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| DISTRICT COURT, ROUTT COUNTY, COLORADO<br>1955 Shield Drive, Unit 200<br>Steamboat Springs, CO 80487<br>(970) 879-5020<br><hr/> <b>Plaintiff:</b> Carpenter Custom Homes, LLC<br><br><b>v.</b><br><br><b>Defendants:</b> Red Creek Filing Two Association; James Williamson | <div data-bbox="1182 302 1435 359" data-label="Text">         DATE FILED<br/>         June 9, 2026 5:05 PM       </div> <div data-bbox="1044 638 1328 674" data-label="Section-Header"> <b>COURT USE ONLY</b> </div> <div data-bbox="1003 722 1385 758" data-label="Text">         Case Number: 2024CV30054       </div> |
| <div data-bbox="412 890 1198 926" data-label="Section-Header"> <b>ORDER REGARDING ATTORNEY FEES AND COSTS</b> </div>                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                          |

This matter comes before the Court on two separate motions: (1) James Brad Williamson’s Bill of Attorneys’ Fees and Costs pursuant to C.R.S. §38-33.3-123(c)(1) and C.R.C.P. 54(d), filed on December 22, 2025, and (2) Red Creek Filing Two Association’s (the Association) Motion for Determination of Amount of Attorney Fees and Costs filed on December 23, 2025, and its associated Bill of Costs under C.R.S. § 13-16-105 separately filed on the same day. Plaintiff Carpenter Custom Homes, LLC (Carpenter) filed a combined Response to the motions on January 16, 2026. Williamson filed his Reply on January 30, 2026 and the Association filed its Reply on February 6, 2026. Upon being fully apprised of the facts and law, the Court finds and rules as follows:

**PROCEDURAL HISTORY**

On August 29, 2025, the Court granted Williamson’s Motion for Summary Judgment dismissing Carpenter’s breach of fiduciary duty claim alleged against him.

On November 23, 2025, the Court issued its Findings of Fact and Conclusions of Law, in which it found that Carpenter failed to satisfy its burden of proving the Association breached the Declaration or Bylaws. It also found that the Association’s consideration of Carpenter’s requests for variances to build a house and driveway outside the defined building envelope was reasonable and was neither arbitrary nor capricious; the Association’s enforcement and application of the Declarations and Bylaws in considering Carpenter’s variance requests were consistent with the decisions made on variance requests submitted by other property owners; and the Association’s Board of Directors and the ARB (i.e. the Architectural Control Committee) exercised reasonable

business judgment. As such, the Court dismissed Carpenter's claim for declaratory judgment, with prejudice, and awarded the Association its reasonable costs and attorney's fees.

Both Williamson and the Association now move the Court for their attorney's fees and costs, though on different bases. The Association seeks \$191,438.00 in fees and \$31,444.03 in costs as the prevailing party and Williamson seeks \$49,120.00 in fees and \$3,173.70 in costs, also as the prevailing party.

## **ARGUMENTS AND ANALYSIS**

### **I. Hearing.**

Williamson and Red Creek have not requested a hearing per C.R.C.P. 121 § 1-22(2)(c). They have therefore waived any argument that a hearing is required. The Court is within its discretion to award attorney's fees absent a hearing. Estate of Keenan v. Colorado State Bank & Tr., 252 P.3d 539, 549 (Colo. App. 2011).

The Court addresses Williamson's and the Association's requests separately.

### **II. Williamson's Award.**

#### **A. Attorney's Fees.**

##### **1. Timeliness.**

Before addressing the basis of the award or the reasonableness of the fees, the Court addresses whether the request for fees and costs is untimely. Carpenter contends the motion is untimely because C.R.C.P. 121 § 1-22 requires the request to be submitted within twenty-one days of the entry of judgment, and Williamson filed them 115 days after the Court entered summary judgment. (Resp. at 12-13). The Court disagrees with Carpenter's assessment.

The Court granted summary judgment on August 29, 2025, concluding that Carpenter's fiduciary duty claim did not satisfy the elements of C.R.S. § 38-33.3-30(2)(b).<sup>1</sup> Twenty-one days from that date was September 19, 2025.

