
(S E R V E D)

(_____)

FEDERAL MARITIME COMMISSION

DOCKET NO. 19-08
POSSIBLE REVOCATION OF
PASSENGER VESSEL OPERATOR PERFORMANCE CERTIFICATE No. P1397
GREAT NORTHERN & SOUTHERN NAVIGATION CO., LLC
DBA FRENCH AMERICA LINE

BUREAU OF ENFORCEMENT
MEMORANDUM OF LAW

By Order dated October 31, 2019, the Federal Maritime Commission (Commission) instituted this proceeding and directed Great Northern & Southern Navigation Co., LLC dba French America Line (Respondent or FAL) to show cause why the Commission should not revoke FAL's Performance Certificate for failure to comply with applicable Commission regulations, respond to lawful inquiries and requests for information, providing willfully false information, and for failure to maintain qualification as financially responsible in accordance with the requirements of 46 C.F.R. Part 540.

I. PROCEDURAL HISTORY

The Commission's Order Granting Hearing and Directing Great Northern & Southern Navigation Co., LLC dba French America Line to Show Cause was published in the Federal Register on November 6, 2019. 84 Fed. Reg 59809. Respondent was directed to submit its affidavits of fact, memoranda of law, and documentary evidence no later than November 26, 2019. The Commission's Order also designated the Commission's Bureau of Enforcement (BOE) as a party thereto. BOE was directed to submit reply affidavits, memoranda of law, and documentary evidence no later than December 11, 2019.

A copy of the Order was served on Respondent's Registered Agent by the Commission's Office of the Secretary via United Parcel Service (UPS) on November 1, 2019. A copy was also served on FAL's Chairman, Mr. Christopher Kyte, via email on October 31, 2019, and via UPS to Mr. Kyte's office in Alameda California on November 1, 2019. Service to Respondent at its purported address of 700 Churchill Parkway, Avondale, LA 70094 was first attempted by UPS on November 1, 2019. After 4 additional failed attempts by UPS to deliver service to FAL at that address, and determining Respondent was no longer located at that address, UPS returned the service package to the Commission.

The Commission received Respondent's reply affidavit, memorandum of law, and documentary evidence on November 26, 2019.

II. VERIFIED STATEMENTS AND PROPOSED FINDINGS OF FACT

BOE submits the Verified Statements of Sandra L. Kusumoto, the Director of the Commission's Bureau of Certification and Licensing (BCL), Clifford R. Johnson, Special Assistant and former Deputy Director of BCL (Johnson VS), Tajuanda L. Singletary, Director of

BCL's Office of Passenger Vessels and Information Processing (OPVIP) (Singletary VS), OPVIP Industry Analyst Russell D. Haynes (Haynes VS), and Commission Area Representative (AR) Eric O. Mintz (Mintz VS), attached as Exhibits A through E.¹ BOE also submits documentary evidence attached as Exhibits F through M.² These verified statements and documents support the entry of a Commission order revoking FAL's Performance Certificate for failure to comply with or respond to lawful inquiries and requests for information, for providing willfully false information, and for failure to maintain its qualification as a financially responsible PVO in accordance with the requirements of 46 U.S.C. § 44102 and 46 C.F.R. Part 540 of the Commission's regulations. Set forth immediately below are proposed findings of fact, including supporting references to documents and statements.

1. Great Northern & Southern Navigation Co., LLC dba French America Line (French America Line or FAL) is a Louisiana Limited Liability Company. Haynes VS ¶ 4.
2. BCL records identify the principal of French America Line as Christopher Kyte, Chairman, and David Christopher Tidmore as Registered Agent for service of process for FAL. Haynes VS ¶ 5.
3. On October 4, 2016 FAL entered into an Escrow Agreement with KeyBank, N.A. for the purposes of providing proof of Financial Responsibility for Indemnification of Passengers in the Event of Nonperformance. Haynes VS ¶ 6; Kusumoto VS ¶ 4.
4. Upon receipt of the escrow agreement, BCL issued French America Line Performance Certificate No. P-1397 effective October 5, 2016. Haynes VS ¶ 6.
5. On October 26, 2016, FAL's sole vessel, the LOUISIANE, suffered a sanitary system failure,

