
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 6, 2025

Agenda ID #23304

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-475:

This is the draft Resolution of Assistant Chief Administrative Law Judge (ACALJ) MacDonald resolving the Appeal K.24-06-003. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is first noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on ACALJ Katherine MacDonald at kk3@cpuc.ca.gov.

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-475
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-475. Resolves the Appeal K.24-06-003, the Appeal of Alex Vayner, ALVA LIMOLUX LLC from Citation No. T.24-05-008 issued on May 24, 2024 by the Consumer Protection and Enforcement Division.

SUMMARY

This resolution resolves K.24-06-003, the appeal of Citation No. T.24-05-008 issued to Alex Vayner, doing business as ALVA LIMOLUX LLC. by the Consumer Protection and Enforcement Division of the California Public Utilities on May 24, 2024. Citation No. T.24-05-008 issues a fine of \$2,000 for one violation for failure to produce access to records in violation of the Public Utilities Code Sections 5389 and 5413 and General Order 157-E Part 6.02. The citation is sustained, and the appeal is denied.

K.24-06-003 is closed.

BACKGROUND

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily under the Passenger Charter-Party Carriers' Act (Public Utilities Code Section 5351, et seq.) Under Resolution ALJ-187, issued by the Commission on September 22, 2005, the Consumer Protection and Enforcement Division (CPED) is authorized to issue citations to various classes of transportation carriers for violations of the Public Utilities (Pub. Util.) Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-377.

On May 24, 2024, CPED issued Citation No. T.24-05-008 to Alex Vayner, doing business (dba) as ALVA LIMOLUX LLC. (Appellant or ALVA), a charter party carrier (TCP) with TCP 39397. The underlying investigation covered the period of January 8, 2024, through May

22, 2024. The citation imposed a penalty of \$2,000 (two thousand) dollars for the following violation:

- Failed to produce access to records in violation of Pub. Util. Code Sections 5389 and 5413 and General Order (G.O.) 157-E Part 6.02 [1 count]

Pub. Util. Code Section 5389 authorizes the Commission and its staff to have access at any time to the land, buildings, or equipment of a charter-party carrier of passengers used in connection with the operation of its business and may inspect the accounts, books, papers, and documents of the carrier.

G.O. 157-E, Part 6.01 states, in relevant part, that every carrier shall institute and maintain in its offices a set of records that reflect information as to the transportation services performed, including waybills, driver records, and safety and maintenance records including copies of all lease and sub-carrier agreements. Such records shall be maintained for a minimum period of three years.

THE APPEAL

On June 10, 2024, Appellant timely appealed Citation No. T.24-05-008. On August 8, 2024, the assigned Administrative Law Judge (ALJ) issued a ruling setting the hearing for August 29, 2024. Both parties appeared at the hearing on the scheduled date. During the hearing, the parties utilized the right to call, examine, and cross-examine witnesses and offer exhibits.

CPED's compliance filing included the following exhibits:¹

CPED-1	3/21/24 – Email from CPED to Appellant and attached Data Request.
CPED-2	3/25/24 – Email from CPED to Appellant, memorializing phone conversation of 3/25/24 as to licensing information and responding to Data Request.
CPED-3	6/21/24 – CPED Compliance Filing and attachments and Certificate of Service (Public).
CPED-4	5/24/24 TO 7/3/24 - Emails between CPED and Appellant post Citation.

RESOLUTION OF THE APPEAL

¹ A public version of the Confidential Compliance filing was also filed in this proceeding.

1. Burden of Proof

Under Resolution ALJ-377, CPED holds the burden to prove, by a preponderance of evidence, that the citation was issued in compliance with the law and the Commission rules, and that the penalty amount is just and reasonable. The burden then shifts to the appellant, who must then prove, by a preponderance of evidence, that no violation occurred or that the amount of the penalty is unjustified.

CPED testified that it investigated ALVA's operations and practices during the period from January 8, 2024, to May 22, 2024. This investigation was initiated because the Appellant was reportedly operating with more vehicles and drivers than provided in the information previously reported to the Commission.²

On March 21, 2024, CPED staff issued a data request to the Appellant via the email registered in the Transportation Charter Party (TCP) Portal.³ The data request required Appellant to submit the following documents:

1. Your current public liability and property damage insurance policy showing the schedule of vehicles and drivers insured.
2. Current service agreement with your Drug Consortium and a list of all drivers enrolled showing dates added and/or deleted.

In this data request, CPED staff instructed Appellant to submit the requested documents electronically by emailing them to CPED by April 9, 2024. Appellant failed to submit the required documents by that deadline. Subsequently, on May 24, 2024, CPED issued citation T.24-05-008 to ALVA for failure to produce access to records in violation of Pub. Util. Code Sections 5389 and 5413 and G.O. 157-E Part 6.02. After CPED issued the citation, ALVA sent the required documents on May 24 and again on May 30, 2024.⁴

During the hearing, Appellant argued that no citation should be issued because all the requested information was publicly available on the TCP portal.⁵ He reiterated that CPED should have been able to access this information through the portal.

