

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation of **Daulton**)
A. Dingman of Russellville, Arkansas,)
Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation(s) and) Docket No. 18-TRAM-137-KHP
Invoice for the Violations of the Kansas Motor)
Carrier Safety Statutes, Rules and Regulations.)
)

**STAFF'S MOTION TO DISMISS
RESPONDENT'S REQUEST FOR HEARING**

Litigation Counsel for Staff of the State Corporation Commission of the State of Kansas (Litigation Counsel, Staff and Commission, respectively) presents the above-captioned matter to the Commission for dismissal of Daulton A. Dingman's Request for a Hearing, with prejudice. In support of its Motion, Litigation Counsel states as follows:

1. On June 26, 2017, the Tennessee Department of Safety conducted a Level I inspection on a vehicle driven by Daulton A. Dingman for Peeples Hot Shot Service, LLC. The inspection lists two out of service violations: "Driver on duty and under the influence of, or using a narcotic drug/amphetamine, which renders the driver incapable of safe operation: Driver in possession of approximately 1 gram of marijuana a small amount of THC wax at the time of inspection" in violation of 49 C.F.R. 392.4(a) and "Driver in possession of intoxicating beverage while on duty or driving: One 12 oz. can of Coors Light found in the vehicle at the time of inspection" in violation of 49 C.F.R. 392.5(a)(3).

2. On July 18, 2017, the Kansas Highway Patrol (KHP) issued a Notice of Violation(s) against Peeples Hot Shot Service, LLC, for alleged violations found during a June 29, 2017, routine motor carrier stop and inspection conducted by the KHP. Respondent was

assessed \$650.00 in civil fines, comprised of the following violations: a \$150.00 fine for No or Defective Automatic Trailer Brake, citing 393.43D and a \$500.00 fine False Report of Drivers Record of Duty Status, citing 395.8E.

3. On July 25, 2017, Mr. Dingman initiated a formal challenge with the KHP.

4. On July 26, 2017, the KHP denied Respondent's challenge and advised People's Hot Shot Service, LLC of its right to an administrative hearing before the Commission.

5. On August 7, 2017, the Kansas Corporation Commission received Mr. Dingman's request for hearing before the Commission.

6. On August 30, 2017, Litigation Counsel requested clarification from Mr. Dingman's attorney to determine if he represented the driver Daulton A. Dingman as well as the motor carrier, People's Hot Shot Service, LLC.

7. On September 7, 2017, Respondent's attorney advised that he did not represent People's Hot Shot Service, LLC and only represented Daulton A. Dingman.

8. K.S.A. 66-1,142b(b) states that "any act, omission or failure of any officer, agent or other person acting for or employed by any motor carrier while acting within the scope of such person's employment, shall in every case be deemed the act, omission or failure of the motor carrier."

9. The Notice of Violation in this matter was issued to People's Hot Shot Service, LLC and not to Daulton A. Dingman in his personal capacity. People's Hot Shot Service, LLC was issued the violations as the carrier of responsibility, in this case responsible for the alleged violations committed by its employee.

10. The initial challenge request, sent on July 25, 2017, and the request for hearing, sent on August 7, 2017, both make clear that the requests come from Daulton A. Dingman and not Peeple's Hot Shot Service, LLC.

11. Peeple's Hot Shot Service, LLC is the only party entitled to request a hearing on the alleged violations. Daulton A. Dingman is a fact witness of the inspection, but in regards to the alleged violations issued to his employer, he is a non-party.

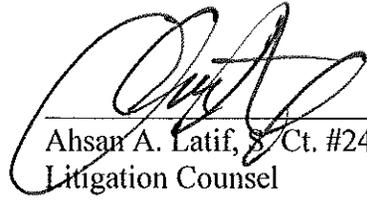
12. Daulton A. Dingman retains a right to challenge any citations or violations issued to him in his personal capacity. However, the alleged violations included in the Notice of Violations seek to penalize his employer for a failure to supervise and direct its employee to act in compliance with the pertinent motor carrier statutes, rules and regulations.

13. The motor carrier, in this case Peeple's Hot Shot Service, LLC, is the only party entitled to initiate a challenge to the violations alleged against it.

14. Due to Peeple's Hot Shot Service, LLC's failure to initiate a challenge and its absence from this proceeding, Litigation Counsel for Staff moves to dismiss, with prejudice, Daulton A. Dingman's Request for Hearing based on the fact that the alleged violations were not issued to him, but to his employer.

WHEREFORE, for the reasons set forth above, Litigation Counsel for Staff respectfully requests the Commission find that Respondent's Request for Hearing be dismissed.

Respectfully submitted,



Ahsan A. Latif, S/Ct. #24709

Litigation Counsel

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For Commission Staff

VERIFICATION

18-TRAM-137-KHP

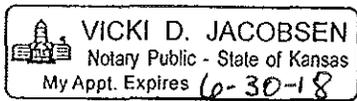
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

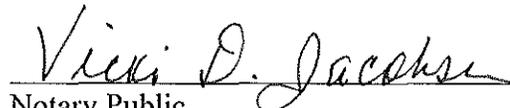
Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Staff's Motion to Dismiss Respondent's Request for Hearing*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Ahsan A. Latif, S. Ct. # 24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 27th day of October, 2017.


VICKI D. JACOBSEN
Notary Public - State of Kansas
My Appt. Expires 6-30-18



Notary Public

My Appointment Expires: June 30, 2018

CERTIFICATE OF SERVICE

18-GIMM-137-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Motion to Dismiss Respondent's Request for Hearing was placed in the United States mail, postage prepaid, or hand-delivered this 30th day of October, 2017, to the following:

JIM C. KLEPPER, ATTORNEY AT LAW

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Vicki Jacobsen