¹ Bates numbered as BOE0100 through BOE0129

² Bates numbered as BOE0130 through BOE0306

- requiring FAL to cancel multiple sailings. Kyte Affidavit ¶ 5, 6.
6. The escrow agreement requires FAL to submit weekly recomputations of unearned passenger revenue and refunds to passengers and are used to adjust the amount in the escrow account accordingly. Ex. G.
 7. The escrow agreement requires FAL submit audit reports on a quarterly basis that attest to the accuracy of its unearned passenger revenue recomputations. Ex. G.
 8. The 2016 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2017. Singletary VS ¶ 7.
 9. The 2017 1st, 2nd, and 3rd Quarter Independent Audits were not received on or before the due dates of May 15, 2017, August 14, 2017, and November 14, 2017, respectively. Singletary VS ¶ 7.
 10. The Louisiana Secretary of State webpage indicates that, on September 21, 2017, FAL changed its name to “Great Northern & Southern Navigation Co LLC French America Line” from “Great Northern & Southern Navigation Co., LLC”. FAL failed to notify the Commission of this change. Ex. K.
 11. By email correspondence dated December 22, 2017 to Tajuanda Singletary, Ken Grigsby requested information about the audit process and what FAL needed to provide. Singletary VS ¶ 14; Ex. M.
 12. Tajuanda Singletary responded to Ken Grigsby by email on January 3, 2018 with paragraph 8 of the escrow agreement which detailed the requirements for the independent audit. Singletary VS ¶ 15; Ex. M.
 13. By correspondence emailed January 25, 2018 to FAL, BCL sent a notification letter to FAL indicating the Commission’s intent to conduct a review of Unearned Passenger Revenue

pursuant to 46 C.F.R. Part 540. Kusumoto VS ¶ 5; Ex. M.

14. In the January 25, 2018 letter to FAL, BCL requested financial documents to be submitted by February 1, 2018. Kusumoto VS ¶ 5.
15. By correspondence emailed January 29, 2018 to BCL, Christopher Kyte requested a two-week extension to provide the documents. BCL granted an extension to February 9, 2018. Haynes VS ¶ 13; Ex. M.
16. The documents requested in the notice of review letter were not received by February 9, 2018. BCL emailed Christopher Kyte, February 13, 2018, again requesting the documents. Singletary VS ¶ 16; Ex. M.
17. The 2017 4th Quarter Independent Audit was not received on or before the due date of February 14, 2018. Singletary VS ¶ 7.
18. By correspondence emailed February 21, 2018 to FAL, BCL again requested the delinquent documentation identified in the January 25, 2018 notice of review letter, though BCL had extended the deadline. Ex. M.
19. The 2018 1st Quarter Independent Audit for January, February, and March was not received on or before the due date of May 15, 2018. Singletary VS ¶ 7.
20. By correspondence emailed May 18, 2018 to FAL, BCL notified FAL that it was not in compliance with its escrow agreement and set a deadline of June 1, 2018 for FAL to comply with the escrow agreement and provide BCL with the required reports, weekly recomputation certificates, statement of good standing with the state of Louisiana, and provide FAL's current operating address. Ex. M.
21. FAL responded to BCL by email on May 31, 2018 in response to BCL's May 18, 2018 notification, and stated that that FAL remained at the same operating address of 700

Churchill Parkway, Avondale, LA 70094. FAL also requested an additional extension to submit requested documents. Ex. M.

