regulations are separate and distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs and Orders of the FMCSA, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to administrative review under 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). If requested, administrative review must commence within ten days after the petition for review is filed and must be concluded as expeditiously as practicable but may run longer than ten days from the date of issuance of such Order or the filing of the petition for review. *See* 49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, and should be sent to the attention of Adjudications Counsel by facsimile or electronic mail as follows:

By Fax:
Adjudications Counsel (MC-CCA)
(202) 366-3602

or electronic mail:
FMCSA.Adjudication@dot.gov

with a copy mailed or sent by commercial delivery service to the Assistant Administrator and Adjudications Counsel at the following address:

Adjudications Counsel (MC-CCA)
Federal Motor Carrier Safety Administration
Office of Chief Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

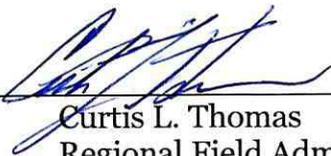
Upon service, a copy of any request for administrative review must also be sent to the Regional Field Administrator by mail and/or facsimile as follows:

Regional Field Administrator, Eastern Service Center
Federal Motor Carrier Safety Administration
802 Cromwell Park Drive
Suite N
Glen Burnie, MD 21061
Fax: (443) 703-2253

The request must identify the issues you dispute.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT SUSPEND
THE OPERATION OF THIS ORDER OR DELAY YOUR DUTY TO COMPLY
WITH THIS ORDER.** This Order is separate and independent from all other orders
or actions that may be issued by FMCSA, and does not amend or modify any other such
orders or actions. Any request for administrative review of this Order does not attach to
or apply to any other order or action.

Date: June 9, 2016



Curtis L. Thomas
Regional Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration
Eastern Service Center

APPENDIX A

YEAR	MAKE	MODEL	TAG NUMBER	VIN
2000	INTL	400SER	P96253	1HTSCAAM5YH307381
2005	FRHT	M2	S13705	1FVACWDC25HU35473
2004	INTL	4300	R19030	1HTMMAAM24H612918
2004	STERLING	ACTERR	P53936	2FZACFAK84AM07544
2004	FRHT	FL70	475387	1FVABSAK44HM58310
2007	FRHT	M2	P54854	1FVACWDC27HZ41338
2004	FRHT	MEDCON	R75385	1FVABSAK04HM25885