

Decision No. R25-0238

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 24F-0073CP

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GREEN JEEP TOURS LLC,

COMPLAINANT,

V.

PURPLE MOUNTAIN TOUR COMPANY LLC AND ZACHARY BUGG AND BROOKE LYNN CARSWELL,

RESPONDENTS.

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**RECOMMENDED DECISION  
DENYING COMPLAINANT’S MOTIONS FOR  
FOR ATTORNEY FEES AND FOR LEAVE TO SET A  
HEARING AND CLOSING PROCEEDING**

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Issued Date: March 31, 2025

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**I. BACKGROUND AND PROCEDURAL HISTORY<sup>1</sup>**

**A. Proceeding No. 23A-0078CP**

1. Following a contested proceeding, Proceeding No. 23A-0078CP (the “Application Proceeding”), the Commission granted Respondent Purple Mountain Tour Company LLC (“Purple Mountain” or “Respondent”) a Certificate of Public Necessity (“CPCN”). Proceeding No. 23A-0078CP was resolved by Decision No. C24-0471, issued July 2, 2024.<sup>2</sup> Complainant Green Jeep Tours, LLC (“Complainant” or “Green Jeep”) was an intervening party in the Application Proceeding.

**B. Procedural History**

2. On February 12, 2024, Green Jeep commenced this Proceeding by filing a Formal Complaint (the “Formal Complaint”) against Purple Mountain;<sup>3</sup> Zachary Bugg, a representative of Purple Mountain; and Lynn Carswell, the Managing Director of Purple Mountain (Mr. Bugg and Ms. Carswell shall hereinafter be together referred to as the “Initial Individual Respondents”). The Formal Complaint alleged that Respondents “offered to sell and ha[ve] sold individual tickets” for transportation services without the proper certificate

<sup>1</sup> This Proceeding has a lengthy procedural history. Only the procedural history necessary to understand this Decision is summarized below. A limited procedural history of Proceeding No. 23A-0078CP is provided for background purposes.

<sup>2</sup> By Decision No. C24-0471 in Proceeding No. 23A-0078CP, the Commission granted, in part, and denied in part, Green Jeep’s Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0280. In Decision No. C24-0280, issued April 29, 2024, the Commission denied the exceptions filed to Recommended Decision No., R24-0036, issued January 19, 2024. In Recommended Decision No., R24-0036, the ALJ assigned to Proceeding No. 23A-0078CP recommended, among other things, granting Purple Mountain’s amended application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle. See Decision No. R24-0036 in Proceeding No. 23A-0078CP, mailed January 19, 2024, at pp. 37-38.

<sup>3</sup> The undersigned ALJ notes that captioned Respondent Purple Points Tour Company is a trade name of Purple Mountain Tour Company LLC according to Commission records.

of public convenience and necessity in violation of Rule 6016 of the Commission’s Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

3. On February 21, 2024, the Commission referred this Proceeding to an Administrative Law Judge by minute entry.

4. By Decision No. R24-0603-I, issued August 21, 2024, the claims asserted in the Formal Complaint against the Initial Individual Respondents were dismissed.

5. On September 11, 2024, Respondents’ Motion for Attorney Fees and Costs (the “Initial Individual Respondents’ Motion for Attorney Fees”) was filed by the Initial Individual Respondents.

6. By Decision No. R24-0712-I, the ALJ then-assigned to this Proceeding granted Complainant’s counsel’s withdrawal request filed by Complainant’s former counsel, Richard Bara (“Attorney Bara”).<sup>4</sup>

7. By Decision No. R24-0760, issued October 23, 2024, the ALJ then-assigned to this Proceeding issued her Recommended Decision (“Decision No. R24-0760” or the “Recommended Decision”), which among other things, granted, in part, the Initial Individual Respondents’ Motion for Attorney Fees.<sup>5</sup>

8. No exceptions were filed to Recommended Decision R24-0760, nor applications for rehearing, reargument, or reconsideration were filed by any party, or former party in this

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<sup>4</sup> See the Motion to Withdraw and Notice to Complainant and Waiver of Rule 1201(d) Time to Object, filed September 30, 2024 by Attorney Bara.

