

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Mark Sievers, Chairman  
Ward Loyd, Commissioner  
Thomas E. Wright, Commissioner

Sam Brownback, Governor

## NOTICE OF PENALTY ASSESSMENT

March 16, 2012

John C. Tipton, Owner  
d/b/a John C. Tipton  
9491 X Rd  
Meriden, Kansas 66512

12-TRAM-656-PEN

This is a notice of a penalty assessment for violation of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on February 21, 2012, by Kansas Corporation Commission Special Investigator Verna Jackson. For a full description of the penalty and process please refer to the Order that is attached to this notice.

### **IF YOU ACCEPT THE PENALTY:**

You have been assessed a \$600 penalty. You have thirty (30) days from service of this Penalty Order to pay the fine amount. Check or money order must be made payable to the Kansas Corporation Commission. Payment is to be mailed to the Fiscal Section of the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and must include a reference to the docket number of this proceeding. Credit card payment may be made by calling the Fiscal Office at 785-271-3274.

You must attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of dates and locations for the safety seminar can be found at the Commission's website [http://www.kcc.state.ks.us/trans/safety\\_meetings.htm](http://www.kcc.state.ks.us/trans/safety_meetings.htm).

You must submit to one follow-up safety compliance review within the next 12 months. Staff will contact you at a later date to determine an appropriate time for this review.


### **IF YOU CONTEST THE PENALTY:**

You have the right to request a hearing. A Request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Respondent must submit an original and seven (7) copies of the request to the Commission's Executive Director at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date stamped on the last page of the Penalty Order. K.A.R. 82-1-215.

### **IF YOU FAIL TO ACT:**

Failure to pay the fine amount within thirty (30) days of service of the Penalty Order, or in the alternative, provide a written request for a hearing within fifteen (15) days from service of the Penalty Order will result in the attached Order becoming a Final Order and may result in the additional sanction of suspension and/or revocation of your motor carrier operations.

Sincerely,

  
Amber Whitlock  
Litigation Counsel  
(785) 271-3301

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman  
Ward Loyd  
Thomas E. Wright

In the Matter of the Investigation of **John C. Tipton, of Meriden, Kansas**, Regarding the Violation of the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to Impose Penalties, Sanctions and/or the Revocation of Motor Carrier Authority. )  
Docket No. 12-TRAM-656-PEN

**PENALTY ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

**I. JURISDICTION**

1. Pursuant to K.S.A. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

## **II. BACKGROUND**

4. John C. Tipton (John C. Tipton) obtained private operating authority from the Commission on December 21, 2009, and operated under KSMCID number 167367 until January 24, 2011, at which time Mr. Tipton failed to renew his authority

5. John C. Tipton operates as a for-hire motor carrier under USDOT number 1801394.

6. John Tipton attended a Commission-sponsored Motor Carrier Education and Instructional Meeting on December 21, 2009, on behalf of John C. Tipton.

7. John C. Tipton is a for-hire motor carrier which primarily hauls rock and gravel within 100 mile radius of his home and operates on a part-time basis.

## **III. STAFF'S STATEMENT OF FACTS**

8. Pursuant to the jurisdiction and authority cited above, on February 21, 2012, Commission Staff (Staff) Special Investigator Verna Jackson conducted a compliance review of the operations of John C. Tipton. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, Ms. Jackson identified two (2) violations of the Motor Carrier Safety Regulations.

- a. In January 2012, during a weekend (specific date unknown), John C. Tipton required or permitted its driver, John C. Tipton, to operate a 1981 Ford F-700 in intrastate commerce from 11<sup>th</sup> and MacVicar, Topeka,

Kansas to the carrier's place of business, 9491 X Road, Meriden, Kansas. This trip is evidenced by a written statement from John C. Tipton dated February 21, 2012, a copy attached hereto as Attachment "B". At the time of this transportation, John C. Tipton was not medically examined and certified as physically fit to operate the commercial motor vehicle. John C. Tipton's failure to confirm that each of its drivers are medically examined and certified prior to requiring or permitting the operation of a commercial motor vehicle and maintaining documentation of the medical certificate in the driver qualification file is a violation of Title 49 C.F.R. 391.45(b)(1) and Title 49 C.F.R. 391.51(b)(7)(i), as adopted by K.A.R. 82-4-3g, and as authorized by K.S.A. 2010 Supp. 66-1,129. Staff recommends a fine in the amount of \$100.