22. On June 6, 2018, BCL granted FAL's request for another deadline extension—to June 30, 2018. Singletary VS ¶ 20.
23. BCL did not receive the required recomputation certificates, requested documents, or independent reports by June 30, 2018. Singletary VS ¶ 20.
24. On July 12, 2018 a conference call was held between BCL and FAL during which FAL agreed it would report to the FMC the progress of its independent auditor no later than the morning of Wednesday July 18, 2018. The parties agreed that a final audit report would be made available to the FMC no later than Friday July 27, 2018. BCL sent a follow-up email to FAL memorializing the conference call. Singletary VS ¶ 21; Johnson VS ¶ 9; Ex. M.
25. On July 16, 2018, Area Representative Eric Mintz visited the principal address of FAL at 700 Churchill Parkway, Avondale, LA 70094. AR Mintz did not find FAL at that address. Mintz VS ¶ 1-3.
26. By correspondence emailed July 17, 2018, Mr. Scott Rojas, Director of Facilities and IT at the building located at 700 Churchill Parkway, Avondale, LA 70094 confirmed FAL vacated the location the week of November 27, 2017. Mintz VS ¶ 4; Ex. F.
27. BCL did not receive a final audit report on July 27, 2018 as agreed during the July 12, 2018 call. Singletary VS ¶ 21.
28. The 2018 2nd Quarter Independent Audit for April, May, and June was not received on or before the due date of August 14, 2018. Singletary VS ¶ 7.
29. By correspondence emailed August 27, 2018 to FAL, BCL informed FAL that it was still not in compliance with the escrow agreement and that the outstanding reports continued to be

past due. Singletary VS ¶ 25.

30. The 2018 3rd Quarter Independent Audit for July, August, and September was not received on or before the due date of November 14, 2018. Singletary VS ¶ 7.
31. By correspondence mailed and emailed February 6, 2019 to FAL, BCL informed FAL it was not in compliance with the escrow agreement and requested FAL provide the necessary documentation to comply with the agreement, the FMC's regulations, and the requirements of the Louisiana Accountancy Act no later than April 9, 2019. Kusumoto VS ¶ 7.
32. The 2018 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2019. Singletary VS ¶ 7.
33. BCL did not receive the correct requested documents due April 9, 2019 per BCL's letter dated February 6, 2019. Kusumoto ¶ 7.
34. By correspondence mailed and emailed April 10, 2019 to FAL, BCL provided notice to FAL of BCL's intent to revoke FAL's Performance Certificate. Kusumoto VS ¶ 8; Ex. A.
35. The 2019 1st Quarter Independent Audit for January, February, and March was not received on or before the due date of May 15, 2019. Singletary VS ¶ 7.
36. As of October 9, 2019, FAL was not in good standing with the Louisiana Secretary of State. Ex. K. FAL renewed its good standing with the Louisiana Secretary of State November 22, 2019.

III. LEGAL ARGUMENT

Part C, 46 U.S.C. § 44102 provides:

- (a) Filing requirement. A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

- (b) Satisfactory evidence. To satisfy subsection (a), a person must file—
- (1) Information the Commission considers necessary; or
 - (2) A copy of the bond or other security, in such form as the Commission by regulation may require.

The statute embodies Congress' intent to "prevent financial loss and hardship to the American travelling public, who, after payment of cruise passage money, are stranded by the abandonment or cancellation of a cruise."³

The Commission's implementing regulations at 46 C.F.R. § 540.3 provide:

No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

The Commission's regulations at 46 C.F.R. § 540.8(b) further provide that a Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

- (1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);
- (2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;
- (3) Failure to comply with or respond to lawful inquiries, requests for information, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

These regulatory provisions largely iterate the obligation imposed by statute that each certificant be financially responsible to its customers in the event of a cancelled sailing and be able to refund fares for transportation not provided. They also emphasize the importance of fully and truthfully responding to the Commission's inquiries, and submitting reports required by the Commission's rules, so that the Commission may continuously ensure the financial integrity of the certificant.

³ *Terry Marler and James Beasley dba Titanic Steamship Line—Possible Violations of Section 3(a) of Public Law 89-777*, 22 S.R.R. 359, 369 (FMC 1983), adopted 22 S.R.R. 798 (FMC 1984).