<sup>5</sup> Decision No. R24-0760, issued October 23, 2024.

Proceeding.<sup>6</sup> Accordingly, Recommended Decision R24-0760 became a final decision of the Commission on the date of its issuance, October 23, 2024.<sup>7</sup>

9. On November 12, 2024, Respondent's Motion for Attorney's Fees and Costs was filed by the only remaining Respondent, Purple Mountain ("Purple Mountain's Motion for Attorney Fees").

10. On November 12, 2024, Attorney Bara's Public Comment was filed by Attorney Bara.

11. On November 26, 2024, Complainant's Response in Opposition to Respondent Purple Mountain Tour Company, LLC's Motion for Attorney Fees and Costs ("Complainant's Response to Purple Mountain's Motion for Attorney Fees") was filed by Complainant.

12. On December 11, 2024, Respondent's Motion for Leave to Set Hearing ("Respondent's Motion for Leave to Set Hearing") was filed by Respondent.

13. On January 15, 2025, the Commission referred this Proceeding by minute entry once again to an ALJ for further proceedings.

## II. RELEVANT LAW

14. "[T]he Commission has broad constitutional and statutory discretion to determine when attorneys' fees should be awarded in its own proceedings."<sup>8</sup>

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<sup>6</sup> However, the ALJ notes the Public Comments Pursuant to 4 CCR 723-1, filed by Attorney Bara on November 12, 2024 ("Attorney Bara's Public Comment"), which stated: "Exceptions in this proceeding are due today and this document is accordingly timely filed." Attorney Bara's Public Comment at p. 1.

<sup>7</sup> Sections 40-6-109(2) and 114(1), C.R.S.

<sup>8</sup>*Colorado Ute Elec. Ass'n, Inc. v. Pub. Utilities Comm'n of the State of Colo.*, 198 Colo. 534, 545, 602 P.2d 861, 868 (1979) (citing Colo. Const. Art. XXV, and 40-3-102, C.R.S.1973 and § 40-3-102, C.R.S.). *See also, Mountain States Telephone and Telegraph Co. v. Public Utilities Commission*, 576 P.2d 544, 548-49 (Colo. 1978); and Decision No. R05-0862 at p. 4, mailed in Proceeding No. 04F-627W on July 11, 2005.

15. Colo. Const. Art. XXV states:

In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

16. Section 40-3-102, C.R.S. states:

The power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state; to generally supervise and regulate every public utility in this state; and to do all things, whether specifically designated in articles 1 to 7 of this title or in addition thereto, which are necessary or convenient in the exercise of such power, and to enforce the same by the penalties provided in said articles through proper courts having jurisdiction; except that nothing in this article shall apply to municipal natural gas or electric utilities for which an exemption is provided in the constitution of the state of Colorado, within the authorized service area of each such municipal utility except as specifically provided in section 40-3.5-102.

17. The Rules of Practice and Procedure, 4 CCR 723-1, et seq. do not specifically proscribe a deadline for requesting recovery of attorney's fees and costs.

18. Where not otherwise inconsistent with Title 40 or the Rules of Practice and Procedure, 4 CCR 723-1, et seq., the Commission, a hearing Commissioner, or an ALJ may seek guidance from or may employ the Colorado Rules of Civil Procedure.<sup>9</sup>

19. The Commission has relied upon “§ 40-6.5-105(1)(d), C.R.S., and consistent with related requirements in Colorado Rule of Civil Procedure 121, § 1-22,” to conclude that the movant “carries the burden to show that the fees it seeks are reasonable.”<sup>10</sup> The Commission has also applied Rule 121, § 1-22, C.R.C.P., in deciding motions for attorney’s fees and costs.<sup>11</sup>

20. C.R.C.P. 121, § 1-22 states, in part:

**1. Costs.** A party claiming costs shall file a Bill of Costs within 21 days of the entry of order or judgment, or within such greater time as the court may allow. The Bill of Costs shall itemize and total costs being claimed. The Bill of Costs shall itemize and provide a total of costs being claimed. Taxing and determination of costs shall be in accordance with C.R.C.P. 54(d) and Practice Standard § 1-15.

