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<tr><td>DISTRICT COURT, GRAND COUNTY, COLORADO
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<tr><td>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

v.

Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; AND GR TERRA LLC.</td></tr>
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Div.: 1</td></tr>
<tr><td colspan="2">GRANBY RANCH METROPOLITAN DISTRICT'S RESPONSE TO HEADWATERS' MOTION FOR AWARD OF DAMAGES</td></tr>
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Plaintiff, Granby Ranch Metropolitan District ("GRMD"), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits its Response to Headwaters' Motion for Award of Damages, and states, as follows:

I. INTRODUCTION[1]

Headwaters cannot demonstrate that its claim for attorney fees and costs is reasonable or appropriate under Colorado law. Headwaters made the unusual decision not to provide its invoices to the Court. Why it did so is not clear. What is clear is that without the actual invoices identifying the work performed, the Court cannot determine the need for or reasonableness of the requested attorney fees or costs. And to be sure, based on the limited information presented (essentially just totals by timekeeper or category of cost), Headwaters' request is unreasonable. It makes no attempt to show how its claim relates to the breach of the Exclusion Agreement. Its claim is replete with errors and shortcomings: it claims compensation for time entries that it redacted, often in full; it overstaffed the litigation, making it top heavy and needlessly expensive; it engaged in widespread block billing, a widely criticized practice; it failed to mitigate its damages, continuing to bill even after the Court ruled against GRMD, foreclosing any claim of further interference with Headwaters' development; and it included bills for GR Terra in its claim for its fees.

The question at issue is straightforward: what reasonable amount of attorney fees and costs was caused by the breach of the Exclusion Agreement? By making the tactical decision not to provide the invoices, Headwaters has made it impossible for the Court to answer these questions. Instead, Headwaters asks the Court to determine, based solely on vague descriptions, that more than 3,100 hours of work (Headwaters claims 1,571.60 hours, and further claims that the same amount of time was spent on behalf of GR Terra) were required to respond to GRMD's claims

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[1] Headwaters violated C.R.C.P. 121(c) § 1-15(1)(a) (setting 15 page limit). This is improper, GRMD objects, and proper action should be taken. However, to avoid multiplying the issues before the Court, rather than filing a motion to strike, GRMD defers to the Court as to the proper remedy.

under the LPA—even though these claims were resolved two years ago.

This is unreasonable. Headwaters' claim should be denied in full, or, in the alternative, should be significantly reduced far below what is claimed.

II. RELEVANT LEGAL STANDARDS

A. The Claiming Party Must Prove Its Damages.

It is axiomatic that a party claiming breach of contract damages must prove its damages, proving that the breach caused the claimed damages. *Ute Water Conservancy Dist. v. Fontanari*, 2022 COA 125M, ¶ 38. The claiming party must "provide the fact finder with a reasonable basis for calculating actual damages in accordance with the relevant measure." *Saturn Sys. v. Militare*, 252 P.3d 516, 529 (Colo. App. 2011). If they fail to carry their burden of proof, the claim is subject to dismissal. *City of Westminster v. Centric-Jones Constructors*, 100 P.3d 472, 477 (Colo. App. 2003) (moving party must provide "evidence of both the existence and the cause of damages" to survive motion for directed verdict on existence of actual damages).

A damage award cannot be based on speculation or conjecture. *Logixx Automation v. Lawrence Michels Family Tr.*, 56 P.3d 1224, 1227 (Colo. App. 2002). Where a party fails to connect the breach to the damages claimed, leaving the factfinder to speculate what portion of damages resulted from the breach, denial is proper. *City of Westminster*, 100 P.3d at 481 (further stating "although the plaintiff was at fault for some of the delay [damages], it combined all of the defendant's alleged breaches "without in any way attempting to relate any specific damage items to any particular breach" (*quoting Boyajian v. US*, 423 F.2d 1231, 1241 (Ct. Cl. 1970))). And, where a party fails to limit or mitigate its damages, such damages are not recoverable. *Tech. Comput. Servs., Inc. v. Buckley*, 844 P.2d 1249, 1255 (Colo. App. 1992)

