

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

PROCEEDING NO. 20C-0264-INS

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IN THE MATTER OF COMMISSION ACTION AGAINST THE CERTIFICATE(S) AND PERMIT(S) OF MOTOR CARRIERS CONCERNING FINANCIAL RESPONSIBILITY PURSUANT TO § 40-10.1-112, C.R.S., AND RULE 4 CCR 723-6-6008 OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLES.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
REVOKING AUTHORITIES AND PERMITS**

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Mailed Date: July 23, 2020

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**I. STATEMENT, BACKGROUND, AND EVIDENCE****A. Summary**

1. This Decision grants the relief sought in the Public Utilities Commission Staff's (Staff or Commission Staff) Complaints against the majority of the motor carrier-Respondents listed in Appendix A to this Decision, and revokes their authorities and permits based on their failure to keep currently-effective proof of financial responsibility on file with the Commission.<sup>1</sup> This Decision also provides avenues for motor carrier-Respondents listed in Appendix A to avoid revocation by taking action before this Decision becomes effective.

**B. Background**

2. On June 19, 2020, Commission Staff instituted the cases against the motor carrier Respondents by issuing and filing "Order[s] of Summary Suspension and Complaint[s] and Notice of Hearing" (Complaints) in this proceeding. The Complaints notify Respondents that their authorities or permits have been, or will be summarily suspended on the date specified in each Complaint, and that a video-conference hearing will take place on July 8, 2020, at 12:00 p.m. to determine whether their authorities or permits should be permanently revoked.

3. On July 7, 2020, Staff served Hearing Exhibits 1, 2A, 2B, 3, 4, and 5 on Respondents by e-mail. *See* Notice Concerning the Service of Exhibits 1-5 for the July 8, 2020 Show Cause Hearing on Respondents (Notice) filed on July 7, 2020.

4. As noticed in the Complaints, on July 8, 2020, the undersigned Administrative Law Judge (ALJ) held the hearing on the Complaints. Commission Staff member Vanessa Condra and counsel appeared on behalf of Commission Staff by video-conference.

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<sup>1</sup> As referenced in this Decision, motor carriers are carriers who hold a Commission permit, authority, or certificate.

5. The following Respondents appeared at the hearing either by video-conference or telephone: Affordable Towing and Recovery; Assist Moving Company Inc.; B&C Care Cab LLC; Captain's Limo's LLC; Challenger Transport, LLC; Cross Limousine Services LLC (Cross Limousine); Cross Towing Service LLC (Cross Towing); Dia Car Services LLC (Dia); D and K's Family Limousine LLC; Discover Transportation LLC; Evan Co. Inc.; Foothills Moving & Storage LLC; Gemechu LLC; LaCo Limo LLC; Michael's Limo; Mile High Chauffeurs Inc., (Mile High); Murray's Transportation LLC; Peace of Mind Medical Rides; Fesseha Tilaye, doing business as Rapid Airport Limousine Services; Royalty Luxury Car Service LLC (Royalty); Satori Tours LLC (Satori); Southwest Express LLC (Southwest); Sugar Limo LLC; Turner Investments LLC, doing business as Elevation Medical Transportation; Van on the Run LLC; and Wisdom Limo LLC.

1. Before the evidentiary portion of the hearing began, the ALJ asked Respondents whether they plan to present evidence, such as testimony or documents, in support of their defenses. The ALJ informed the parties that if any Respondents wished to present documents, that the hearing would most likely need to be recessed for a short period to facilitate obtaining electronic copies of such documents so they could be presented during the evidentiary portion of the hearing. No Respondent stated that they wished to present documentary evidence, but a number of Respondents stated that they wish to present testimony.

2. Ms. Condra testified on behalf of Commission Staff. In addition, Mikiyas Girma testified on behalf of Royalty; Shemelash Alemayehu testified on behalf of Southwest; Zoltan Keszthelyi testified on behalf of Mile High; Gemechu Said testified on behalf of Gemechu LLC; Adbeltif Kaciri testified on behalf of Dia; and Dominic Andoh testified on behalf of Cross Limousine and Cross Towing. All witnesses were sworn before testifying, and each witness verified that no one was assisting them with their testimony and that they would inform the ALJ if

that changed during the course of their testimony. In addition, based on the record and information Respondents provided, the ALJ found that all the individuals testifying on behalf of Respondents established that they are eligible to represent each Respondent they appeared on behalf of, and permitted them to represent their respective companies as permitted by § 13-1-127, C.R.S. and Rule 1201(b)(II), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