**2. Attorney Fees.**

(a) *Scope.* This practice standard applies to requests for attorney fees made at the conclusion of the action, including attorney fee awards requested pursuant to Section 13-17-102, C.R.S...

(b) *Motion and Response.* Any party seeking attorney fees under this practice standard shall file and serve a motion for attorney fees within 21 days of entry of judgment or such greater time as the court may allow. The motion shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated. The motion shall be accompanied by any supporting documentation, including materials evidencing the attorney’s time spent, the fee agreement between the attorney and client, and the reasonableness of the fees. Any response and reply, including any supporting documentation, shall be filed within the time allowed in practice standard § 1-15...

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<sup>9</sup> Rule 1001 of the Rules of Practice and Procedure, 4 CCR 723-1.

<sup>10</sup> Decision No. C19-0164 at p. 11, mailed February 14, 2019 in Proceeding No. 17A-0797E, *citing Westec Const. Mgmt. Co. v. Postle Enter., Inc.*, 68 P.3d 529, 536 (Colo. App. 2002).

<sup>11</sup> *See, e.g.*, Decision No. C19-0164 mailed on February 14, 2019 in Proceeding No. 17A-0797E at p. 7; and Decision No. C08-0601 mailed on June 13, 2008 in Proceeding No. 07A-0469E at p. 4.

(c) Hearing; Determination of Motion. Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney fees awarded under this practice standard shall be taxed as costs.

21. Although § 13-17-102 is applicable to "any court of record," rather than Commission proceedings, the Commission has used §13-17-102 to guide its decisions when addressing awards of attorney's fees and costs.<sup>12</sup>

22. Section 13-17-102(4), C.R.S., provides:

The court shall assess attorney fees or licensed legal paraprofessional fees if, upon the motion of any party or the court itself, the court finds that an attorney, licensed legal paraprofessional, or party brought or defended an action, or any part of an action, that lacked substantial justification or that the action, or any part of the action, was interposed for delay or harassment or if the court finds that an attorney, licensed legal paraprofessional, or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party pursuant to section 13-21-111.5 (3) that lacked substantial justification.

23. Section 13-17-102 (9)(a), C.R.S. states: "As used in this article 17, unless the context otherwise requires: (a) 'Lacked substantial justification' means substantially frivolous, substantially groundless, or substantially vexatious."

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<sup>12</sup> See, e.g., Decision No. R24-0036 at p. 20, issued in Proceeding No. 23A-0078CP on January 19, 2024; Decision No. R12-0641 at p. 4, mailed June 13, 2012 in Proceeding No. 12A-152CP-EXT; and Decision No. C08-0552 at p. 2, mailed August 19, 2008 in Proceeding No. 07F-036W.

24. Section 40-6-109(2), C.R.S. provides, in part:

Whenever any hearing, investigation, or other proceeding is assigned to an administrative law judge or individual commissioner for hearing, the administrative law judge or individual commissioner, after the conclusion of said hearing, shall promptly transmit to the commission the record and exhibits of said proceeding together with a written recommended decision which shall contain his findings of fact and conclusions thereon, together with the recommended order or requirement. Copies thereof shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty days after service upon the parties, or within such extended period of time as the commission may authorize in writing (“copies of any such extension to be served upon the parties”), or unless such decision is stayed within such time by the commission upon its own motion, such recommended decision shall become the decision of the commission and subject to the provisions of section 40-6-115...

25. Section 40-6-114(1), C.R.S. provides, in part:

After a decision has been made by the commission or after a decision recommended by an individual commissioner or administrative law judge has become the decision of the commission, as provided in this article, any party thereto may within twenty days thereafter, or within such additional time as the commission may authorize upon request made within such period, make application for rehearing, reargument, or reconsideration of the same or of any matter determined therein. Such application shall be governed by such general rules as the commission may establish and shall specify with particularity the grounds upon which the applicant considers the decision unlawful. Any such application shall, within thirty days after the filing thereof, be considered and acted upon by the commission...