FAL's factual and legal assertions in response to the Order to Show Cause fail to demonstrate that its actions and inactions support the retention of its Certificate (Performance). BOE's proposed Findings of Fact set forth a clear picture of FAL's repeated failures to submit the financial documentation required by the Commission's rules in 46 C.F.R. Part 540. In addition to FAL's repeated failures to provide required financial documentation, FAL has at best seriously misled the Commission regarding the location of its place of business. FAL's "misleading" assertions are addressed first.

1. 700 Churchill Parkway, Avondale LA 70094

Respondent does not contest the proposed findings of fact stated above, with one exception. Respondent has repeatedly insisted that FAL has an active mailing address at 700 Churchill Parkway, Avondale, LA 70094, a vacant office building in Jefferson Parish. However, Respondent has not provided any documentary evidence to support its claim. Respondent acknowledges that it changed its physical address and argues that the Commission "is being hyper-technical" with regards to FAL's address. A business' address, especially the address it represents to the public through its website and Secretary of State business filings, is a vital piece of information about that business. It is for this reason the Commission's regulations require that address information be accurate and updated with every change.

In reply, BOE submits the verified statements of AR Mintz, who visited 700 Churchill Parkway in Avondale, LA, and, finding no indication of FAL's presence there spoke with the President and CEO of the landlord company, JEDCO. AR Mintz later received written confirmation from the building's Director of Facilities that FAL had not maintained a presence there since November 2018. Ex. E; Ex. F.

For this proceeding, the Commission’s Secretary attempted service at this purportedly active “mailing address” on November 1, 4, and 5, 2019, to no avail. BOE has attached in Exhibit F the UPS shipment notification indicating multiple delivery attempts for the Order to Show Cause. BOE also submits records of failed service in October 2019 of a summons on FAL by the United States District Court for the Eastern District of Kentucky in unrelated litigation. Ex. F. To date, FAL has not submitted nor requested to submit documentary evidence to support the statements in its memorandum of law or Mr. Kyte’s affidavit regarding its address, and BOE respectfully requests the Commission accept BOE’s submission and consider this fact conceded by FAL.

2. Independent Audit Reports

The required independent audit reports, referenced in paragraph 8 of the escrow agreement, require these examinations to be conducted “in accordance with generally accepted auditing standards.” Ex. G. According to the Louisiana Accountancy Act, “attest” services include “any audit or other engagement to be performed in accordance with the Statements on Accounting Standards (SAS) or Government Auditing Standards.” La. R.S. § 37:73(1)(a)(i). The reports that the CMA retained by FAL as its independent auditor, Mr. Toujouse, furnished fit under the definition of “report” pursuant to La. R.S. § 37:73(16). That section defines “report” to mean, when used with reference to any “attest services” to be “an opinion, report, or other form of language that states or implies an assurance as to the reliability of any financial statement or assertion...” The Act states that “Only the holder of an active certificate may provide attest services and must do so in a CPA firm that holds a permit issued pursuant to this part.” La. R.S. § 37:76(A)(2). Although Mr. Toujouse mentioned to the Commission that he would be working with a CPA firm, he did not. Accordingly, the required reports submitted to the Commission

were not in accordance with the Louisiana Accountancy Act, or, more broadly, with generally accepted accounting procedures, and should not be relied upon. Ex. G.

In his affidavit, Mr. Kyte states that after the Commission rejected Mr. Toujouse's reports, FAL engaged a CPA to do the audit and states that a CPA named John W. Foard contacted the FMC to obtain guidance. Kyte Affidavit ¶ 16. However, the only contact from a CPA that BCL received regarding FAL was from Mr. Aaron Ready, on April 4, 2019. Haynes VS ¶ 19. Because Mr. Ready did not have an engagement letter with FAL, BCL could not verify that it was permitted to share financial information with Mr. Ready. BCL instead instructed Mr. Ready to contact FAL for information pertaining to the audit, specifically paragraphs 6, 7, and 8 of the escrow agreement. Haynes VS ¶ 19. BCL received no further correspondence from Mr. Ready or any other CPA regarding FAL.