3. Hearing Exhibits 1, 2A, 2B, 3, 4 and 5 were admitted into evidence during the hearing.<sup>2</sup>

**C. Staff's Evidence**

4. Ms. Condra is responsible for reviewing Commission records and coordinating with other Commission Staff to commence proceedings against motor carriers to suspend and revoke their permits and authorities when they do not have currently effective proof of insurance or surety coverage on file with the Commission. Ms. Condra assisted with initiating this proceeding against Respondents because the Commission received notice from each of the Respondents' insurance or surety carriers of the imminent cancellation of their insurance or surety coverage. *See* Hearing Exhibits 2A and 2B.

5. The Complaints<sup>3</sup> against each of the Respondents in this proceeding allege that the Commission received notice from the Respondents' insurance or surety carriers that the Respondents' insurance or surety coverage has been or will be cancelled, as specifically identified

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<sup>2</sup> Before taking evidence, the ALJ suggested that Respondents take a moment to check their e-mail in order to access Hearing Exhibits 1 through 5, which Staff served on them by e-mail on July 7, 2020. During the hearing, each exhibit was presented electronically and displayed on the video-conference screen for viewing. The ALJ took custody of the electronic exhibits as they were presented.

<sup>3</sup> This proceeding involves numerous Respondents against whom the Commission initiated Complaints by sending them each a Complaint. Hearing Exhibit 2A and 2B. Each of those Complaints is assigned a unique "Case No." which specifies the grounds unique to each Respondent. And, each of those case numbers are part of this single proceeding.

in each Complaint; that Respondents' authorities or permits have been or will be summarily suspended as specifically identified in each Complaint; and that a video-conference hearing will be held on July 8, 2020 to determine whether Respondents' permits or authorities should be permanently revoked. *Id.* With each Complaint, Staff included instructions for attending the hearing by video-conference.<sup>4</sup> Hearing Exhibit 3. Hearing Exhibit 3 includes the link that Respondents must use to attend the hearing by video-conference; the telephone number and access code to join the hearing by telephone; and additional instructions on how to join the meeting by video-conference. *Id.*

6. Ms. Condra explained that the Commission served the Complaints and Attachment A to the Complaints (Hearing Exhibit 3) upon the Respondents by United States mail on June 19, 2020, at the addresses, and upon the persons identified as designated agents for the Respondents, as provided in the Commission's files. Hearing Exhibits 2A, 2B, and 3. Respondents provided the Commission the addresses and identities of their designated agents that were used to serve the Complaints in this proceeding.

7. The Certificate of Service demonstrates that the Commission served the Respondents by mailing the Complaints addressed as indicated in the "Hearing Cycle Listing." Hearing Exhibit 4. The Hearing Cycle Listing referenced in the Certificate of Service is Hearing Exhibit 1. *See* Hearing Exhibit 1 and 4. Hearing Exhibit 1 is the list of the Respondents, their designated agents, and addresses as on file with the Commission as of June 19, 2020, whose insurance or surety faced imminent termination or were already terminated. *See also* Hearing Exhibits 2A and 2B.

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<sup>4</sup> References to the Complaint(s) herein include the Complaint(s) and Attachment A to the Complaint(s), which are Hearing Exhibits 2A, 2B, and 3.

8. Ms. Condra also explained that on July 7, 2020, Staff's counsel served Hearing Exhibits 1 through 5 upon Respondents at the e-mail addresses on file with the Commission for each of the Respondents, and that Respondents provided those e-mail addresses.

9. Also on July 7, 2020, Ms. Condra searched Commission records to determine whether any motor carriers in Hearing Exhibit 1 had come into compliance with their financial responsibility requirements since the Complaints were sent on June 19, 2020. Many Respondents, including several who appeared at the hearing, came into compliance since the Complaints were issued. Ms. Condra generated a new list of Respondents who were out of compliance as of July 7, 2020; Hearing Exhibit 5 is that list.