B. A Party Claiming Attorney Fees Must Meet Its Burden of Proof to Demonstrate That the Requested Fees Are Reasonable.

The party requesting fees has the burden of proof to demonstrate entitlement to a fee award. *Bd. of Cty. Comm'rs v. Auslaender*, 745 P.2d 999, 1001 (Colo. 1987). It is the moving party's "burden to prove and establish the reasonableness of each dollar, each hour, above zero." *Payan v. Nash Finch Co.*, 2012 COA 135M, ¶ 34. Any award of attorney fees must be reasonable. Colo. R. Prof'l Conduct 1.5(a)[2] (requiring same for fees and costs); *Spensieri v. Farmers All. Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. App. 1990). This remains true even where a fee-shifting provision is silent as to reasonableness or even provides for an award of all fees. *S. Colo. Orthopaedic Clinic Sports Med. & Arthritis Surgeons, P.C. v. Weinstein*, 2014 COA 171, ¶¶ 11-17. The court must make findings supporting its conclusions regarding the appropriateness of and the reasonableness of attorney fees. *Colo. Republican Party v. Benefield*, 337 P.3d 1199, 1209 (Colo. App. 2011)

The "initial estimate" of reasonable attorney fees is reached by calculating the lodestar amount, that is "the number of hours reasonably expended multiplied by a reasonable hourly rate[.]" *Tallitsch v. Child Support Servs.*, 926 P.2d 143, 147 (Colo. App. 1996). This may be adjusted, up or down, and hours that are not reasonably expended are to be excluded from the initial estimate. *Payan*, 2012 COA 135M, ¶ 22. During this analysis, certain practices call a party's claim into question and should be considered by the court. The application of billing judgment is required, *Tallitsch*, 926 P.2d 143, block billing is discouraged and is largely improper, *Crow v.*

[2] Rule 1.5(a), Colo. R. Prof'l Conduct, provides factors relevant to assessing an attorney fee's reasonableness. However, given that Headwaters has primarily relied on the lodestar analysis for its claim (and it does not argue that its claimed fees should be increased based on these factors), as Mr. Bronesky discusses, the primary considerations here are the presence of factors recognized in Colorado caselaw that merit reducing the hours to arrive at a number that is actually reasonable.

Penrose St. Francis Healthcare Sys., 262 P.3d 991, 1000 (Colo. App. 2011), entries without adequate descriptions cannot be assessed for reasonableness, *In re Green*, 11 P.3d 1078 (Colo. 2000). Again, it is the moving party's burden to justify its claim, "it is not the court's burden to justify each dollar or hour deducted from the total submitted by counsel." *Payan*, 2012 COA 135M, ¶ 34.

C. Costs Must Be Necessary and Reasonable.

The party seeking an award of costs has the burden of proof to demonstrate that each item of requested costs is recoverable. *Valentine v. Mt. States Mut. Cas. Co.*, 252 P.3d 1182, 1187 (Colo. App. 2011). In order to be recoverable, costs must be *both* necessary *and* reasonable. *See Danko v. Conyers*, 2018 COA 14, ¶ 71. That is, the expense must be necessarily incurred by reason of the litigation and for the proper preparation for trial, *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407, 412 (Colo. App. 2009), and must be reasonable, *Gomez v. Walker*, 2023 COA 79, ¶¶ 36-37. The trial court has the authority to reject unreasonable costs to avoid results that are "manifestly unreasonable and unjust" leading to "untenable result" of an award for costs "which never should have been incurred." *Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901, 910 (Colo. 1993). In ruling on a cost request, the district court must enter findings explaining its decision, including "whether and which costs are deemed reasonable." *Danko*, 2018 COA 14, ¶ 72. Where the court's findings are insufficient, an award is improper. *See Great W. Sugar Co. v. N. Nat. Gas Co.*, 661 P.2d 684, 695 (Colo. App. 1982) (remanding where court made no findings as to reasonableness).