In addressing its admitted delinquencies in responding to the Commission's request for documents and requests for it to adhere to the terms of the escrow agreement, Respondent presents equitable arguments in an attempt to excuse it from complying with the Commission's regulations but does not provide good cause to avoid revocation. In Mr. Kyte's affidavit, he provides a list of reasons why he believes the Commission would not need various documents, but at no time did FAL request to be relieved of the Commission's requirements—requirements which are applied to every other PVO in the industry. Instead, FAL continued to delay, ask for extensions, and otherwise failed to comply with the Commission's lawful requests and the requirements of FAL's escrow agreement.

FAL argues that it does not need to comply with the Commission's regulations because it is not currently providing passenger services, yet also argues that it desires to keep its Certificate

so, that sometime in the future, it can resume services without having to reestablish financial responsibility. These arguments are intrinsically contradictory, and the Commission should be wary of following this paradoxical reasoning. FAL asserts that the required recomputations and audit reports are irrelevant because it is merely a dormant PVO that intends to commence operations promptly when it is able. However, these are the very documents that the Commission must look to in order to determine FAL's status with regards to the booking of passengers and collecting their deposits and fares. "When a passenger vessel operator relies upon an Escrow Agreement to establish its financial responsibility, the Commission must have accurate, credible and reliable information concerning the collection of passenger deposits and fares to ensure the protection of passengers and the integrity of the Escrow Agreement."⁴

3. Misrepresentations to Passengers

In his affidavit, Mr. Kyte states that "FAL and FMC worked together to come up with an agreed wording for Letter of Cancellation [sic] to the passengers, a copy of which is attached as Exhibit 3." Kyte Affidavit ¶ 11. What Mr. Kyte fails to mention is that the FMC only became involved in passenger notifications after FAL had misrepresented, to the public, FMC's regulations, the role of the FMC with respect to the escrow account, and the refund process. In September 2017, FAL falsely stated via email to its passengers that:

"The Federal Maritime Commission (FMC) requires all money collected by cruise lines for cruise voyages to be held in an escrow account until after the sail date. Payments are transferred into our escrow account to be held in security, and are not available in the general operating accounts of FAL. In the event that refunds are needed, we are allowed to request money be transferred back to us for the purpose of making refunds to passengers. After that request has been approved by the FMC and the funds have been transferred to our operating account, then we are able to process refunds. In some cases,

⁴ *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis—Possible Violations of Passenger Vessel Certification Requirements*, Order of Investigation, 61 FR 51283 (October 1, 1996).

the funds are returned to us prior to the sail date, but not always, and this decision is at the discretion of the escrow bank.” Ex. H.

With this statement, FAL attempted to misdirect its passengers’ frustrations with the refund process and lay them at the feet of the FMC. FAL’s erroneous description of the escrow and refund process and timeline above is not the process actually followed by the Commission, namely, that FAL was to issue refunds to passengers first, and then may be entitled to a reimbursement from the escrow, based on the balance of the escrow account in relation to unearned passenger revenue.

When BCL Deputy Director Clifford Johnson was made aware of FAL’s dissemination of this misinformation, he contacted FAL by email October 11, 2017 and demanded FAL immediately rescind the erroneous messages. Johnson VS ¶ 5, 6, 7; Ex. M. Deputy Director Johnson also recommended that FAL clearly state to passengers (and agents) that FAL will be providing refunds directly and there is no requirement for FMC approval. However, on November 6, 2017, Mr. Johnson received an email from a passenger who had previously received the erroneous statement but seemed not to have received any corrective statement from FAL. Johnson VS ¶ 6; Ex. H. This necessitated BCL’s involvement with how FAL was to draft its communications.