10. On the morning of the hearing, July 8, 2020, Ms. Condra again searched Commission records to determine whether any Respondents on Hearing Exhibit 5 had come into compliance since she generated Hearing Exhibit 5 on July 7, 2020, or whether any Respondents should be dismissed from this proceeding for other reasons. Based on that search, she determined that Complaints against eight Respondents listed on Hearing Exhibit 5 should be dismissed. Specifically, Ms. Condra requested that the Complaints against the following Respondents listed on Hearing Exhibit 5 be dismissed because they have come into compliance with their financial responsibility obligations: Joy Limousine/Car Service LLC's Permit No. LL-02225 (Case No. 11254-INS); Amazing Moves, Moving and Storage, LLC's Permit No. HHG-00102 (Case No. 11114-INS); XMEN LLC's Permit No. LL-03297 (Case No. 11211-INS); Iron Buffalo Holdings Inc., doing business as JECO's Permit No T-05007 (Case No.11195-INS); E & I Colorado LLC's Permit No. LL-03036 (Case No. 11098-INS); Monarch Towing LLC's Permit No. T-04615 (Case No.11091-INS); and Discover Longmont Tours, doing business as Discovery Longmont and Discover Longmont Tours's Permit No. 55932 (Case No. 11147-INS).

11. Ms. Condra also asked that the Complaint against Satori's Permit No. 55949 (Case No. 11155-INS) be dismissed because Satori recently filed an application to suspend that permit. Staff does not wish to dismiss the second Complaint against Satori's Permit No. LL-03560 (Case No. 11239-INS).

12. Ms. Condra also explained that Respondents listed in Hearing Exhibit 5 whose permit are revoked by a recommended decision have 20 days from the date of the recommended decision to file proof of financial responsibility with the Commission before the permit revocation becomes effective. In such circumstances, Complaints against such Respondents are dismissed, and their permits remain active.

13. Other than Respondents that Ms. Condra identified, Staff requests that the Commission revoke the permits and authorities of Respondents listed in Hearing Exhibit 5.

#### **D. Respondents' Evidence**

14. Throughout the course of the hearing, many Respondents asked whether they could suspend or cancel their permits or authorities in order avoid revocation. Respondents' testimony followed a general theme: they have been unable to operate due to COVID-19, and as a result, cannot afford to pay for the Commission-required insurance, but they do not wish to have their permits revoked.

15. Shemelah Alemayehu testified on behalf of Southwest, who owns luxury limousine Permit No. LL-02210. *See* Hearing Exhibit 5 at 18. Shemelah Alemayehu testified that Southwest follows all of the Commission's rules, but that because of the pandemic, all customers are staying home. As a result, Southwest placed its Commission-required insurance on hold until August 2020. Shemelah Alemayehu spoke with Commission Staff to ask for Southwest's permit also be put on

hold, and followed-up on June 2, 2020, by faxing a form to the Commission asking for the permit to be cancelled. That form was not presented as evidence.

16. Mr. Mikiyas Girma testified on behalf of Royalty, who owns luxury limousine Permit No. LL-02233. He testified that Royalty is currently not operating due to the ongoing pandemic circumstances, but that he is not terminating the business. Based on the pandemic and the fact that he is not operating his business, he had the insurance company put Royalty's Commission-required insurance on hold. He has a different kind of insurance, "comprehensive insurance" for Royalty's vehicle. Mr. Girma testified that he has proof of his comprehensive insurance and does not understand why his comprehensive insurance is not good enough to avoid having his permit revoked given the unique circumstances. He testified that running the business puts him at risk because it involves contact with the public, and that he has a preexisting condition that puts him at more risk. He believes it is unfair for his permit to be revoked under the circumstances. He also testified that he contacted Commission Staff by email to tell Staff that he has comprehensive insurance, and that he attempted to reach Staff by telephone, but received no response. He is disturbed that only the insurance company may file proof of insurance with the Commission, and that he is not able to do that himself, but he repeatedly testified that he does not have in effect the specific insurance which the Commission requires for Royalty.<sup>5</sup>

17. Mr. Zoltan Keszthelyi testified on behalf of Mile High, who owns luxury limousine Permit No. LL-02416. He testified that Mile High's insurance company sent the required proof of

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<sup>5</sup> After the evidentiary portion of the hearing was closed, Mr. Girma made a statement that the ALJ construed as a closing argument. He argued that he was not given the opportunity to present proof of the comprehensive insurance that he continues to maintain for his company and again stated that the comprehensive insurance which his company has is not the Commission-required insurance. The ALJ declined to reopen the evidentiary record. The ALJ takes Mr. Girma's testimony that Royalty has comprehensive insurance at face value; but since it is undisputed that Royalty's comprehensive insurance does not meet the Commission's financial responsibility requirements, the fact that Royalty has comprehensive insurance does not change the outcome of this proceeding.



insurance to the Commission on the morning of the hearing. He did not know when it was sent, and testified that it is possible that it may have been sent while the hearing was taking place. Mile High's insurance company sent him an email confirming that the insurance was sent to the Commission.<sup>6</sup> Based on all of this, Mr. Keszthelyi asked that Mile High's permit not be revoked.