- b. During the trip described in paragraph a., above, John C. Tipton permitted this transportation without first obtaining and documenting a successful periodic (annual) inspection on the commercial motor vehicle during the preceding 12-month period. This violation is evidenced by the absence of a periodic (annual) inspection report in the maintenance file of the vehicle at the time of the compliance review. John C. Tipton's failure to conduct periodic (annual) inspections on commercial motor vehicles is a violation of Title 49 C.F.R. 396.17(a), as adopted by K.A.R. 82-4-3j, and as authorized by K.S.A. 2010 Supp. 66-1,129. Staff recommends a fine of \$500.

#### **IV. STAFF'S RECOMMENDATIONS**

9. Based upon the available facts, Staff recommends the Commission find John C. Tipton committed two (2) violations of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

10. Additionally, Staff recommends a civil penalty of \$600 for two (2) violations of the Motor Carrier Safety Statutes, Rules and Regulations.

11. Staff further recommends that John C. Tipton be required to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance. A schedule of the dates and locations for the safety seminar can be found on the Commission's website at [http://kcc.ks.gov/trans/safety\\_meetings.htm](http://kcc.ks.gov/trans/safety_meetings.htm).

12. Finally, Staff recommends that John C. Tipton submit to one follow-up safety compliance review within the next twelve (12) months. Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

#### **V. CONCLUSIONS OF LAW**

13. The Commission finds it has jurisdiction over John C. Tipton because it is a motor carrier as defined in K.S.A. 66-1,108.

14. The Commission finds John C. Tipton committed two (2) violations of Kansas law that govern motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSR), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. John C. Tipton, of Meriden, Kansas is hereby assessed a \$600 civil penalty for two (2) violations of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. John C. Tipton is hereby ordered to attend a Commission-sponsored safety seminar within the next ninety (90) days and is to provide Staff with written proof of attendance. Further, John C. Tipton is ordered to submit to one follow-up safety compliance review within the next twelve (12) months.

C. Pursuant to K.S.A. 77-537 and K.S.A. 77-542, and amendments thereto, any party may request a hearing on the above issues by submitting a written request, setting forth the specific grounds upon which relief is sought, to the Commission's Executive Director, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. Hearings will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of John C. Tipton's right to a hearing, and this Penalty Order will become a Final Order assessing a \$600 civil penalty against John C. Tipton, and ordering John C. Tipton to attend a Commission-sponsored safety seminar within the next ninety (90) days and provide Staff with written proof of attendance, and to submit to a safety compliance review within twelve (12) months from the date of service of this Order.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. A corporation shall not be permitted to enter an appearance, except by its attorney.

E. If you do not request a hearing, the payment of the civil penalty is due in thirty (30) days from date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. *The payment shall include a reference to the docket number of this proceeding.*

F. Failure to pay the \$600 civil penalty within thirty (30) days of the service of this Penalty Order, and/or failure to comply with the provisions of this Order, may result in revocation of John C. Tipton's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of out-of-service and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated:                     MAR 16 2012                    



**ORDER MAILED MAR 19 2012**

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Patrice Petersen-Klein  
Executive Director

AW

**ATTACHMENT "A"**



US DOT #  
1801394

Legal: JOHN C TIPTON  
Operating (DBA):

MC/MX #:

Federal Tax ID [REDACTED] (SSN)

Review Type: Compliance Review (CR) - Receipt

Scope: Principal Office

Location of Review/Audit: Other

Territory:

Operation Types Interstate Intrastate

Carrier: N/A Non-HM  
Shipper: N/A N/A  
Cargo Tank: N/A

Business: Individual

Gross Revenue: [REDACTED] for year ending: 12/31/2011

Company Physical Address:

[REDACTED]  
[REDACTED]

Contact Name: John Tipton

Phone numbers: (1) [REDACTED] (2) Fax

E-Mail Address: [REDACTED]

Company Mailing Address:

9491 X RD  
MERIDEN, KS 66512-9454

Report Summary

Report	# of Pages
Part A - General	2
Part B - Violations	1
Part B - Recommendations	3
Review/Audit Receipt Page	1
<b>Total Pages</b>	<b>7</b>

**Disclaimer:** By signing below, I acknowledge that I have received a copy of this review/audit and agree with the total number of pages indicated (above) for each document. My signature does not imply agreement with the findings of the review/audit, however they have been discussed in detail with me.