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<sup>1</sup> The statute states that "any action alleging an act or omission by the association must be brought against the association and not against any unit owner" and that the liability of an HOA board member is limited only to willful and wanton acts or omissions. Specifically, the court found that (a) Williamson was not a member of the HOA board at the time of Carpenter's first application and was never a member of the ARB when it denied his driveway application and second application, and therefore, Williamson had no role and made no decision as a member of the HOA board with respect to any of Plaintiff's applications related to his property and could not have owed a duty to Carpenter with respect to the applications; (b) Carpenter did not present any evidence that Williamson actions constituted willful and wanton misconduct - other board members also voted to deny the appeal and a contentious relationship, personal animosity and name-calling do

Rule 121 Section 1-22 governs requests for costs and attorney’s fees. Subsection (1) requires that a bill of costs be filed within twenty-one days of the entry of an order or judgment “or within such greater time as the court may allow.” Subsection (2) requires that a motion for attorney fees be filed “within twenty-one days of entry of judgment or such greater time as the court may allow.” These rules are to be “liberally construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action.” C.R.C.P. 1. Rule 121 “is not a jurisdictional rule and should not be applied in a manner which unreasonably denies a party its day in court.” AAA Crane Serv., Inc. v. Omnibank Univ. Hills, N.A., 723 P.2d 156, 158 (Colo. App. 1986). Colorado also permits implied extensions. See US Fax Law Ctr., Inc. v. Henry Schein, Inc., 205 P.3d 512, 516 (Colo. App. 2009) (if the court accepts a filing after the deadline without expressly granting an extension, it has impliedly exercised its discretion under the rule).

On December 5, 2025, Williamson requested an extension of time in which to file his request for attorney fees and costs. Carpenter did not object.<sup>2</sup> The Court granted that motion on December 7, 2025, and extended the deadline to December 22, 2025. Williamson timely filed on December 22, 2025. Accordingly, the December 7, 2025 order confirms the present motion’s compliance with the 21-day deadline, ensuring its timeliness.

The Court recognizes that Williamson’s extension motion did not sufficiently satisfy the conferral requirement of Rule 1-15(8). However, that procedural error does not affect the validity of the Court’s December 7, 2025 extension order. While the Court agrees with Carpenter that Williamson’s December 5, 2025 motion was deficient, Rule 121 § 1-15(8) is not jurisdictional and does not invalidate the Court’s subsequent December 7, 2025 Order granting the requested extension. See AAA Crane Serv., 723 P.2d at 158; Nagy, 762 P.2d at 162–63. Because the Court exercised its discretion to extend the filing deadline and Williamson filed his request within the newly established deadline, the motion for attorney’s fees is timely under C.R.C.P. 121 § 1-22.

## 2. Basis of the Award.

Finding the present motion timely, the Court turns to the basis of the award.

C.R.S. § 38-33.3-123(1)(c)(I) provides “[i]n any civil action to enforce or defend this article 33.3 or the declaration, bylaws, articles, or rules and regulations, the court shall award

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not transform a vote to affirm the decision made by prior board members into willful and wanton conduct; and (c) Carpenter did not establish the element of causation in his breach of fiduciary duty claim because he presented no evidence that the board's decisions on his applications or the subsequent appeal would have been different if Williamson were not a board member or had recused himself during the appeal process. All of the decisions were unanimous and therefore even if Williamson had recused himself, the outcome would have been the same.

<sup>2</sup> According to Carpenter, counsel would have objected when Williamson’s counsel moved for an extension but had not been given sufficient time in which to do so. Carpenter did not object to the filing until January 16, 2025, when it filed the Response to Williamson’s Bill of Attorney’s Fees and Costs.

reasonable attorney fees, actual costs, and actual costs of collection to the prevailing party...” Carpenter does not dispute that Williamson is the prevailing party, nor does it challenge any specific entries. Instead, it maintains that a breach of fiduciary duty claim is “quite common and does not contain the type of complexity which warrants substantial attorney fees” and that Williamson’s “liability exposure” was not significant “given that the bulk of the financial breach claims fell to the Association as co-defendant.” (Resp. at 13). The Court disagrees.