26. Section 40-6-112(2), C.R.S. states: “In all collateral actions or proceedings, the decisions of the commission which have become final shall be conclusive.”

27. An argument that is “inconsistent” with findings made in a final administrative agency’s decision may be barred as an inappropriate collateral attack.<sup>13</sup>

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<sup>13</sup> See *Closed Basin Landowners Ass'n. v. Rio Grande Water Conservation Dist.*, 734 P.2d 627, (Colo. 1987) (barring as a collateral attack an argument that was “inconsistent” with a final Water Court decision).

28. Due to efficiency and finality concerns, the Commission discourage litigation of matters that have been addressed in prior final Commission decisions.<sup>14</sup>

### **III. FINDINGS, ANALYSIS, AND CONCLUSIONS**

#### **A. Procedural Adequacy of Puple Mountain's Motion for Attorney Fees, Complainant's Response to of Puple Mountain's Motion for Attorney Fees, and Respondent's Motion for Leave to Set Hearing**

29. As indicated above, because no exceptions, nor an application for rehearing reargument, or reconsideration were filed in this Proceeding, the Recommended Decision became a final decision of the Commission on the date of its issuance, October 23, 2024.<sup>15</sup> Purple Mountain's Motion for Attorney Fees was filed on November 12, 2021, set forth the basis for Respondent's request, and included: an itemized Bill of Costs,<sup>16</sup> affidavits in support of Purple Mountain's Motion for Attorney Fees,<sup>17</sup> and a copy of the Fee Agreement between Respondent and its legal counsel.<sup>18</sup> Complainant's Response to Purple Mountain's Motion for Attorney Fees, filed on November 26, 2024, set forth the basis for Complainant's opposition to Puple Mountain's Motion for Attorney Fees. Lastly, as stated in Respondent's Motion for Leave to Set Hearing, Puple Mountain's Motion for Attorney Fees affects Respondent.<sup>19</sup>

30. Based on Colo. Const. Art. XXV, § 40-3-102, C.R.S., Rule 1001 of the Rules of Practice and Procedure, 4 CCR 723-1, and relying on C.R.C.P. 121, § 1-22 for guidance, the ALJ finds and concludes that filings of Purple Mountain's Motion for Attorney Fees, Complainant's Response to of Purple Mountain's Motion for Attorney Fees, and Respondent's Motion for Leave to Set Hearing are procedurally adequate.

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<sup>14</sup> See Decision No. R15-0496 mailed on May 22, 2015, in Proceeding No. 14A-1057EG at p. 7.

<sup>15</sup> However, the ALJ notes Attorney Bara's Public Comment. See *supra* footnote no. 6.

<sup>16</sup> Attachment A to Purple Mountain's Motion for Attorney Fees.

<sup>17</sup> Attachments B and C to Purple Mountain's Motion for Attorney Fees.

<sup>18</sup> Attachment D to Purple Mountain's Motion for Attorney Fees.

<sup>19</sup> Respondent's Motion for Leave to Set Hearing at p. 2.

**B. Purple Mountain's Motion for Attorney Fees**

31. The Initial Individual Respondents' Motion for Attorney Fees was filed by the Initial Individual Respondents following their dismissal from this Proceeding.<sup>20</sup> In the Initial Individual Respondents' Motion for Attorney Fees, the Initial Individual Respondents claimed that they were entitled to attorney fees and costs pursuant to § 13-17-102, C.R.S. because the "[Formal] [C]omplaint, discovery disputes, motions practice, and the like were all without substantial justification [on the part of Complainant's].<sup>21</sup> The Initial Individual Respondents' Motion for Attorney Fees further sets forth the conduct by Complainant that Respondent believed was frivolous<sup>22</sup> and vexatious,<sup>23</sup> and the grounds pursuant to which Respondent believed that its requested \$23,992.33 in attorney fees and \$683.33 in costs award was reasonable.<sup>24</sup>