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604 785-271-3151

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

Name: John Tipton Title: Owner  
Name: Title:

Reported By: *Verne Jackson* Title: *SI* Code: KS8219 Date: 2/21/2012

Received By: *John C Tipton* Title: *OWNER OPERATOR 2/21/12*





US DOT #  
1801394

Legal: JOHN C TIPTON  
Operating (DBA):

MC/MX #:

Federal Tax ID: [REDACTED] (SSN)

Review Type: Compliance Review (CR)

Scope: Principal Office

Location of Review/Audit: Other

Territory:

Operation Types Interstate Intrastate

Carrier: N/A Non-HM

Shipper: N/A N/A

Cargo Tank: N/A

Business: Individual

Gross Revenue: [REDACTED] for year ending: 12/31/2011

Company Physical Address:

[REDACTED]  
[REDACTED]

Contact Name: John Tipton

Phone numbers: (1) [REDACTED] (2) Fax

E-Mail Address: [REDACTED]

Company Mailing Address:

9491 X RD  
MERIDEN, KS 66512-9454

Carrier Classification

Authorized for Hire

Cargo Classification

Other: Rock/Gravel

Does carrier transport placardable quantities of HM? No

Is an HM Permit required? N/A

Driver Information

	Inter	Intra	Average trip leased drivers/month: 0
< 100 Miles:		1	Total Drivers: 1
>= 100 Miles:			CDL Drivers: 1

Equipment

	Owned	Term Leased	Trip Leased	Owned	Term Leased	Trip Leased
Truck	1	0	0			

Power units used in the U.S.: 1

Percentage of time used in the U.S.: 100





**JOHN C TIPTON**  
U.S. DOT #: 1801394

Review Date:  
02/21/2012

**Part A**

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604 785-271-3151

**This report will be used to assess your safety compliance.**

**Person(s) Interviewed**

**Name:** John Tipton

**Title:** Owner

**Name:**

**Title:**





**JOHN C TIPTON**  
U.S. DOT #: 1801394

Review Date:  
02/21/2012

**Part B Violations**

1 STATE	Primary: 391.45(b)(1) Secondary: 391.11(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
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**Description**

Using a driver not medically examined and certified during the preceding 24 months.

**Example**

John Tipton  
January 2012  
7/13/2009 - expired 7/13/2011

2 STATE	Primary: 396.3(b)(1) CFR Equivalent: 396.3(b)(1)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
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**Description**

Failing to keep a maintenance record which identifies the vehicle, including make, serial number, year, and tire size.

**Example**

John Tipton  
January 2012  
Maintenance record does not indicate VIN and tire size

3 STATE	Primary: 396.17(a) CFR Equivalent: 396.17(a)	Discovered 1	Checked 1	Drivers/Vehicles In Violation 1	Checked 1
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**Description**

Using a commercial motor vehicle not periodically inspected.

**Example**

John Tipton  
January 2012  
1981 Ford F700

<b>Safety Fitness Rating Information:</b>		<b>OOS Vehicle (CR): 0</b>			
<b>Total Miles Operated</b>	5,000	<b>Number of Vehicle Inspected (CR): 0</b>			
<b>Recordable Accidents</b>	0	<b>OOS Vehicle (MCMIS): 0</b>			
		<b>Number of Vehicles Inspected (MCMIS): 0</b>			

Your proposed safety rating is :

**This Review is not Rated.**





## Part B Requirements and/or Recommendations

### 1. DRIVER FITNESS BASIC PROCESS BREAKDOWN: Monitoring and Tracking

DESCRIPTION OF PROCESS BREAKDOWN: Driver not required to have current medical examiners certificate.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Monitoring and Tracking Processes.