4. FAL’s Website: www.frenchamericaline.com

Lastly, in its reply, Respondent repeatedly states that it is not marketing the LOUISIANE, nor advertising French America Line. BOE invites the Commission to view FAL’s website at www.frenchamericaline.com, screenshots of which are submitted as Exhibit I. FAL continues to advertise its line and its vessel on this extensive website, and states that:

“The LOUISIANE will be refreshed and return to passenger service in late summer 2018, with new itineraries and new destinations including some rivers not previously

offered. Look for significant on board [sic] enhancements and a stylish array of pre- and post-cruise options. To obtain special advance notice of 2018 schedules and offers, please click [here](#) to be added to our priority list.”

The embedded “here” hyperlink directs the viewer to FAL’s “Contact us” page, which presents its Reservations Department’s hours, and also lists their address as 700 Churchill Parkway in Avondale, LA. Ex. I.

The Supreme Court has defined advertising as “merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold, and the acquisition of the article to be sold constitutes the only inducement to its purchase.”⁵ Lower Federal courts have applied similar definitions, such as “to give notice to; to inform; to make known to”⁶ and “the traditional notice for the selling of goods and services designed and generally circulated to attract public attention.”⁷ In this instance, FAL’s extensive and descriptive website specifically draws the public’s attention to the LOUISIANE and her features. The site lavishly describes amenities, cuisine, and accommodations including maps of her decks and location of specifically named suites and staterooms. FAL’s ports of call and itineraries are also detailed, drawing the public’s attention to the sailings and adventures on offer. Although the site does disclaim that it is not currently involved in passenger service, it invites the visitor to sign up for offers and schedules. Ex. I.

“Advertising is a word the definition of which is peculiarly dependent upon the context and situation in which it is used.”⁸ Although in *Titanic II*, the Commission found that detailed and

⁵ *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 365 (1916).

⁶ *Bissell Carpet Sweeper Co., v. Masters Mail Corder Co.*, 140 F. Supp. 165, 173 (D. Md 1956) (quoting Webster’s New International Dictionary).

⁷ *Garza v. Chicago Health Clubs, Inc.*, 329 F. Supp. 936, 941 (N.D. Ill. 1971).

⁸ *Terry Marler and James Beasley dba Titanic Steamship Line—Possible Violations of Section 3(a) of Public Law 89-77*, 22 S.R.R. 359, 368 (F.M.C. 1983). (Hereinafter “*Titanic II*”).

lavish descriptions in informational materials, without the actual collection of fares, are not necessarily “advertising”, in that case the Commission found that since the materials at issue were mailed only to travel agents with special knowledge of the business, and not the general public, the materials were not “advertising”. In contrast to *Titanic II*, FAL’s materials and its website pages are designed with the consumer in mind, and it is difficult to imagine a form of information more public than a website. Although Respondent claims it is not marketing the LOUISIANE or French America Line, a simple Google search proves otherwise.

5. The Commission’s Responsibility

FAL’s insubstantial equitable arguments by and large admit BOE’s factual allegations. They also invite the Commission to disregard its own regulations—regulations which every other PVO in the trade must adhere to. This the Commission cannot and should not do. FAL’s attempt to convince the Commission that it should be treated as an exception is without merit.

In addition to its numerous and repeated compliance failures, FAL has a pattern and practice of disappointing and frustrating its customers. Numerous cancelled sailings, irregularities in the resulting refund process, and false statements to its passengers⁹ demonstrate a profound irresponsibility towards its customers and the public. This has resulted in multiple complaints to industry advocates,¹⁰ the news media,¹¹ and the Commission (Ex. L; Singetary VS ¶ 10).

⁹ FAL falsely represented to customers that sailings were cancelled due to its involvement in hurricane relief and misrepresented to the public the FMC’s role in the escrow and refund process.