32. In the Recommended Decision, the ALJ then-assigned to this Proceeding thoroughly addressed the Initial Individual Respondents' Motion for Attorney Fees.<sup>25</sup> The ALJ found that: "the record suggests that Complainant pursued claims against [the Initial Individual Respondents] to harass them and impede Purple Mountain's business[;]"<sup>26</sup> and that "the claims asserted [by Complainant] against [the Initial Individual Respondents] were substantially frivolous, groundless, and vexatious."<sup>27</sup> On these grounds the ALJ then-assigned to this Proceeding ordered Complainant and Attorney Bara to pay Respondents \$10,000 in attorney fees and costs. With respect to the fees and costs sought by Complainant, the ALJ stated:

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<sup>20</sup> The Initial Individual Respondents' Motion for Attorney Fees at p. 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at pp. 3-5.

<sup>23</sup> *Id.* at pp. 5-7.

<sup>24</sup> *Id.* at pp. 7-8

<sup>25</sup> See Recommended Decision at pp. 35-40.

<sup>26</sup> *Id.* at p. 37.

<sup>27</sup> *Id.* at p. 38.

142. In contrast [to the fees and costs Complainant seeks to recover from the Initial Individual Respondents], the claims against Purple Mountain were neither frivolous nor groundless. As explained in Decision No. R24-0603-I, disputed issues of fact existed which precluded summary judgment in Purple Mountain's favor. In particular, Hearing Exhibit 105, which was attached to Complainant's Motion for Summary Judgment, seemed to suggest that Purple Mountain sold individual tickets before the grant of its CPCN Application. Clearly, then, Complainant's claims against Purple Mountain, even if not ultimately successful were not frivolous and groundless.<sup>28</sup>

143. Nevertheless, certain actions taken by Complainant and her then-counsel Bara during the course of this Proceeding were vexatious, harassing, 'stubbornly litigious,' caused 'unwarranted delay,' and/or were 'disrespectful of truth and accuracy.'<sup>29</sup> In particular the ALJ points to the following actions by Complainant and her former counsel, Bara:

a. Complainant's filing of a motion for contempt citation, asserting that Respondent had failed to respond to discovery requests, even though Complainant had never filed a motion to compel requesting that Respondent be compelled to produce the information;

b. Complainant's filing of a Purple Mountain's Motion for continuance less than 44 hours before the scheduled commencement of the August 22, 2024 evidentiary hearing;

c. Complainant's counsel's failure to prepare for the hearing, having failed to subpoena any witnesses for hearing or have exhibits ready to be offered into evidence; and,

d. As presciently noted by Complainant in the Response to Respondent's Motion for Attorney Fees ("filed by Complainant's new counsel"), '[a]t the forefront of [the undersigned ALJ's] mind [is] undoubtedly . . . Green Jeep's previous counsel arriv[ing] at the scheduled evidentiary hearing over 1.5 hours late.'<sup>30</sup>

144. Although the undersigned ALJ is sympathetic to Complainant's predicament and notes that most of the above actions appear to have been carried out by Complainant's previous counsel, Bara, the fact remains that this Proceeding was initiated with Complainant's approval. Although Schultz appears to have made attempts encouraging Bara to seek settlement and questioning the need to proceed to hearing, Respondent,

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<sup>28</sup> *Id.*

<sup>29</sup> *Citing Zivian v. Brooke-Hitching*, 28 P.3d 970, 974 (Colo. App. 2001)

<sup>30</sup> Recommended Decision at pp. 38-39 (*citing* in subparagraph d. of ¶ 143 of § V. of the Recommended Decision Complainant's Response to Respondent's Motion for Attorney Fees and Costs, filed Oct. 10, 2024, at p. 7).

along with Bugg and Carswell, were left to defend against these vexatious actions, causing them real financial harm and prejudice.<sup>31</sup>

145. Accordingly, the ALJ finds and concludes that Respondent is entitled to some portion of its attorney fees and costs for defending against the vexatious actions outlined above.<sup>32</sup>

146. Respondent requests that it be awarded two-thirds of its fees and costs for defending the claims asserted against Bugg and Carswell. The Affidavits of Atkinson, Bugg, and Carswell state that ‘Respondents have incurred \$24,675.66 in attorneys’ fees and costs as related to this matter.’<sup>33</sup> Respondents’ Bill of Costs, attached as Exhibit B to the Motion for Attorney Fees, enumerates \$38,998.80 in fees and \$1,024.99 in costs.<sup>34</sup>

