

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO
PROCEEDING NO. 20G-0370CP

Civil Penalty Assessment Notice: 126663-CPAN

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

HERMOSA TOURS, LLC,

Respondent.

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (hereinafter “Staff”) and Respondent Hermosa Tours, LLC (hereinafter “Hermosa”) (collectively the Parties, and individually, Party) enter into this Stipulation and Settlement Agreement (hereinafter “Settlement Agreement”) for the above-referenced proceeding as a complete and final resolution of all issues that were or could have been raised in any of the proceedings.

RECITALS AND PROCEEDING BACKGROUND

1. Matthew McFee is the owner of Hermosa Tours, LLC and has authority to enter into this Joint Stipulation and Settlement Agreement on its behalf.
2. This Settlement Agreement contemplates the full and final resolution and dismissal of the pending action by Staff against Hermosa. The Settlement

EXHIBIT

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Agreement resolves Proceeding Number 20G-0370CP, involving one Civil Penalty and Assessment Notice Number 126663 (hereinafter “CPAN”).

3. Staff issued the CPAN on September 1, 2020 and served it on Hermosa on September 3, 2020.

4. The CPAN alleges two violations. Count one of the CPAN alleges a violation of section 40-10.1-107, C.R.S., for failure to maintain and file evidence of financial responsibility in sums as required by the Public Utilities Commission. Count two alleges a violation of section 40-10.1-201(1), C.R.S., for operating or offering to operate as a common carrier in intrastate commerce without a certificate of public convenience and necessity from the Public Utilities Commission.

5. The CPAN provides that the civil penalty assessed for the first violation is \$11,000.00, with a fifteen percent surcharge of \$1,650.00, for a total penalty of \$12,650.00. The civil penalty for the second violation is \$1,100.00, with a fifteen percent surcharge of \$165.00, for a total penalty of \$1,265.00. The total amount of the CPAN penalty is \$13,915.00. The CPAN further provides that if the CPAN is paid within 10 calendar days of its receipt, the civil penalty violation is reduced to \$6,957.50.

SETTLEMENT AND AGREEMENT

6. The Parties have reached a settlement in this matter. Hermosa has agreed to apply for a certificate of public convenience and necessity permit from the commission in exchange for Staff’s dismissal of the proceeding and CPAN.

7. 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:

- i. Staff will agree to dismiss Proceeding Number 20G-370CP for CPAN 126663.
- ii. Staff will agree to issue a warning violation letter in lieu of pursuing this matter at an administrative hearing.
- iii. Staff will agree to consider the following mitigating factors:
 - a) Hermosa cooperated with Staff's investigation and promptly responded to its requests for information.
 - b) Hermosa cooperated with the settlement process and provided the necessary information to Staff to accomplish the settlement.
 - c) Hermosa has informed Staff that the penalty imposed in CPAN would cause irreparable harm to its business, including requiring it to cease all business operations and lay off several employees.

B. Performance by Hermosa:

- i. Hermosa will apply for a certificate of public convenience and necessity, and if issued a permit, comply with all requirements of section 40-10.1-107, C.R.S. and section 40-10.1-201(1), C.R.S.
- ii. Hermosa will agree to apply for the certificate described in Paragraph 6(B)(i) by January 15, 2021.
- iii. If Hermosa is unsuccessful in getting the certificate described in Paragraph 6(B)(i), it will not advertise, offer to perform, agree to perform, or perform the services of a common carrier and for which a permit is required under section 40-10.1-201(1), C.R.S.

8. This Settlement Agreement has been reached in the spirit of compromise and to avoid the uncertainties of a hearing and the costly expense of litigation.

9. 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.

10. This Settlement Agreement serves the public interest because it requires the Respondent to apply for a certificate of public convenience and necessity and to comply with the statutes which apply to common carriers. It also allows Hermosa to remain in business and to continue to operate, pay its employees, and survive during the COVID-19 pandemic.

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

12. 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.

13. The Respondent's failure to make the required settlement payment and to complete obligations described in Paragraph 6(B) of the Settlement Agreement shall be deemed as a waiver by the Respondent of any rights and all rights to file exceptions, as well as a request for rehearing, reargument, and reconsideration, or to file any other form of the appeal.

14. 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 (7) days of such order. In this event, this Settlement Agreement Shall be void and this matter set for hearing.

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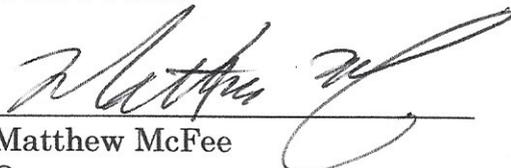
DATED this ____ day of November, 2020.

STAFF OF THE COLORADO PUBLIC UTILITIES COMMISSION

By: Lloyd E. Swint
Digitally signed by Lloyd E. Swint
DN: cn=Lloyd E. Swint, o,
ou=Transportation Supervisor,
email=lloyd.swint@state.co.us, c=US
Date: 2020.11.20 15:45:33 -07'00'
Lloyd Swint, Criminal Investigator II
Transportation Staff
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, CO 80202

DATED this 20 day of November, 2020.

HERMOSA TOURS

By: 
Matthew McFee
Owner
Hermosa Tours, LLC
10 Town Plaza, #243
Durango, CO 81301

Approved as to form:

PHILIP J. WEISER
Attorney General

By: Heather Whitman
Digitally signed by Heather
Whitman
Date: 2020.11.20 15:58:56
-07'00'
Heather W. Whitman, #31909
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