III. ARGUMENT

A. Headwaters' Claim for Attorney Fees and Costs Is Unsupported and Unreasonable and Should Be Denied in Full.

Headwaters, beyond the totals billed by timekeeper and by cost category, has not provided

relevant evidence to the Court regarding its claim. Its argument is, essentially: these total amounts were incurred as fees and costs, we say they are reasonable, therefore we are entitled to them. But that's not true. Based on this limited evidence, the Court cannot properly assess the reasonableness of Headwaters' claim for attorney fees or costs. Mr. Palmeri's argument does not alter this. Why are these amounts reasonable? The evidence presented is insufficient to answer this question.

***Headwaters' claim for attorney fees fails*.** Headwaters fails to provide information for the Court to independently assess and make findings regarding its claim. All it has provided is total hours and amounts by timekeeper and generalized descriptions of case tasks that fail to link those totals to the specific work performed in a way that permits analysis. *See* Motion, at 12 (providing laundry list of case tasks without detail). The claim that a party spent 1600 hours litigating a case at a given rate is not evidence that this number of hours is reasonable. *Ipse dixit* is not evidence.

Asking even basic questions makes this failure evident: What time was spent defending against GRMD's claims? On Headwaters' counterclaim for breach of the Exclusion Agreement? On its *unsuccessful* counterclaims? On its Rule 12(b)(1) and Rule 56 motions? On the limited discovery relevant to those motions? It is impossible to answer these questions with anything other than speculation. Given Headwaters' purposeful choice to avoid giving the Court its invoices, it is impossible to answer these questions, making any reasonableness determination impossible.

Headwaters' claim for costs similarly fails. Costs must be both necessary and reasonable. Simply presenting the totals, by category, is insufficient. The Court cannot assess what services were billed for, why they were *necessary* to the case, or why the amounts paid were *reasonable*. The mere fact that costs were paid is not proof of what is required.

Thus, Headwaters' claim for fees and costs should be rejected in full. The limited evidence

provided simply does not permit the Court to assess the claims and make the required findings.[3]

B. GRMD's Claims Were Resolved on Rule 12(b) in July 2023 – *Two Years Ago*.

In February 2021 GRMD filed suit to protect its rights under the Lease Purchase Agreement. In response to GRMD's amended complaint, Headwaters, GR Terra, and others filed motions to dismiss, which were broadly denied in January 2022. Thereafter, Headwaters and GR Terra answered and counterclaimed, each asserting counterclaims. GRMD again amended, filing a third amended complaint in October 2022, that Headwaters and GR Terra again answered and counterclaimed, now with Headwaters asserting six counterclaims and GR Terra asserting five.[4]

In January 2023 the parties filed competing dispositive motions, with Headwaters and GR Terra filing a renewed C.R.C.P. 12(b)(1) motion to dismiss GRMD's claims for lack of standing and a Rule 56 motion on three of GR Terra's counterclaims. In July 2023, the Court held that the LPA was terminated, quieted title in favor of GR Terra, and dismissed GRMD's claims.

Thus, as of July 2023, all of GRMD's claims had been dismissed, the LPA was determined

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[3] Headwaters provided its invoices to its expert, but it made the tactical decision not to provide them to the Court. Its argument is that the total hours is reasonable, the fees are reasonable, and the fees and costs were paid therefore they are recoverable. Headwaters points to C.R.C.P. 121(c) § 1-22 for the proposition that no specific type of supporting documentation is required. Perhaps. But *sufficient evidence is required*. Rule 121 does not excuse Headwaters from its burden of proof. And with the evidence it did submit, Headwaters cannot meet its burden. If it intended to present evidence of the specific tasks engaged in, it should have done so, and should have presented the unredacted invoices themselves. It failed to do so and cannot now reverse course, and GRMD's discussion of the invoices here does not permit Headwaters to belatedly seek to introduce them.