147. While reducing the requested sum to two-thirds of the total fees and costs is not unreasonable, the ALJ concludes that the figure is too high when compared to the time spent defending against the claims asserted against [the Initial Individual Respondents]. The claims against [the Initial Individual Respondents] were undeniably intertwined with the claims against Purple Mountain, yet the only claims asserted against the individuals were for aiding and abetting and accounted for just one-fourth of the claims asserted in the Formal Complaint. The defense of those claims could not have required the same level of research and work as defending against the claims asserted against Purple Mountain. Further, responding to the vexatious actions of Complainant and its counsel appear to have accounted for approximately two hours of Respondent’s counsel’s time (1.5 hours waiting for Complainant’s counsel to appear and 0.5 hours preparing for and verbally responding to Complainant’s motion for contempt citation and second motion for continuance).<sup>35</sup>

148. Consequently, the ALJ concludes that a more reasonable breakdown of the fees and costs to be awarded is one-fourth of the fees and costs incurred. Basing the calculation of the total fees and costs set out in Exhibit B to the Motion for Attorney Fees, the ALJ finds and concludes that an award of \$10,000 in attorney fees and costs is reasonable, just and appropriate under the circumstances.<sup>36</sup>

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<sup>31</sup> *Id.* at pp. 39.

<sup>32</sup> *Id.*

<sup>33</sup> *Citing* Exhibits C and D to the Initial Respondents’ Motion for Attorney Fees.

<sup>34</sup> Recommended Decision at pp. 39-40 (noting that “two-thirds of \$40,023.79 (\$38,998.80 + \$1,024.99) is \$26,682.53.” *Id.* at p. 40, Footnote No. 103).

<sup>35</sup> *Id.* at p. 40.

<sup>36</sup> *Id.*, (noting that “\$10,000 is a fair rounding down from the exact figure of \$10,005.96 ( $\$40,023.79 \div 4$ )”).

33. Purple Mountain's Motion for Attorney Fees was brought by the single remaining respondent in this Proceeding, Purple Mountain.<sup>37</sup> In Purple Mountain's Motion for Attorney Fees, Respondent claims that pursuant to § 13-17-102, C.R.S. it is entitled to recover the attorney fees and costs it incurred in defending "against the claims brought by Complainant that are devoid of substantial justification."<sup>38</sup> The basis of Respondent's request as set forth in the Purple Mountain's Motion for Attorney's Fees is Complainant and its then-counsel's vexatious acts.<sup>39</sup> Specifically, Respondent cites Complainant's filing of a motion for a contempt citation without having first filed a motion requesting to compel Respondent to respond to Complainant's discovery requests.<sup>40</sup> Respondent further cites Complainant's filing of a Purple Mountain's Motion for continuance less than 44 hours before of the August 22, 2024, evidentiary hearing.<sup>41</sup> Respondent also cites Complainant's counsel failing to prepare for the hearing by neglecting to subpoena any witnesses or prepare exhibits for admission into evidence and arriving an hour-and-a-half late to the August 22, 2024, evidentiary hearing.<sup>42</sup> The conduct cited by Respondent in Purple Mountain's Motion for Attorney Fees by Complainant and Attorney Bara that form the basis for Respondent's allegation that Complainant and its then-counsel engaged in substantially vexatious conduct took place on, or before, August 22, 2024.<sup>43</sup> Lastly, Respondent cites a verbal exchange between the ALJ then-assigned to this Proceeding and Complainant's representative, Mr. Schultz, during the evidentiary hearing on August 22, 2024 that, according to

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<sup>37</sup> Purple Mountain's Motion for Attorney Fees at p. 1.

<sup>38</sup> *Id.* at p. 2.

<sup>39</sup> *Id.* at pp. 2-4.

<sup>40</sup> *Id.* at p. 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *See* Purple Mountain's Motion for Attorney Fees at p. 3; *see also*, Recommended Decision at pp. 38-39.