² See, Compliance Filing of the Consumer Protection and Enforcement Division (Compliance Filing) for Citation No. T.24-05-008, Attachment 1.

³ Ibid.

⁴ Transcript, at 33.

⁵ Transcript, at 16.

Appellant stated that he was confused about what specific data CPED sought in their data request.⁶ He contended that he should not receive a citation for what he characterized as a miscommunication with CPED Staff.

The evidence demonstrates that ALVA violated Pub. Util. Code Section 5389 by failing to respond promptly to CPED's data request and neglecting to provide the required documents by the April 9, 2024 deadline. CPED's data request clearly identified the documents sought and instructed the Appellant to scan the documents and transmit them by e-mail. CPED also presented evidence that the Appellant contacted CPED after receiving the data request and was also provided information on how to request an extension of time to provide responsive information.

Appellant failed to provide evidence that he provided the information by the deadline or that he timely submitted a request for an extension of the April 9 deadline. We understand that ALVA ultimately provided the requested documents to CPED, but he did so well past the April 9 deadline. Consequently, ALVA violated Pub. Util. Code Sections 5389 and 5413 and GO 157-E Part 6.02.

The citation alleging that ALVA failed to produce access to records in violation of Pub. Util. Code Sections 5389 and 5413 and G.O. 157-E Part 6.02 is sustained.

ASSESSMENT OF THE FINE

In assessing the reasonableness of the \$2,000 penalty, several factors must be considered. Decision (D.) 98-12-075 sets forth criteria for determining the reasonableness of a fine. The factors to consider in assessing the reasonableness of a fine include: (1) the severity of the economic or physical harm resulting from the violation; (2) the conduct to prevent, detect, disclose, and rectify the violation; (3) the financial resources of the party involved; (4) the public interest involved; (5) the totality of the circumstances; and (6) Commission precedents.

As set forth in D.98-12-075, the Commission should evaluate the reasonableness of the \$2,000. Using these criteria, it is determined that although the public was placed at risk, there was no immediate economic or physical harm because of the violations. Although Appellant demonstrated through conduct that he knew how to contact the investigator to clarify the request and/or request additional time to comply, he failed to provide the information or request additional time.

During the hearing, CPED testified that the calculation of the penalty, which was set at \$2,000, was the standard penalty amount for a carrier that fails to produce required records.⁷ This amount

⁶ Transcript, at 16.

⁷ Hearing Transcript at 37.

reflects a consistent approach, as it is based on the fines imposed for comparable violations over the past two years.

Based on the totality of the circumstances, we find that the penalty of \$2,000 is reasonable. The appeal is denied.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly regarding safety concerns. (*See* for example, Pub. Util. Code §§ 451, 5382, and 5387.) The Commission is mindful that the statutory schemes under which this citation was issued in this case are intended to secure the safety of charter-party carrier passengers and the public.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the service list.

ASSIGNMENT OF PROCEEDING

KieuChinh Tran is the assigned Administrative Law Judge for this citation appeal.

FINDINGS

1. Alex Vayner is dba ALVA LIMOLUX LLC. is a charter-party carrier, under TCP 39397 in California.
2. CPED initiated an investigation of ALVA on January 8, 2024. The investigation covered a period of January 8, 2024, through May 22, 2024.
3. The CPED investigation resulted in a citation for violating Public Utilities Sections 5389 and 5413 and G.O. 157-E Part 6.02.
4. CPED requested ALVA to submit the required documentation by April 9, 2024.
5. ALVA failed to submit documentation to CPED by the deadline of April 9, 2024.
6. CPED issued Citation No. T.24-05-008 to ALVA for \$2,000 on May 24, 2024.

THEREFORE, IT IS ORDERED that:

1. The Citation T.24-05-2024 is affirmed, and the appeal is denied.
2. Alex Vayner, doing business as ALVA LIMOLUX LLC., must pay a penalty of \$2,000 within 45 days of the effective date of this resolution. Payment must be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102. Alex Vayner, dba Write on the face of the check or money order, "For deposit to the General Fund pursuant to Resolution ALJ-XXX."
3. K.24-06-003 is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

RACHEL PETERSON
Executive Director

ALJ/KK3/sgu

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION ALJ-475. Resolves the Appeal K.24-06-003, the Appeal of Alex Vayner, ALVA LIMOLUX LLC from Citation No. T.24-05-008 issued on May 24, 2024 by the Consumer Protection and Enforcement Division.

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for K.24-06-003.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

Dated February 6, 2025, at San Francisco, California.

/s/ SHANE GUTTO

Shane Gutto

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

Resolution ALJ-475 ALJ/KK3/sgu

***** PARTIES *****

***** SERVICE LIST *****

Last Updated on 06-FEB-2025 by: KB3
K2406003 LIST

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