Carpenter sought damages in the amount of \$1,872,520.00. In response to Pattern Interrogatory 9.1, which asked “[a]re there any other damages that you attribute to the INCIDENT?[,],” Carpenter answered:

Carpenter has been denied effective use of its property. This prolonged denial has led to losses surrounding the inability to use the property, and resulted in serious economic consequences in the form of a significant rise in building cost in Routt County between the time of purchase and current day. Carpenter has incurred ongoing expenses tied to repeated building application submissions and maintenance of the property, including additional surveying, platting, and assessment fees. Carpenter has also expended additional funds to travel and lodge elsewhere while his building applications have stalled in front of the Association. Following a survey of contractors who operate in Routt County, it is estimated that the cost for building a similar residential structure as that proposed by Carpenter has increased 42% or \$260.00/per square foot between 2023 and 2025. When applied to Carpenter’s housing plans of 7,202 sq/ft, the Association’s improper delays to construction on Lot 23 have cost \$1,872,520.00. This number is likely to rise based on increased material and labor cost forecasts and inflation. As such, Carpenter reserves the right to revise these estimates accordingly. These estimates do not reflect legal fees related to this action or the purchase of the property, as well as other amounts expended to hold the property while it cannot be used, and to try to develop the property in a manner similar to other properties in the subdivision, which efforts have been thwarted by Defendants’ actions.

(Reply Ex. C at 5-6). There is no indication that Carpenter distinguished which defendant caused more harm. As such, prior to the grant of summary judgment, Williamson faced damages close to \$2 million. This is not insignificant and the Court rejects any contention otherwise.

The Court further finds that Williamson was the prevailing party under C.R.S. § 38-33.3-123(1)(c)(I) and is entitled to his reasonable attorney’s fees and costs. Archer v. Farmer Bros. Co., 90 P.3d 228, 230 (Colo. App. 2004) (a “prevailing party” is one who prevails on a significant issue in the litigation and derives some of the benefits sought by the litigation).

### 3. Reasonableness of the Award.

Finding a basis for the award, the Court turns to the award itself.

“An award of attorney's fees must be reasonable.” Hartman v. Freedman, 591 P.2d 1318, 1322 (Colo. 1979). When a party seeks to recover attorney’s fees, certain criteria must be satisfied:

The motion [for attorneys' fees] 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.

C.R.C.P. 121 § 1-22(2)(b).

The determination of what constitutes a reasonable award of attorney's fees is a question of fact. Stuart v. North Shore Water & Sanitation Dist., 211 P.3d 59, 63 (Colo. App. 2009); Williamson bears the burden of proving his entitlement to an award of fees by a preponderance of the evidence. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352, 383 (Colo. 1994); Payan v. Nash Finch Co., 2012 COA 135M, ¶ 35 (burden of proof is on the person seeking the award of fees). An attorney can meet this burden by submitting detailed billing records, an attorney affidavit, and supporting documentation. Crow v. Penrose-St. Francis Healthcare Sys., 262 P.3d 991, 999 (Colo. App. 2011). "In awarding attorney's fees, the trial court may consider, among other factors, the amount in controversy, the length of time required to represent the client effectively, the complexity of the case, the value of the legal services to the client, and the usage in the legal community concerning fees in similar cases." Hartman, 591 P.2d at 1322. None of these factors are conclusive. Id. When an application for attorney fees is voluminous, a court need not evaluate and rule on the adequacy or propriety of every entry in the application. Am. Water Dev., 874 P.2d at 387.