18. Mr. Gemechu Said testified on behalf of Gemechu LLC, who owns luxury limousine Permit No. LL-03558. He explained that for two months after the pandemic began, he continued to pay \$556 a month to maintain the Commission-required insurance. Mr. Said did so with the hope that the city would open up and the pandemic would go away. It did not. He was not able to get any business, and could no longer afford to pay \$556 a month to maintain the Commission-required insurance. He contacted the insurance company about this, and arranged for the insurance company to provide "comprehensive" insurance instead of the Commission-required insurance. The insurance company told Mr. Gemechu that the Commission-required insurance can be reinstated when Gemechu LLC is able to get back to work. Mr. Said testified that he attempted to find out how he could suspend his permit to avoid having it revoked, but was not able to find information on this. He is waiting for the pandemic to be over so that Gemechu LLC can get back to work, and then he will have the Commission-required insurance reinstated. He asked that Gemechu LLC's permit be suspended, and not revoked.

19. Mr. Abdeltif Kaciri testified on behalf of Dia, which owns luxury limousine Permit No. LL-01502. He explained that he is in the same situation as many other Respondents who testified. Because of the pandemic, Dia had no business, and as a result, he could not afford to maintain the Commission-required insurance. Mr. Kaciri had Dia's Commission-required insurance placed on hold because it did not make sense to pay for that insurance while Dia's

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<sup>6</sup> He did not attempt to present this or any other documents into evidence.

vehicles stayed parked in the garage. Dia still has insurance, though it is not the Commission-required insurance; Dia's current insurance insures its vehicle against weather damage and theft. Mr. Kaciri believes the Commission's actions to revoke Dia's permit means the Commission expects motor-carriers to continue to operate, and put themselves at risk for exposure to the COVID-19 virus during the pandemic. He does not believe that Respondents should be punished for not risking their lives to operate during the pandemic. Mr Kaciri left messages for Staff saying that he froze Dia's Commission-required insurance and wants to put Dia's permit on hold, but got no response. Given that Respondents have had no control over the lack of business resulting from the pandemic, Mr. Kaciri believes it is unfair to revoke Respondents' permits.

20. Mr. Dominic Andoh testified on behalf of Cross Limo and Cross Towing. Cross Limo owns luxury limousine Permit No. LL-01119; Cross Towing owns Permit No T-05070. Mr. Andoh's testimony mirrored that of many other Respondents. He explained that both of his companies are facing the same problems as everyone else due to the pandemic. His companies do not have any business and as a result, cannot afford to pay for the Commission-required insurance, but Cross Limo and Cross Towing both have liability insurance. Mr. Andoh plans to cancel Cross Towing's permit, and has called the Commission and left a message about this, but never heard back. He wants to maintain Cross Limo's permit and asks that it not be revoked.

## **II. RELEVANT LAW, FINDINGS, ANALYSIS, AND CONCLUSIONS**

### **A. Relevant Law**

#### **1. Financial Responsibility Requirements and the Commission's Authority to Revoke Permits and Authorities**

21. Generally, motor carriers holding a Commission permit, authority, or certificate must maintain and file evidence of financial responsibility with the Commission in such sum, for such protection, and in such form as the Commission deems necessary to adequately safeguard the

public interest. § 40-10.1-107(1), C.R.S. (2019); Rule 6008 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6. Motor carriers must ensure their insurance or surety coverage is kept continuously effective during the life of a certificate or permit to operate. § 40-10.1-107(3), C.R.S. Commission Rule 6008 identifies the amount, type of protection, and form for the insurance or surety coverage that motor carriers must maintain at all times in order to safeguard the public interest.