[4] Headwaters asserted six counterclaims: [1] breach of the Exclusion Agreement; [2] breach of the Letter Agreement and Master IGA Termination; [3] breach of the Waiver and Release Agreement; [4] breach of GRMD's Service Plan; [5] breach of the Second Granby IGA agreement; and [6] declaratory judgment that the LPA was terminated. GR Terra asserted five counterclaims: [1] and [2]: declaratory judgment that the LPA was or is terminated; [3] quiet title; [4] breach of GRMD's Service Plan; and [5] breach of the Waiver and Release Agreement. Of these 11 counterclaims, only one (Headwaters' first) directly regards the Exclusion Agreement.

to have been terminated, and GR Terra had clear title. All that remained in this case was Headwaters' and GR Terra's counterclaims against GRMD. Given that Headwaters asserts it has been damaged *by GRMD's claims* in this case, this is highly relevant. For the last two years, it has been Headwaters' and GR Terra's claims, not GRMD's claims, that have been at issue. In that time, Headwaters billed nearly 350 hours claiming just under $220,000 in fees and more than $10,000 in costs – 25% of both its claimed fees and its claimed costs.

It is also highly relevant that Headwaters had a pending counterclaim for breach of the Exclusion Agreement in January 2023 when it filed other dispositive motions, yet it decided against filing motions on this claim, delaying 18 months (until July 2024) before filing. While Headwaters is entitled to make its own decisions, it cannot shift the costs directly resulting from those decisions on to GRMD. Headwaters prevailed on Rule 12, eliminating GRMD's claims; it then prevailed on Rule 56 after a significant delay. Thus, even though there were numerous claims at issue between the parties and there were numerous, complex agreements relevant to those claims, Headwaters' decisions in this case have magnified the complexity and expense of the case.

C. GRMD Has Obtained and Presents Here an Independent Analysis That Is Highly Critical of Headwaters' Claim.

In order to provide the Court with an analysis of Headwaters' claim—including an examination of the facts underlying its claim—GRMD has asked attorney Joseph Bronesky to review Headwaters' claim, its motion, and the underlying invoices themselves. Declaration of J.J. Bronesky attached and incorporated herein as **Exhibit 1** (attaching his July 3, 2025, Letter and Exhibits 1-12 thereto). Mr. Bronesky is a shareholder and assistant general counsel at Taft Stettinius & Hollister LLP with more than 50 years' experience, including significant experience regarding the analysis of claims for attorney fees. His resume is attached to his Letter and provides

further detail of his extensive experience, education, and qualifications.

In sum, Mr. Bronesky concludes that the Court may reject Headwaters' claim for attorney fees and costs in full given the lack of underlying invoices, or, alternatively, the Court should significantly reduce any award entered in favor of Headwaters. Mr. Bronesky conducted a detailed, *line-by-line* analysis of each of the invoices underlying Headwaters' claim, examining each entry in light of Colorado law, the context of this case and the Court's March 2025 order, and his decades-long experience. In light of his review, Mr. Bronesky concludes that (if the claim is not rejected outright) Headwaters' claim for attorney fees should be reduced to a maximum of $184,745.51. GRMD adopts Mr. Bronesky's analysis and asks that the Court consider and adopt his analysis, with further reductions to Headwaters' claim as discussed below.

D. Headwaters' Claim for Fees Contains Significant Errors and Shortcomings, Requiring (if It Is Not Rejected Outright) That It Be Significantly Discounted.

1. Headwaters failed to show that its fees were caused by the breach of the Exclusion Agreement and therefore they should be significantly reduced.

Headwaters, of the myriad of agreements between the parties, located a single provision in a single agreement that discusses fee-shifting.[5] The whole of the litigation does not relate to the Exclusion Agreement and Headwaters must link its fees and costs to the Exclusion Agreement. Broadly, Headwaters has failed to do so. It simply claims all fees and costs. As discussed by Mr. Bronesky, this is inappropriate, Bronesky Letter, at 9-12, and is both contrary to Colorado law and fails to prove that the requested fees are reasonable. *See City of Westminster*, 100 P.3d at 481; *see*

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[5] GRMD, respecting the Court's ruling, continues to believe that the Exclusion Agreement has a far narrower scope than the Court has determined and does not provide for fee-shifting. Regardless, and as discussed here, Headwaters still must demonstrate that its damages are related to this breach of the Exclusion Agreement.

also Rocky Mt. Festivals, Inc. v. Parsons Corp., 242 P.3d 1067, 1073 (Colo. 2010) (discussing segregation for successful and unsuccessful claims). Headwaters made strategic choices in this case (asserting distinct, aggressive counterclaims, seeking fulsome discovery, delaying filing dispositive motions) that involved work unrelated to defense of GRMD's claims and the Exclusion Agreement and that increased its total fees. Again recall that GRMD's claims were resolved against it two years ago yet 25% of Headwaters' fees were incurred since that ruling. In short, as discussed by Mr. Bronesky and herein, Headwaters has failed to link its claimed damages to the breach, meaning that its claim must be significantly discounted.