Respondent, “support[s] the contention that Complainant maintained an impermissible claim, whether through its corporate representative’s or its agent’s knowledge...”<sup>44</sup>

34. In Complainant’s Response to the Purple Mountain’s Motion for Attorney Fees, Complainant makes three primary arguments. First, Complainant argues that the Recommended Decision already awarded attorney fees and costs based on the same set of facts as those set forth in the Purple Mountain’s Motion for Attorney Fees.<sup>45</sup> In support of this argument, Complainant states that in the Purple Mountain’s Motion for Attorney Fees, Respondent “copies, almost verbatim the ALJ’s Recommended Decision, makes no new arguments, presents no new facts, and yet seeks an additional award based on vexatious actions that were already punished.”<sup>46</sup> Complainant further points out that the ALJ then-assigned to this Proceeding separately analyzed the “Fees and Claims against Purple Mountain” and the “Fees and Claims against Bugg and Carswell.”<sup>47</sup> Next, Complainant argues that Respondent’s assertion that Complainant’s claims against Purple Mountain were substantially unjustified “is expressly contradicted by the ALJ’s findings in this case.”<sup>48</sup> Complainant points out that “the ALJ found that ‘Complainant’s claims against Purple Mountain, even if not ultimately successful were not frivolous and groundless.’”<sup>49</sup> Lastly, Complainant argues that Attorney Bara should be solely responsible for any further award of fees. In support of this argument, Complainant points out the discussion in the Recommended Decision about the challenges that attorney Bara created for Complainant throughout this Proceeding and attached to Complainant’s Response to Purple Mountain’s

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<sup>44</sup> Purple Mountain’s Motion for Attorney Fees at pp. 3-4.

<sup>45</sup> Complainant’s Response to Purple Mountain’s Motion for Attorney Fees at pp. 3-4.

<sup>46</sup> *Id.* at p. 4.

<sup>47</sup> *Id.*, citing the Recommended Decision at ¶¶ 143-145.

<sup>48</sup> *Id.* at p. 5, citing the Recommended Decision at ¶ 144.

<sup>49</sup> *Id.*, quoting the Recommended Decision at ¶ 142.

Motion for Attorney Fees the affidavit of Nicole Shultz, along with supporting exhibits, which, according to Complainant discuss these challenges.<sup>50</sup>

35. As stated above, pursuant to § 40-6-109(2), C.R.S., the Recommended Decision (hereinafter, alternatively, the “Final Commission Decision”) became a final Decision of the Commission by operation of law on the date of its issuance, October 23, 2025.

36. In Purple Mountain’s Motion for Attorney Fees, Respondent seeks to revisit the Recommended Decision by requesting recover \$40,775.91 in fees and costs which Respondent claims comprise the remainder of the attorney fees and costs that Respondent claimed it incurred “from the inception of the suit in February [2024] through the end of October [2024]...” less the \$10,000 awarded by the Recommended Decision.<sup>51</sup> Notwithstanding the procedurally adequate filing of Purple Mountain Motion for Attorney Fees,<sup>52</sup> revisiting the findings, and/or conclusions and/or orders made in the Final Commission Decision would be contrary to § 40-6-112(2), C.R.S.

37. Further, the granting of Purple Mountain’s Motion for Attorney Fees would be inconsistent with the very findings made in the Recommended Decision. In the Recommended Decision the ALJ then-assigned to this Proceeding stated:

144. Although the undersigned ALJ is sympathetic to Complainant’s predicament and notes that most of the above actions appear to have been carried out by Complainant’s previous counsel, Bara, the fact remains that this Proceeding was initiated with **Complainant’s** approval... **Respondent**, along with [the Initial Individual Respondents], were left to defend against these vexatious actions, causing them real financial harm and prejudice.

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<sup>50</sup> *Id.*; see also Complainant’s Affidavit and Exhibits A-E thereto, filed as attachments to Complainant’s Response to Purple Mountain’s Motion for Attorney Fees on November 27, 2024.