22. Specifically, motor carriers must obtain and keep motor vehicle liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I), 4 CCR 723-6. In addition to motor vehicle liability coverage, towing carriers and household goods movers must maintain and keep cargo liability insurance or surety bond coverage in force at all times. Rule 6008(a)(I) and (III), 4 CCR 723-6. Towing carriers must obtain and keep worker's compensation insurance in force at all times; and towing carriers providing storage must obtain and keep garage keeper's liability insurance in force at all times. Rule 6008(a)(IV) and (V), 4 CCR 723-6. And, in addition to motor vehicle liability and cargo liability coverage, household good movers must obtain and keep general liability insurance or surety coverage in force at all times. Rule 6008(a)(VI), 4 CCR 723-6.

23. Insurers and sureties must notify the policy or bond holder and the Commission when terminating a policy or bond at least 30 days before the effective date of termination; failing that, termination is not valid. § 40-10.1-107(4), C.R.S. As a result, the Commission receives notice from insurance or surety carriers about imminent policy or bond terminations for motor carriers licensed by the Commission. *Id.*

24. Notice of cancellation from a motor carrier's insurance or surety carrier is evidence that the motor carrier no longer has proof of financial responsibility on file with the Commission. Rule 6008(e), 4 CCR 723-6. Failure to have proof of current and effective insurance or surety

coverage on file with the Commission creates a rebuttable presumption that the carrier is in violation of the financial responsibility requirements. *Id.*

25. Section 40-10.1-112(1)(a) and (c), C.R.S., provide that a Commission issued authority or permit may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission at a properly-noticed hearing that the holder of that authority or permit has violated Article 10.1, Title 40 of the Colorado Revised Statutes, or any applicable Commission rule. Rules 6009 and 6011 also provide the Commission specific authority to revoke a permit or authority in the circumstances here. 4 CCR 723-6.

## **2. Notice and Service Requirements**

26. The Commission must provide Respondents with notice of the Complaints against them, including sufficient facts to adequately advise Respondents of the relief sought and how they are alleged to have violated the law, as well as the time affixed for a hearing on the Complaints. §§ 40-10.1-112(1) and 40-6-108, C.R.S.; Rule 1302(h), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure; *see also* § 24-4-105(2), C.R.S. Such notice must be served upon the Respondents, which may be accomplished by mail. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), 4 CCR 723-1; *see also* § 24-4-104(10), C.R.S.

27. Regulated motor carriers must provide the Commission "its designation of the name, mailing address, and physical address of a Person upon whom service may be made of any lawful notice, order, process, or demand." Rule 6006(a), 4 CCR 723-6. That person is the motor carrier's designated agent upon whom the Commission may serve complaints and other notices. *Id.*; Rule 1205(a) and (d), 4 CCR 723-1. And, regulated motor carriers are responsible for updating the Commission on changes to their designated agent, including the agent's mailing and email addresses, within two days of the change. Rule 6006(b), 4 CCR 723-6. Service on a motor carrier's

designated agent on file with the Commission is service upon the carrier and is “prima facie evidence” that the carrier received notice. Rule 6006(c) and (d), 4 CCR 723-6. A certificate of service issued by the Commission’s Director is *prima facie* evidence that service has been obtained. § 40-6-108(3), C.R.S.

28. In addition, Commission Rule 1205(a), 4 CCR 723-1 requires that a person filing any pleading or other document with the Commission must serve all other parties; the same rule allows parties to serve pleadings and documents by e-mail.

### **3. Burden of Proof**

29. Staff carries the burden of proof by a preponderance of the evidence to demonstrate that the Complaints’ allegations are true and that the Complaints were properly served on each of the Respondents. § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, tips in favor of that party. *Schocke v. State, Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

### **B. Findings, Analysis, and Conclusions.**

30. To start, the ALJ grants Staff’s requests to dismiss the Complaints against the following Respondents listed in Hearing Exhibit 5 for having come into compliance with their financial responsibility obligations since the Complaints were issued: Joy Limousine/Car Service LLC’s Permit No. LL-02225 (Case No. 11254-INS); Amazing Moves, Moving and Storage, LLC’s Permit No. HHG-00102 (Case No. 11114-INS); XMEN LLC’s Permit No. LL-03297 (Case No. 11211-INS); Iron Buffalo Holdings Inc., doing business as JECO’s Permit No T-05007 (Case

No.11195-INS); E & I Colorado LLC's Permit No. LL-03036 (Case No. 11098-INS); Monarch Towing LLC's Permit No. T-04615 (Case No.11091-INS); and Discover Longmont Tours, doing business as Discovery Longmont and Discover Longmont Tours's Permit No. 55932 (Case No. 11147-INS).