Williamson seeks \$49,120.00 in fees pursuant to C.R.S. §38-33.3-123(1)(c)(1) and C.R.C.P. 54(d) (Brownstein Hyatt Farber Schreck, LLP - \$6,285.00 and Patterson Ripplinger, P.C. - \$42,835.00). He provided the Affidavit of Jonathan G. Pray of Brownstein Hyatt Farber Schreck, LLP (Brownstein Hyatt) (Ex. A), an itemization of the work performed by Brownstein Hyatt, including who performed the work, the number of hours devoted, and a description of the actual work performed (Ex. B), an itemization of Williamson's costs incurred by Brownstein Hyatt (Ex. C), the Affidavit of Kevin G. Ripplinger of Patterson Ripplinger, P.C. (Patterson Ripplinger) (Ex. D), an itemization of the work performed by Patterson Ripplinger, including the number of hours devoted and a description of the work performed (Ex. E), an itemization of costs incurred by Patterson Ripplinger (Exs. F and G), and a State Farm Insurance Claim reservation of rights letter (Ex. H). Patterson Ripplinger was retained by State Farm. From August 28, 2024, forward, Patterson Ripplinger, P.C. acted as Williamson's counsel in this action. (Bill of Attorney's Fees and Costs ¶ 5). Williamson did not include the fee agreements between himself and counsel. See C.R.C.P. 121 § 1-22(2)(b).

The Court must first calculate the "lodestar" amount to determine the initial estimate. Payan, ¶ 18. This amount is "the number of hours reasonably expended multiplied by a reasonable hourly rate." Tallitsch v. Child Support Services, Inc., 926 P.2d 143, 147-48 (Colo. App. 1996); Am. Water Dev., 874 P.2d at 386. Hours that were not reasonably expended, such as "excessive, redundant, or otherwise unnecessary" hours, must be excluded from the lodestar amount. Payan, ¶ 23 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). These hours are to be deducted before multiplying the hourly rate. Payan, ¶ 23 (percentage deductions to the total hours billed should be applied before applying the hourly rate multiplier). The lodestar amount

carries with it a strong presumption of reasonableness. Id. ¶ 18; Spensieri v. Farmers Alliance Mut. Ins. Co., 804 P.2d 268, 270 (Colo. App. 1990).

a. Number of Hours Expended.

Several attorneys performed legal work for Williamson. Three people at Brownstein Hyatt and four people at Patterson Ripplinger.

The party requesting the award must “establish the reasonableness of each dollar, each hour, above zero.” Payan, ¶ 35. Courts may consider “(1) the amount in controversy; (2) the length of time required to represent the client effectively; (3) the complexity of the case; (4) the value of the legal services to the client; and (5) and awards in similar cases.” Tisch v. Tisch, 439 P.3d 89, 108 (Colo. App. 2019). Hours that were not “reasonably expended” are not recoverable. Payan, ¶ 23; see also Case v. United Sch. Dist. No. 233, 157 F.3d 1243, 1250 (10th Cir. 1998) (The claimant is expected to use “billing judgment” – that is, “winnowing the hours actually expended down to the hours reasonably expended” – and to exclude from its time hours “that would be unreasonable to bill to a client and therefore to one’s adversary irrespective of the skill, reputation or experience of counsel”).

Brownstein Hyatt performed work for Williamson from July 18, 2024 to October 2024:

- |                               |           |
|-------------------------------|-----------|
| • Jonathan G. Pray            | 1.1 hours |
| • Of Counsel Corey T. Zurbuch | 5.8 hours |
| • Paralegal Polly Chesson     | 2.6 hours |

|                    |           |
|--------------------|-----------|
| Total time claimed | 9.5 hours |
|--------------------|-----------|

Patterson Ripplinger performed work for Williamson from July 30, 2024 to December 22, 2025:

- |                        |            |
|------------------------|------------|
| • Kevin Ripplinger     | 163 hours  |
| • Timothy Murphy       | 2.4 hours  |
| • Brian K. Patterson   | 13.0 hours |
| • Paralegal Daria Duwe | 19.5 hours |

|                    |                           |
|--------------------|---------------------------|
| Total time claimed | 197.50 hours <sup>3</sup> |
|--------------------|---------------------------|

Carpenter does not argue that these hours were not reasonably expended or were “excessive, redundant, or otherwise unnecessary” nor does it object to any specific entries. Instead, Carpenter seeks an adjustment to the lodestar amount, which the Court addresses after calculating the number of hours reasonably expended multiplied by a reasonable hourly rate.

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<sup>3</sup> Neither the affidavits nor the time-sheets for either law firm include the total hours billed by each attorney and paralegals. The Court has reluctantly performed this task.