<sup>51</sup> Purple Mountain’s Motion for Attorney Fees at p. 4.

<sup>52</sup> See § III. A. of this Decision.

145. Accordingly, the ALJ finds and concludes that **Respondent** is entitled to some portion of its attorney fees and costs for defending against the vexatious actions outlined [in ¶ 143 on pp. 38-39 of the Recommended Decision].<sup>53</sup>

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147. While reducing the requested sum to two-thirds of the total fees and costs is not unreasonable, the ALJ concludes that the figure is too high when compared to the time spent defending against the claims asserted against Bugg and Carswell. **The claims against [the Initial Individual Respondents] were undeniably intertwined with the claims against Purple Mountain**, yet the only claims asserted against the individuals were for aiding and abetting and accounted for just one-fourth of the claims asserted in the Formal Complaint. The defense of those claims could not have required the same level of research and work as defending against the claims asserted against Purple Mountain. Further, **responding to the vexatious actions of Complainant and its counsel appear to have accounted for approximately two hours of Respondent's counsel's time** (1.5 hours waiting for Complainant's counsel to appear and 0.5 hours preparing for and verbally responding to Complainant's motion for contempt citation and second motion for continuance).<sup>54</sup>

Respondent's request to recover attorney fees and costs on behalf of Purple Mountain is inconsistent with the finding in the Recommended Decision in that the attorney fees and costs were awarded for Complainant's and Attorney Bara's vexatious *conduct*, rather than for the specific harm incurred by the Initial Individual Respondents, as compared with the harm incurred by Purple Mountain. In other words, Purple Mountain's claim that it is entitled to all attorney fees and costs it incurred in this Proceeding through October 30, 2024,<sup>55</sup> less the fees and costs awarded by the Recommended Decision, is based on a premise that is contradictory to the findings made in the Recommended Decision.

38. Therefore, Purple Mountain's Motion for Attorney Fees is an impermissible collateral attack on the Recommended Decision in violation of § 40-6-112(2), C.R.S.

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<sup>53</sup> Recommended Decision at ¶¶ 144-145, p. 39 (emphasis added).

<sup>54</sup> *Id.* ¶ 147, p. 40 (emphasis added).

<sup>55</sup> See Purple Mountain's Motion for Attorney Fees at p. 4. and Exhibit A to Purple Mountain's Motion for Attorney Fees.

39. In addition, the granting (or partial granting) of Purple Mountain's Motion for Attorney Fees would erode the integrity of the Final Commission Decision and therefore impede administrative efficiency and finality.

40. Based on the foregoing, Purple Mountain's Motion for Attorney Fees will be denied, as ordered below.

**C. Respondent's Motion for Leave to Set Hearing**

41. In Respondent's Motion for Leave to Set Hearing, Respondent requests "to set the ongoing attorney fee dispute for hearing before the ALJ"<sup>56</sup> to address Purple Mountain's Motion for Attorney Fees and Complainant's Response to Purple Mountain's Motion for Attorney Fees because "[t]he determination of attorney fees significantly affects both parties in this proceeding."<sup>57</sup>

42. Given the findings above and the denial herein of Purple Mountain's Motion for Attorney Fees, there is no need to hold a hearing in this Proceeding. Therefore, Respondent's Motion for Leave to Set Hearing will be denied, as ordered below.

**D. Transmission of the Record and Recommended Decision to the Commission**

43. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written recommended decision and recommends that the Commission enter the following order.

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<sup>56</sup> Respondent's Motion for Leave to Set Hearing at p. 1.

<sup>57</sup> *Id.* at p. 2.

**IV. ORDER****A. The Commission Orders That:**

1. Consistent with the discussion above, Respondent's Motion for Attorney's Fees and Costs filed by Respondent Purple Mountain Tour Company LLC ("Purple Mountain") on November 12, 2024, is denied.

2. Consistent with the discussion above, Respondent's Motion for Leave to Set Hearing filed by Purple Mountain on December 11, 2024, is denied.

3. Proceeding No. 24F-0073 is closed.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

7. Proceeding No. 24F-0078CP is closed.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

AVIV SEGEV

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Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director