Therefore, Headwaters' claim should be reduced as outlined by Mr. Bronesky, removing $325,184.62 from its claim.

2. *Headwaters' assertions regarding GR Terra's invoices call into question its own claims.*

Husch Blackwell represents both Headwaters and GR Terra in this matter, parties who have separate roles in this litigation and who had separate, if overlapping, counterclaims. In its motion, Headwaters asserts that the fees and costs were split between the two entities. Motion at 4, 19 (fees and costs were split evenly between Headwaters and GR Terra "with a few exceptions").

Several concerns flow from this. ***First***, again because Headwaters decided not to provide the invoices to the Court, this claim cannot be verified or examined.[6] All time entries? On all invoices? Were split exactly 50%-50%? Without any change (unless the entry was one of a "few exceptions" related solely to a single client)? "All that same work would have been required if

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[6] To be clear, GRMD is not questioning or attacking counsel. The point is not their professionalism, which is not questioned. The question is: how can the Court verify what is meant by the claimed split and answer the questions posed above.

Husch Blackwell had represented only Headwaters in the case." Motion at 4.

Second, this calls into question Headwaters' claim. It claims it incurred 1,571.60 hours. If this was split evenly, that would mean counsel actually billed on the order of 3,143.20 hours. But this number of hours is unreasonable – *that's more than two full years of attorney work* (assuming 1,500 hours per year billed). Headwaters does not argue that 3,150 hours is reasonable; it argues that 1,571.60 is. But if this is the amount that's reasonable, then that's the amount that should have been split between the two clients. Or, said differently, given that there's no argument that 3,150 hours is reasonable and on its face it appears unreasonable, then that figure must be reduced, necessarily reducing the amount of Headwaters' claim.

Here, GRMD's total hours are a relevant point of comparison. GRMD, through current counsel, expended 1398 hours – which initially appears to be roughly the same number as Headwaters' claim.[7] Decl. of D. Batchelder attached as Exhibit 2. But, Headwaters is saying that counsel really expended 3,150 hours – more than double GRMD's total. And GRMD's figure relates to *all parties*, not just to Headwaters. If GRMD had prevailed and was seeking an award of fees, it would have been rightly required to provide evidence that the claimed work related solely to Headwaters. Thus, even assuming that including all of GRMD's hours can be included in a

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[7] While the time periods vary slightly, the total are relevantly similar for broad comparisons. GRMD's time period runs from July 2022 to April 2025, rather than January 2022 to April 2025. But, as a counterweight, Headwaters' invoices reflect 1706.50 hours, which for the same July 2022 to April 2025 period is 1580.60 hours, which is quite similar.

This raises the related point that Headwaters has claimed 1571.60 hours but its invoices reflect 1706.50 hours. Headwaters fails to identify the reason for this disparity: what time is it not claiming? Because Headwaters has the burden to make its claim and to demonstrate its reasonableness, this failing is Headwaters' and not GRMD's. GRMD is entitled to the full reductions identified by Mr. Bronesky and discussed herein. Headwaters cannot show that it has not claimed these objectionable fees.

comparison with Headwaters' claimed hours, it remains that Headwaters' hours are more than double GRMD's. Headwaters' claim should be substantially reduced in light of these points.