31. The ALJ also grants Staff's request to dismiss the Complaint against Satori's Permit No. 55949 (Case No. 11155-INS) based on its pending application to suspend that permit. The Complaint against Satori's Permit No. LL-03560 (Case No. 11239-INS), is not dismissed.

32. The ALJ finds that the Complaints were served on Respondents listed in Hearing Exhibit 5 by United States mail at the most recent addresses and upon the designated agents on file with the Commission, and that Respondents provided the information used for service. *See* Hearing Exhibits 1 - 5. The ALJ concludes that Staff demonstrated by a preponderance of the evidence that it properly served the Complaints upon each of the Respondents listed in Hearing Exhibit 5. § 40-6-108(3), C.R.S.; Rule 1205(a) and (d), and Rule 1302(g)(II)(e), 4 CCR 723-1; and Rule 6006(a) and (c), 4 CCR 723-6.

33. The ALJ finds that the Complaints comply with the relevant notice requirements because they: (a) inform Respondents that the Commission has received insurance or surety cancellation notices for each Respondent and the effective date of such cancellation; (b) advise Respondents that their authorities or permits are summarily suspended as of the coverage cancellation date; (c) notify Respondents that they may not conduct operations under their authorities or permits after the coverage cancellation and summary suspension date; (d) inform Respondents that the Commission has initiated a proceeding to permanently revoke their permits or authorities for failing to maintain and provide proof of effective insurance or surety coverage; (e) notify Respondents of the date, time, and means to attend the remote hearing on the Complaints

at which Respondents have an opportunity to present data, views, and arguments; and (f) advise Respondents of the legal authority for the Complaints and relief sought. Hearing Exhibits 2A, 2B and 3; Rule 6009(e), 4 CCR 723-6; *see* § 40-6-108, C.R.S.

34. As to service of Hearing Exhibits 1 to 5, Staff's list of e-mail addresses for Respondents that were served does not connect the e-mail addresses used for service with the name of the Respondents that were served. Notice; Exhibit A to Notice. Instead, it lists permit or authority numbers alongside Respondents' email addresses. The permit and authority numbers in Exhibit A to the Notice match permit and authority numbers listed for Respondents in Hearing Exhibit 5. Staff's approach unnecessarily complicates matters because it cannot be determined based on the Notice and Exhibit A to the Notice alone which Respondents were served. Only upon comparing the permit and authority numbers listed in Exhibit A to the Notice to permit and authority numbers in Hearing Exhibit 5 may one identify the Respondents who were served. In the future, Staff should take care to identify the *Respondents* who were served.

35. Nonetheless, the ALJ concludes that Staff properly served Hearing Exhibits 1 to 5 on Respondents listed in Hearing Exhibit 5 by e-mail at the e-mail addresses which Respondents provided. As such, Respondents had the opportunity to review those exhibits before or during the hearing. *See* Rule 1205(a), 4 CCR 723-1; Notice and Exhibit A to Notice; Hearing Exhibit 5.

36. The ALJ concludes that Staff established by a preponderance of the evidence that the Commission received notice from the insurance or surety providers for the motor carriers identified in Hearing Exhibit 5 that their insurance or surety coverage was or will be cancelled or terminated. This creates the rebuttable presumption that the relevant Respondent carriers are in violation of their respective financial responsibility requirements. Rule 6008(e), 4 CCR 723-6.

37. With the exception of Mile High and the Respondents identified in ¶ 35 above, the evidence was undisputed that the Respondents listed in Hearing Exhibit 5 remain out of compliance with their respective financial responsibility requirements as required by § 40-10.1-107(1), C.R.S. and Commission Rule 6008. Indeed, except for Mile High, the Respondents who testified stated that they either allowed their Commission-required insurance to lapse or worked with their insurance or surety providers to place that insurance on hold. Most of those Respondents testified that they maintain other types of insurance, such as comprehensive or liability insurance, but none asserted that their comprehensive or liability insurance meets their respective financial responsibility requirements under § 40-10.1-107(1), C.R.S. and Commission Rule 6008.

38. As to Mile High, Mr. Keszthelyi testified the required proof of insurance was sent to the Commission on the morning of the hearing and that it is possible that it may have been sent during the hearing. While the ALJ finds this testimony credible, neither the law, nor the preponderance of the evidence weigh in Mile High's favor. Mile High did not provide documents showing that it has the required insurance, or that its insurance company filed that proof of insurance with the Commission. As such, the ALJ concludes that Mile High failed to overcome the rebuttable presumption that as of the July 8, 2020 hearing, it was in violation of its financial responsibility obligations under Rule 6008, 4 CCR 723-6.