- Implement an effective process for monitoring and documenting all drivers' job functions, training, qualifications, renewal dates, disclosed medical conditions, and operational restrictions, including those of drivers on a waiver program or with impairments that may be satisfied by a Skill Performance Evaluation certificate, to ensure that assignments are covered by qualified drivers.
- Review and retain each driver's Motor Vehicle Record (MVR) at least annually to ensure compliance with company policies, federal regulations, and state and local laws and ordinances related to driver fitness. If a driver seems to have numerous violations, the MVR should be reviewed more often. Random MVR checks in addition to annual checks are also effective. File the MVR in each driver's driver qualification file after review.
- Maintain each driver's investigation history file in a secure location with limited and controlled access for as long as the driver is employed and for three years thereafter.
- Maintain roadside inspection reports, moving violation records, training records, the Commercial Driver's License (CDL), the dispatch schedule, bills of lading, and the medical report to help evaluate the performance of all staff involved in qualifying drivers (dispatchers and managers) and the effectiveness of the policies and procedures.
- Implement a system for keeping accurate records of employee driver-fitness training needs, such as entry-level and HAZMAT training, and completed training, via software, a checklist in the driver's file, and/or another appropriate method.
- Evaluate personnel who are monitoring driver-fitness performance by making sure they are reviewing driver-assignment and qualification files; applying the performance standards fairly, consistently, and equitably; and documenting the evaluations.
- Regularly evaluate the company's driver-fitness-related inspection results via the Federal Motor Carrier Safety Administration's (FMCSA) website at <http://ai.fmcsa.dot.gov/SMS>. Assess violations for process breakdowns and how to remedy them. Use data to help implement an effective process beyond self-reporting to monitor, document, and evaluate compliance with driver-fitness regulations and company policies.
- When monitoring and tracking any driver-fitness-related issue, always assess whether it is individual or represents a systemic breakdown in one of the Safety Management Processes (Policies and Procedures, Roles and Responsibilities, etc.).

#### Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

### 2. VEHICLE MAINTENANCE BASIC PROCESS BREAKDOWN: Policies and Procedures

DESCRIPTION OF PROCESS BREAKDOWN: Carrier utilizing commercial motor vehicle not annually inspected. Carrier Maintenance Record missing the VIN and tire size.

#### BASIC SPECIFIC RECOMMENDED REMEDIES

Implement Safety Improvement Practices: The following are recommended practices related to Policies and Procedures.

- Develop a system of preventive maintenance for compliant, safe, and efficient fleet operations, including a schedule for periodic maintenance, inspection, and recordkeeping. This system should be attuned to manufacturer recommendations, the carrier's own experience, and regulatory requirements.
- Develop a procedure ensuring that vehicle defects that impact safety and/or safety compliance are reported, repaired, and certified before the vehicle is operated.
- Develop procedures to ensure that management is notified of vehicle defects through the use of Driver Vehicle





### Part B Requirements and/or Recommendations

Inspection Records (DVIRs) and other communication channels, such as driver call-in and e-mail from mechanics.

- Develop a policy ensuring that drivers are qualified to complete thorough and timely Driver Vehicle Inspection Records (DVIRs) by the end of the day of the trip and prior to a subsequent assignment.
- Establish a policy requiring drivers to submit copies of all roadside inspections to carrier management within 24 hours.
- Develop policies and procedures requiring drivers to immediately notify appropriate management of any roadside vehicle Out-of-Service (OOS) order.
- Develop a written, progressive disciplinary policy comprising warning letters, suspensions, and fines, and ultimately leading to termination, focused on taking corrective action to ensure that employees comply with vehicle inspection, repair and maintenance regulations, and company policies. This policy should also specify consequences for any carrier official who knowingly and willfully allows vehicle maintenance violations.

#### Seek Out Resources:

- You are encouraged to review your company's record at the following website: <http://ai.fmcsa.dot.gov/SMS>. You will need to use your PIN Number that has been provided by the FMCSA.
- Contact industry associations to get resources and ideas on safety improvement practices from other carriers in the industry.

#### 3. For all Investigations:

- **Understand Why Compliance Saves Time and Money:** Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.
- **Document and Follow Through on Action Plans:** Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.
- **NOTICE:** A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.
- **NOTICE:** 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:  
<http://www.psp.fmcsa.dot.gov/Pages/default.aspx>

- All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities.

\* KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 15-days, and any additional evidence necessary to prove the corrective action has been taken to:

Kansas Corporation Commission  
Attn: Gary Davenport





**JOHN C TIPTON**  
U.S. DOT #: 1801394

Review Date:  
02/21/2012


**Part B Requirements and/or Recommendations**

1500 SW Arrowhead Rd  
Topeka, KS 66604-4027



**ATTACHMENT "B"**

I, John Tipton, operated a 1981 Ford F-700 in commerce on a weekend in January, 2012, (specific date unknown). Dirt was hauled from the customer residence 11<sup>th</sup> & MacVicar, Topeka, Kansas, to carrier's residence, 9491 X Road, Meriden, Kansas.

 2/21/12  
John Tipton Date

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
John C. Tipton, OWNER 9491 X Rd Meriden, KS 66512-9454		
AMBER WHITLOCK, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED MAR 19 2012

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.