Third, despite its claim that it is not doing so, Headwaters is claiming fees for GR Terra work. Fifty entries, representing $55,525.45 in fees, expressly relate—in whole or in part—to work performed for GR Terra or other defendants. Batchelder Declaration, Exhibit 1 (identifying same). Some of these may have been (but it is impossible to verify without the unredacted invoices) split evenly with GR Terra. But 25 entries, totaling 48.90 hours and $27,563.10 in fees, expressly *relate only to GR Terra* (in whole or part). *Id*. (green entries). There is no basis to claim these fees. Further, and more troubling, is the fact that nine additional entries expressly relate to GR Terra *but have been redacted in full* (after having been initially produced without redactions). *Id*. (orange entries). Headwaters expressly stated it was not claiming GR Terra charges, yet not only is it claiming nearly $30,000 for such charges, *it has hidden an additional nine entries from the Court*. This is the same issue that Mr. Bronesky identified regarding travel: after saying attorney travel had been excluded, it was actually included *in redacted entries.* Bronesky Letter, at 6.

Headwaters' claim should be substantially reduced in light of these significant problems. First, no time related only to GR Terra should be awarded and so $55,525.45 in fees should be rejected. Second, and globally, any amount not otherwise reduced or rejected should be substantially reduced given the unreasonable number of hours claimed. GRMD suggests a 30% discount, one that is in keeping with what Mr. Bronesky found to be appropriate and one that is conservative (given that Headwaters' time is double GRMD's time on the case as a whole).

3. Fees related to redacted entries should be rejected.

Headwaters claimed fees for time entries that have been redacted, in whole or part. On its

invoices, it redacted more than 500 entries. Of these, numerous entries were completely redacted or redacted in a manner that makes it impossible to determine what work was performed. These redactions are not only unnecessary – the information is not subject to privilege or any privilege has been waived – as discussed by Mr. Bronesky, this is improper because the Court cannot determine the reasonableness of these fees.[8] Bronesky Letter, at 4-6. Further, these redactions are troubling because they includes claims, directly contrary to what Headwaters told the Court, for attorney travel time. Bronesky Letter, at 6 (discussing same).

Therefore, $181,036.65 ($169,833.60 (entries that cannot be assessed) + $11,203.05 (applying the redactions)) as identified by Mr. Bronesky in his Letter should be excluded from Headwaters' claim.

4. Fees related to block billing should be significantly discounted.

Headwaters claimed fees for time where it block billed. On its invoices, it block billed in hundreds of entries, claiming $415,310.25 for these entries. Bronesky Letter, at 6-8. Because block billing is not standard practice in Colorado, is often prohibited by clients, and because it conflates billable and non-billable work and inflates the claimed time, Colorado courts routinely make across-the-board cuts to such bills. As discussed by Mr. Bronesky, such discounts are routine and there is ample support for significant discounts. *Id*. Based on his analysis, a 30% across-the-board discount is both appropriate, and is actually more conservative than it could be given that the discount is applied only to specific entries rather than the full amount of Headwaters' claim (as court often do). Therefore, $124,593.07 as identified by Mr. Bronesky in his Letter should be

[8] Additionally, the time spent on these redactions, $11,203.05, is unreasonable and should not be awarded.

excluded from Headwaters' claim.

5. Fees caused by excessive staffing should be rejected.

Headwaters claimed fees that are not reasonable in light of best practices for proper staffing of commercial litigation matters. Best practices dictate that matters be staffed by a senior partner, a junior partner, and then associates and paralegals who conduct the majority of the work on the case with the partners doing less. Bronesky Letter, at 8-9. Here, not only were two senior partners assigned to the case, but they were also the most active timekeepers on the case. *See* Affidavit of J. Steiner, at Exhibit B (identifying timekeeper, role, and hours and fees incurred). The highest biller was senior partner JoAnn Sandifer who billed 697.50 hours and $488,620.50 in fees; senior partner David Richardson was second highest, billing 206.60 hours and $131,907.65. Together these two timekeepers represent 70% of Headwaters' claimed fees.

This is unreasonable. To partially, and conservatively, address this Mr. Bronesky concludes that Mr. Richardson's time should be excluded. Bronesky Letter, at 8-9. As discussed, Mr. Richardson's involvement is premised on his involvement in this client's real estate transactions, his role in the case (even though he is not a litigator but a real estate attorney) overlaps with Ms. Sandifer, and it appears that he is involved due to the client relationship and not the reasonable needs of defending the case. *Id*. While excluding Mr. Richardson's time does not address the fact that Ms. Sandifer billed nearly 50% of the time on the case and so staffing levels remain substantially inconsistent with best practices, it at least partially addresses this problem and, as a functional solution is further justified by the above reasons that call Mr. Richardson's involvement into question.