39. For the foregoing reasons, except for the Respondents discussed in ¶ 35, the ALJ concludes that Staff established by a preponderance of the evidence that the Commission's records do not show a currently effective level of financial responsibility in such form and in such manner as required by § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6, for the Respondents identified in Hearing Exhibit 5 as of the July 8, 2020 hearing. As a result, Staff met its burden to show by a preponderance of the evidence that the allegations in the Complaints are true as to the Respondents



listed in Hearing Exhibit 5, except for the Respondents discussed in ¶ 35. Hearing Exhibit 5 is attached to this Decision as Appendix A.

40. Many Respondents were frustrated that Staff sought to revoke their permits or authorities given that they have been largely unable to operate their motor carrier businesses due to the COVID-19 pandemic. They believe it is unfair to revoke their permits or to force them to maintain expensive insurance under the circumstances. As mentioned, many Respondents asked whether they could cancel or suspend their permits to avoid revocation. And, some Respondents viewed the Complaints against them as an effort to force them to operate, thereby risking contracting the COVID-19 virus. But, the Complaints do not allege that Respondents must operate, nor do the Complaints attempt to force Respondents to operate. Hearing Exhibits 2A and 2B. Instead, the Complaints aim to do just the opposite: prevent Respondents from operating without current and effective insurance or surety required by law. *Id.*

41. The ALJ does not question Respondents' testimony as to the difficult circumstances that COVID-19 has placed on them; and the ALJ sympathizes with them. This, unfortunately, does not change the fact that the Commission remains legally obligated to fulfill its important and statutorily-mandated duty to the public to guarantee that motor carriers who hold an active authority or permit from the Commission have effective insurance as required by law. Indeed, the statute and rules creating both the Commission's and Respondents' legal obligations relating to insurance requirements remain in full force and effect; none have been suspended or modified by executive order, or the legislature. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6; *see* § 24-33.5-701, *et seq.* (authorizing Governor to temporarily suspend statutes); *see e.g.*, Executive Order D 2020-011 (suspending certain regulatory statutes due to presence of COVID-19 disease in Colorado).

42. The Commission's only means of performing its important health and safety function is to have documentation of Respondents' current and effective insurance or surety furnished in a uniform format to the Commission. The holder of the authority is responsible for ensuring that document is provided to the Commission. § 40-10.1-107, C.R.S., and Rule 6008, 4 CCR 723-6. Except as otherwise stated, the Respondents listed in Hearing Exhibit 5 have failed to do so. For that reason, their authorities and permits should be revoked.

43. As mentioned, many Respondents asked whether they could they could suspend or cancel their permits or authorities to avoid having them revoked. The Commission allows limited regulation carriers (which includes luxury limousine carriers),<sup>7</sup> household goods movers, towing carriers, and hazardous materials carriers to submit a form to cancel their permits or authorities. Given the difficult circumstances that COVID-19 has created, this Decision allows such carriers to take advantage of that process if they wish to avoid having their permits or authorities revoked. Specifically, the ALJ is recommending dismissal of Complaints against Respondents who submit a request to cancel their permits or authorities to the Commission before the effective date of this Recommended Decision. Limited regulation carriers, household goods movers, towing carriers, and hazardous materials carrier-Respondents may obtain a permit cancellation form at: [https://drive.google.com/file/d/0B3u7jb\\_duOQ2QWlrMFlvUDJoNjQ/view?.authuser=0](https://drive.google.com/file/d/0B3u7jb_duOQ2QWlrMFlvUDJoNjQ/view?.authuser=0).

44. But even if such Respondents fail to cancel their permits or authorities before the effective date of this Decision, this does not mean that their businesses are permanently terminated. Generally, Commission rules allow many types of motor carriers, including luxury limousine, household goods movers, and towing carriers, to obtain new permits without difficulty. For the

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<sup>7</sup> Limited regulation carriers are defined as carriers who provide transportation service by charter bus, children's activity bus, fire crew transport, luxury limousine, Medicaid client transport or off-road scenic charter. Rule 6001(qq), 4 CCR 723-6

most part, such permits may be obtained by completing an application that can be submitted to the Commission on-line, providing related supporting information and proof of financial responsibility, and paying a fee.<sup>8</sup> Rule 6302 (luxury limousine application and permit); Rule 6503 (towing carrier application and permit); Rule 6603 (household goods mover carrier application and permit). Applications for a luxury limousine, towing, or household goods mover permits are available at the following link: <https://doraapps.state.co.us/puc/TransportationApplications/>.