The Court has reviewed the billing entries and finds them reasonable. The Amended Complaint was 15 pages and consisted of over 70 paragraphs. Coordination with the Association's counsel and State Farm's counsel was required for answers, responses, motions, extensive discovery/depositions, and trial preparation. Counsel prepared and was successful in his summary judgment motion. Counsel adequately demonstrated how he calculated attorney fees and provided two spreadsheets laying out the respective hourly rates and the total hours worked for each entry. (Mot. Exs. B, E). The total amount of work charged approximately matches the requested fees.<sup>4</sup>

As such, there is no indication that the fees were "excessive, redundant, or otherwise unnecessary" or that they lacked any relation to the requested relief. Payan, ¶ 23 (quoting Hensley, 461 U.S. at 434).

b. Hourly Rate.

Mr. Pray's hourly rate is \$860.00; Mr. Zurbuch's hourly rate is \$635.00; Ms. Chesson's hourly rate is \$400.00; Mr. Ripplinger's hourly rate is \$225.00; Mr. Murphy's hourly rate is \$200.00; Mr. Patterson's hourly rate is \$200.00; and Ms. Duwe's hourly rate is \$125.00.

Carpenter does not argue that these rates are unreasonable.

"A trial court should award attorney fees based on the prevailing market rate by private lawyers in the community." Payan, ¶ 46 (citations omitted). The Court is vested with broad discretion in this regard. Id. To satisfy its burden, Williamson must produce

satisfactory evidence - in addition to the attorney's own affidavits - that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. A rate determined in this way is normally deemed to be reasonable and is referred to - for convenience - as the prevailing market rate.

Blum v. Stenson, 465 U.S. 886, 895 n. 11 (1984); In re W.P.A.S., 2026 COA 4, ¶ 32 (the burden of justifying attorney fees rests with the party seeking such fees). A fee applicant must provide evidence demonstrating that the requested rates reflect what the market commands. Murphy v. Schaible, Russo & Company, L.L.P., 722 F.Supp.3d 1191, 1196 (D. Colo. 2024).

Here, the attorneys attest that their respective firm's "rates are commensurate with the education, experience, and skill of the attorneys and paralegals performing the work." (Mot. Exs. A and D). The Court finds this statement largely conclusory but adequate because "unrebutted testimony of an attorney may be sufficient to support a finding of reasonableness of fees awarded." Roget v. Grand Pontiac, Inc., 5 P.3d 341, 347 (Colo. App. 1999). It is "evidence of specific rates actually charged by various law firms in the community" and is therefore sufficient. See Xtreme Coil Drilling Corp. v. Encana Oil & Gas (USA), Inc., 958 F. Supp. 2d 1238, 1256 (D. Colo. 2013). Carpenter does not object to Williamson's attorneys' or paralegal's rates nor has it provided any

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<sup>4</sup> The difference is discussed in the Adjustment to Lodestar Amount below.

evidence that these rates do not reflect the prevailing market rates in either Denver or Steamboat Springs.

Additionally, the court may take judicial notice of fees charged in the community when assessing the reasonableness of an award only when there is other evidence in the record of the reasonableness of those fees. In re W.P.A.S., ¶ 35. Here, Mr. Pray and Mr. Ripplinger attest that their rates “are commensurate with the education, experience, and skill of the attorneys and paralegals performing the work.” (Williamson’s Bill of Costs Exs. A and D). As such, the Court may rely on its own familiarity with the range of prevailing rates. Id.; see also Case, 157 F.3d at 1257; Bee v. Greaves, 910 F.2d 686, 689 (10th Cir. 1990) (Court may “properly drew on its own experience as well as the affidavits submitted by the parties in setting the hourly rates”). The Court concludes that, apart from Paralegal Chesson, these hourly rates are reasonable and are consistent with the prevailing market rates by private lawyers in real estate/subdivision litigation.<sup>5</sup>

Ms. Chesson bills \$400/hour. In Pro Polish, LLC v. Abkarian, the district court found that “\$355 per hour for Ms. Chesson is not consistent with the prevailing rates for paralegals in the Colorado legal community.” 2024 WL 4661385, at \*9 (D. Colo. Oct. 16, 2024) (finding that a reasonable rate for a paralegal in Denver is no more than \$250 per hour). The Court agrees. Other Federal cases have similarly held that paralegal rates are typically less than \$300/hour. See Let’s Go Aero, 2024 WL 4068758, at \*4 (approving paralegal rate of \$225 per hour); Edwards v. Edwards, 2021 WL 130690, at \*2 (D. Colo. Jan. 14, 2021) (\$180 per hour for paralegal “is consistent with evidence of what the market commands for federal litigation in the District of Colorado”).