Therefore, $131,907.65 as identified by Mr. Bronesky in his Letter should be excluded

from Headwaters' claim.[9]

E. Headwaters' Request for Costs Should Be Denied in Full.

Headwaters purposefully provided the Court with no invoices. Similar to the above, this is fatal to its costs request because it prevents the Court from assessing their necessity and reasonableness. That Headwaters' motion and affidavits generally described the costs by category does not change this: these categories are not somehow per se necessary or reasonable. Headwaters' decision to rest wholly on the categories themselves means that same questions remain for each of the seven categories claimed: why were they necessary and how are these amounts reasonable? It is impossible for the Court to answer these questions.

Beyond this, additional unanswerable questions arise, compounding the issues caused by Headwaters' decision to proceed without invoices.

First, as with the claimed fees, Headwaters states that costs represent 50% of the amount incurred. Motion at 19. Therefore, in assessing the necessity and reasonableness of these costs, the Court must consider whether twice the stated amount is necessary and reasonable. Again, as with the claimed fees, this only further calls into question Headwaters' claim: why is, for example, $28,000 for a very modest database or $20,000 for limited travel necessary or reasonable?

Second, as with the above, there is no effort or argument tying these costs to the Court's determination that GRMD breached the Exclusion Agreement. How were these costs caused by that breach and how are they related to Headwaters protecting its rights under that Agreement? Again, answers are impossible based on what Headwaters chose to provide the Court.

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[9] As noted by Mr. Bronesky, these categories have some overlap and so to avoid double counting, may need to be adjusted as described in his letter. Bronesky Letter, at 9 n. 3.

Third, for several categories (databases, depositions, travel), while some portions on these costs might be necessary or reasonable, the specifics matter. For depositions: how was the testimony necessary; was the cost simply for a transcript or did it include additional (and expensive) services (such as video, Realtime, rush service, rough drafts, etc.). For databases: why was it necessary to maintain the full database for the entirety of the case; were additional (and, again, expensive) services (such as project manager time, analytics, de-duplication, etc.) included. For the lodging: why was it needed? If it was in Denver, that is inconsistent with Headwaters' claim that its use of out-of-state attorneys was no more expensive than Denver area attorneys. Where these questions are unresolved, Colorado courts rightly reject claims for costs.

Lastly, and specific to the mediation costs, JAG's standard agreement requires that the parties each bear their own costs of mediation. Headwaters cannot now seek to repudiate its own agreement on this point and shift this cost to GRMD.

Given all these questions, award of any costs is unreasonable and Headwaters' request should be denied in full, or, alternatively, it should be significantly reduced.

IV. CONCLUSION

For these reasons, Headwaters' claim for attorney fees and costs should be denied in full – it has failed to present information that permits the Court to assess the reasonableness and necessity of its claim. Alternatively, if the request is not denied in full, the Court should reduce any award of attorney fees in the manner discussed by Mr. Bronesky and further reduce any award for the reasons discussed here at Sections III.D.1 (unreasonable total) and III.D.2 (improperly included GR Terra charges), and deny the request for costs in full or reduce it significantly.

Respectfully submitted July 3, 2025.

BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.

Duly signed original is on file in this office and available for inspection and/or copying upon request.

/s/ D. Dean Batchelder
David K. TeSelle, Reg. No. 29648
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CERTIFICATE OF SERVICE

I certify that on July 3, 2025, a true and correct copy of this **GRANBY RANCH METROPOLITAN DISTRICT'S RESPONSE TO HEADWATERS' MOTION FOR AWARD OF DAMAGES** was filed and served upon all counsel of record via CCE.

Duly signed original is on file in this office and available for inspection and/or copying upon request.

/s/ D. Dean Batchelder
D. Dean Batchelder