

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0435CP

Civil Penalty Assessment Notice: 132328-CPAN

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PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

WILD SIDE 4 x 4 TOURS LLC,

Respondent.

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### JOINT STIPULATION AND SETTLEMENT AGREEMENT

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The Parties, Trial Staff of the Colorado Public Utilities Commission (“Staff”) and Respondent Wild Side 4 x 4 Tours, LLC (“Wild Side” or “Respondent”), enter into this Stipulation and Settlement Agreement (“Settlement Agreement”) in the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in this proceeding. Individually, Staff and the Respondent shall be referred to as Party. Together, Staff and the Respondent shall be referred to as the Parties.

### BACKGROUND AND RECITALS

1. Neil C. O’Malley is the co-owner of Wild Side and has authority to enter into this Settlement Agreement on behalf of Respondent.

2. On October 12, 2022, Staff issued and filed a Civil Penalty and Assessment Notice of Complaint to Appear (“CPAN”) Number 132328. It was served on Respondent by personal service on October 12, 2022 when Staff delivered it to Neil O’Malley’s home. The CPAN alleges three violations: 1. Violation of 4 CCR 723-6-6015 for the alleged failure of Respondent to display the required PUC Off-Road Charter permit number on the transport bearing Colorado license plate RQK563; 2. Violation of 4 CCR 723-6-6202(a) for operating and/or offering to operate as a common carrier in intrastate commerce without first having obtained a certificate of public convenience and necessity from the Commission; and, 3. Violation of § 40-10.1-104 for operating or offering to operate as a motor carrier in Colorado in a manner that is not in accordance with § 40-10.1, C.R.S. because Respondent operated outside the definition of an Off-Road Scenic Charter under § 40-10.1-301(12), C.R.S.

3. The CPAN provides that the civil penalty fine assessed for the first alleged violation is \$500.00, with an additional fifteen-percent surcharge of \$75.00, for a total penalty of \$575.00. The civil penalty fine for the second alleged violation is \$1,100.00, with an additional fifteen-percent surcharge of \$165.00, for a total penalty of \$1,265.00. The civil penalty fine for the third alleged violation is \$1,100.00, with an additional fifteen-percent surcharge of \$165.00 for a total penalty of \$1,265.00. The total amount of the three civil penalties, including the fifteen-percent surcharge, is \$3,105.00. The CPAN further provides that if Respondent pays the civil penalties within 10 calendar days of receipt of the CPAN, the amount of the civil penalty violations will be reduced to \$1,552.50.

4. The 10 calendar days to pay the reduced amount of the CPAN ended on October 24, 2022.<sup>1</sup>

5. On October 23, 2022 Respondent acknowledged liability for Count 1 (violation of 4 CCR 723-6-6015) of the CPAN, sent payment by check to the Commission of the fifty-percent settlement amount of \$287.50 for Count 1, and requested a hearing for the remaining counts. On October 31, 2022, the Commission received Respondent's check for the fifty-percent settlement amount of \$287.50 for Count 1 of the CPAN (4 CCR 723-6-6015) and acknowledged receipt for this payment.

#### SETTLEMENT AND AGREEMENT

6. The Parties have reached a settlement in this matter. The Respondent has agreed to pay \$1,265.00 as a civil penalty and admit liability for Count 2 of the CPAN. The settlement amount includes a penalty amount of \$1,100.00, plus a fifteen-percent surcharge of \$165.00, pursuant to section 24-34-108(2), C.R.S.

7. Respondent admits liability for the violation in Count 2 in the CPAN.

8. Staff will agree to dismiss Count 3 in the CPAN.

9. In consideration of the following promises and agreements set out below in the Settlement Agreement and for other good and valuable consideration, the sufficiency of which are acknowledged herein, the Parties have agreed to the following terms and conditions.

A. Performance by Staff:

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<sup>1</sup> The tenth calendar day fell on October 22, 2022, a Saturday. Respondent, therefore, had until the following Monday, or October 24, 2022, to pay the reduced amount of the CPAN.