45. Fully regulated intrastate carriers, such as common carriers who operate a shuttle service, sightseeing service, charter service, taxicab service, and contract carriers may submit an application to suspend their authority under Rule 6205, 4 CCR 723-6 to avoid having their permits revoked. Indeed, Staff requested that a Complaint against Satori's common carrier permit be dismissed because Satori filed an application to suspend its permit. The ALJ granted that request. Given the unique circumstances that COVID-19 has created, the ALJ is recommending dismissal of Complaints against fully regulated intrastate carriers who file an application to suspend their authority before the effective date of this Recommended Decision.

46. The Application form to suspend a common carrier authority is available at: [https://drive.google.com/file/d/0B3u7jb\\_duOQ2dXZ0UTNIXzBvRIU/view](https://drive.google.com/file/d/0B3u7jb_duOQ2dXZ0UTNIXzBvRIU/view). The Application form to suspend a contract carrier authority is available at: [https://drive.google.com/file/d/0B3u7jb\\_duOQ2U2JQS2dvek5HWm8/view](https://drive.google.com/file/d/0B3u7jb_duOQ2U2JQS2dvek5HWm8/view). Applications to suspend may be submitted to the Commission by United States mail, and through the

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<sup>8</sup> Carriers concerned about their ability to comply with application requirements may request that the Commission waive an application requirement, per Rule 1003(a), 4CCR 723-1. That rule allows parties to request a waiver of a Commission rule; in deciding whether to waive a rule, the Commission may consider hardship, equity, or more effective implementation of a rule on an individual basis. 4 CCR 723-1. Such requests are decided on an individual and case by case basis and are outside the scope of this proceeding. *See* Rule 1003(a), 4 CCR 723-1.

Commission's free E-Filing System. Carriers may register to use the Commission's free E-filing System at: <https://www.dora.state.co.us/pls/efi/EFI.register>.

47. Finally, as provided below, Complaints against carriers who come into compliance with their financial responsibility requirements before the effective date of this Decision will be dismissed, and their permits will not be revoked.

48. As explained during the hearing, and provided below, this Recommended Decision will not become effective for 20 days after the date the Decision is mailed, and only then, if no party appeals this Decision by filing exceptions. This allows ample time for Respondents to take action to avoid a final Commission decision revoking their permits or authorities.

49. Pursuant to § 40-6-109, C.R.S., the ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission.

### **III. ORDER**

#### **A. The Commission Orders That:**

50. The Complaints against Joy Limousine/Car Service LLC's Permit No. LL-02225 (Case No. 11254-INS); Amazing Moves, Moving and Storage, LLC's Permit No. HHG-00102 (Case No. 11114-INS); XMEN LLC's Permit No. LL-03297 (Case No. 11211-INS); Iron Buffalo Holdings Inc., doing business as JECO's Permit No T-05007 (Case No.11195-INS); E & I Colorado LLC's Permit No. LL-03036 (Case No. 11098-INS); Monarch Towing LLC's Permit No. T-04615 (Case No.11091-INS); and Discover Longmont Tours, doing business as Discovery Longmont and Discover Longmont Tours's Permit No. 55932 (Case No. 11147-INS) are dismissed for having come into compliance with their financial responsibility obligations.

51. The Complaint against Satori Tours LLC's Permit No. 55949 (Case No. 11155-INS) is dismissed based on its pending application to suspend that permit.

52. Except as provided above, the authorities or permits listed in Appendix A and attached hereto are revoked as of the effective date of this Recommended Decision.

53. Ordering Paragraph No. 3 will be void and the case dismissed as to any Respondent who takes one of the following actions before the effective date of this Recommended Decision: (a) files the required Certificate of Insurance or surety with the Commission; (b) files an Application to Suspend their permit or authority with the Commission; or (c) submits a permit cancellation form to the Commission.

54. Proceeding No. 20C-0264-INS is closed.

55. This Recommended Decision will 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.

56. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision will 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 will 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.

8. If exceptions to this Decision are filed, they may not exceed 30 pages in length, unless the Commission finds good cause and permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director