¹⁰ Elliott Advocacy, as documented on their blog, <https://www.elliott.org/blog/tour-operator-takes-money-no-refund-no-trip/>; Harzog Enterprises, LLC, as reported by WBIR, <https://www.wbir.com/article/news/nation-now/investigation-cruise-start-up-french-america-line-took-customer-money-didnt-deliver/465-35cd4c61-7512-42a0-b026-5851d739d7b0>; The Better Business Bureau, <https://www.bbb.org/us/la/avondale/profile/cruises/french-america-line-0985-90009359>.

¹¹ *Investigation: Cruise startup French America Line took customer money, didn't deliver*, Rebekah L. Sanders, The Arizona Republic (June 7, 2018), available at <https://www.azcentral.com/story/money/business/consumers/2018/06/07/LOUISIANE-french-america-line-uncommon-journeys-riverboat-company-sails-away-customers-money-refund/653837002/>; *Riverboat cruise*

Although, to date, all FAL’s passengers have had their fares and deposits refunded, the Commission must determine if FAL can continue to be considered financially responsible in light of the aforementioned facts. As the Commission stated in *Pacific Far East Line, Inc.—Certificate (Performance) No. P-88*, 17 S.R.R. 1541, 1548 (FMC 1977) (emphasis in original):

“After all, the ultimate purpose of the Part 540 Regulation is NOT to determine whether respondent has always qualified to be a ‘blue chip’ investment for widows and orphans, but merely to ascertain, from past experience and present resources, whether there is a reasonable assurance that future passengers will not be stranded AND left without financial recourse in the event of nonperformance of transportation.”¹²

Considering FAL’s actions, inactions, and misrepresentations detailed above, BOE does not believe the Commission can earnestly assure future FAL passengers that they will be protected within the spirit of 46 U.S.C. § 44102.

Accordingly, because FAL has failed to demonstrate that any of the above proposed findings of fact discussed herein are disputed, BOE urges the Commission to find that all alleged facts are conceded. FAL’s actions demonstrate that the Commission can no longer consider FAL to be financially responsible as intended under 46 U.S.C. § 44102. FAL’s false statements to the Commission regarding its business address satisfy the conditions for revocation of its Certificate under 46 C.F.R. § 540.8(b)(1). FAL’s failure to timely submit reports as required by the Commission’s regulations and its escrow agreement satisfy the conditions for revocation of its Certificate under 46 C.F.R. § 540.8(b)(2). FAL’s failure to respond to and comply with

company that once promised to revive Gretna leaves unhappy customers, idle boat in its wake, Jennifer Larino, The Times-Picayune (June 12, 2018), available at https://www.nola.com/archive/article_16dd2e37-cbe8-537e-b124-f4d433cf0a0f.html.

¹² *Pacific Far East Line, Inc.—Certificate (Performance) No. P-88*, 17 S.R.R. 1541, 1548 (FMC 1977) (emphasis in original).

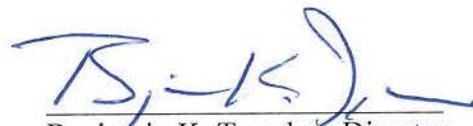
Commission requests satisfies the conditions for revocation of its Certificate under 46 C.F.R. § 540.8(b)(3).

IV. CONCLUSION

For the reasons and facts set forth above, FAL should be found to have conceded the facts established in BOE's memorandum of law, affidavits, and documents submitted. Accordingly, BOE believes that the Commission has sufficient cause to revoke FAL's Certificate (Performance) in accordance with 46 C.F.R. § 540.8(b).

Respectfully submitted,

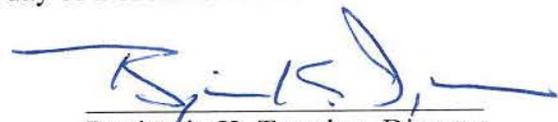

Maryanne G. Mundy, Trial Attorney
Bureau of Enforcement


Benjamin K. Trogdon, Director
Bureau of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all parties via email on December 11, 2019.

Signed in Washington, D.C. this 11th day of December 2019.


Benjamin K. Trogdon, Director
Bureau of Enforcement