- i. Staff will agree to accept Respondent's admission of liability for Count 2 of the CPAN and allow it to pay the associated fine of \$1,265.00. The settlement amount includes the penalty amount of \$1,100.00 and the surcharge amount of \$165.00, for a total payment amount of \$1,265.00.
- ii. Staff will agree to dismiss Count 3 of the CPAN after receipt of Respondent's signature on the settlement agreement and payment of the fine described in Paragraph 9(A)(ii).
- iii. Staff has agreed to consider the following mitigating factors, pursuant to Commission Rule 1302(b), in reducing the penalty amount and for the dismissal of Count 3:
  - a) The Respondent resolved the violation for Count 1; it has admitted liability and paid the fine.
  - b) The Respondent, through counsel, initiated settlement discussions with Staff to attempt to resolve the remaining two counts in the CPAN.
  - c) The Respondent has applied for a Certificate of Convenience and Public Necessity ("CPCN"), in Application No. 22A-0310CP, which has been consolidated into Proceeding No. 22A-0215CP, with 22A-0215CP being primary.

- d) Respondent will operate within the scope of its existing permit Number ORC-00244 while it waits for the resolution of its CPCN permit application.
- e) Respondent misunderstood in good faith the limitations of the ORC permit based on prior communications with Staff, and immediately attempted to achieve compliance and prevent similar future violations as soon as it was issued the CPAN.
- f) Respondent has agreed to comply with all Commission statutes and regulations.
- g) Staff has not previously issued Wild Side or its predecessor-in-interest companies a CPAN.

B. Performance by Respondent

- i. The Respondent will admit to Count 2 of the CPAN.
- ii. Respondent will pay a total settlement amount of \$1,265.00. The payment will be due within 15 days after the date settlement is approved by the Commission.
- iii. The Respondent will comply with the requirements of §§ 40-10.1-201 and 40-10.1-302, C.R.S.
- iv. If Respondent fails to make the payment required by this Paragraph 9(B), unless otherwise modified by the Parties, ORC Permit No. 00244 will be revoked, and Wild Side will be disqualified from

applying for an ORC Permit for three years from the date of revocation, pursuant to 40-10.1-304(1), C.R.S.

10. This Settlement Agreement is entered into in the spirit of compromise and to avoid the uncertainties of hearing and the costly expense of litigation.

11. This Settlement Agreement promotes administrative efficiency because it avoids the time and expense that necessarily would be devoted to preparing for and attending the hearing for this proceeding.

12. This Settlement Agreement serves the public interest and is just and reasonable because it both requires the Respondent to pay a civil penalty of \$1,265.00, according to the terms of Paragraph 9(B), and reduces the penalties owed in recognition of the mitigating factors described herein.

13. This Settlement Agreement may be signed in counterparts, each of which, when taken together shall constitute the entire agreement of the Parties.

14. This Settlement Agreement may not be modified by the Parties, except in writing, with express agreement of each Party, and with the approval of the Commission.

15. Should this Settlement Agreement be modified or not approved in its entirety by the Administrative Law Judge or the Commission, either Party, at that Party's option, may withdraw from this Settlement Agreement by filing a notice with the Commission in this proceeding within seven days of such order. In this event, this Settlement Agreement shall be void and this matter set for hearing.

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Dated this 10th day of January, 2023.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: Digitally signed by Lloyd E. Swint, Investigations Supervisor  
DN: cn=Lloyd E. Swint, Investigations Supervisor, o, ou=DORA/PUC/  
Transportation/ Investigations, email=lloyd.swint@state.co.us, c=US  
Date: 2023.01.09 12:50:04 -07'00'  
Lloyd Swint  
Criminal Investigator II  
Criminal Investigations Unit Supervisor  
Transportation, Investigations & Compliance  
1560 Broadway, Suite 250  
Denver, CO 80202

WILD SIDE TOURS LLC

By:   
Neil O'Malley  
Co-Owner  
5769 Highway 7  
Estes Park, CO 80517

*Approved as to form:*

Philip J. Weiser  
Attorney General

By: Digitally signed by Heather  
Whitman  
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