The Court finds Ms. Chesson’s hourly rate unreasonable and reduces it by 50%.

In summary, the hourly rates and time billed for the following attorneys and paralegals are reasonable:

|                    |           |   |            |            |
|--------------------|-----------|---|------------|------------|
| • Jonathan G. Pray | 1.1 hours | x | \$860.00 = | \$946.00   |
| • Corey T. Zurbuch | 5.8 hours | x | \$635.00 = | \$3,683.00 |
| • Polly Chesson    | 2.6 hours | x | \$200.00 = | \$520.00   |
| TOTAL              |           |   |            | \$5,149.00 |

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<sup>5</sup> See Xtreme Coil, 958 F. Supp. at 1256-57 (“the prevailing rates in Denver for experienced litigators approach \$400 per hour in recent years ...” and that \$262 per hour requested by an associate “is consistent with various reported and unreported decisions and the Court’s own knowledge of typical associate rates.”); Let’s Go Aero, Inc. v. Forcome Co. Ltd., 2024 WL 4068758, at \*4 (D. Colo. Sept. 5, 2024) (finding \$325.00/hour, \$395/hour, and \$500/hour “reasonable in light of each attorney’s experience and the prevailing market rates.”); Prim v. Ensign U.S. Drilling, Inc., 2019 WL 4751788, at \*7 (D. Colo. Sept. 30, 2019) (approving hourly rates of \$400 per hour for attorney with eight years’ experience and \$650 per hour for attorneys with 18 and 22 years of experience); Aguilar v. Pepper Asian Inc., 2022 WL 408237, at \*7 (D. Colo. Feb. 10, 2022) (\$400/hour rate reasonable for attorney with 16 years of experience).

|                      |            |   |            |                    |
|----------------------|------------|---|------------|--------------------|
| • Kevin Ripplinger   | 163 hours  | x | \$225.00 = | \$36,675.00        |
| • Timothy Murphy     | 2.4 hours  | x | \$200.00 = | \$480.00           |
| • Brian K. Patterson | 13.0 hours | x | \$200.00 = | \$2,600.00         |
| • Daria Duwe         | 19.5 hours | x | \$125.00 = | \$2,437.50         |
| TOTAL                |            |   |            | \$42,192.00        |
| <b>TOTAL</b>         |            |   |            | <b>\$47,341.00</b> |

The Court finds a final lodestar amount for counsel's invoices of \$47,341.00.

c. Adjustments to the Lodestar Amount.

Carpenter urges the Court to decrease any award based on the factors enumerated in Colo. RPC 1.5(a) because there was only one claim alleged against Williamson which "is quite common and does not contain the type of complexity which warrants substantial attorney fees" and that "liability exposure" was insignificant for Williamson, "given that the bulk of the financial breach claims fell to the Association as co-defendant." (Resp. at 13).

Upon determination of the lodestar amount, the Court may adjust the lodestar upward or downward by application of the factors set forth in Rule 1.5 of the Colorado Rules of Professional Conduct. People v. Shifrin, 2014 COA 14, ¶ 113. Rule 1.5 provides the following factors in considering the reasonableness of a fee: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. Colo. RPC 1.5(a). In addition, the Court may also consider "the experience, reputation, and ability of the lawyer or lawyers performing the services, and the complexity of the case." Shifrin. 342 P.3d at 826.

The Court does not find these factors warrant any additional adjustments to the lodestar amount. It also does not find Carpenter's arguments compelling for any reduction. First, Carpenter has not provided any authority, legal or otherwise, that the allegation of one claim (as opposed to multiple) necessitates a decrease in fees, or that a claim for breach of fiduciary duty is a common claim lacking complexity, also warranting a reduction in hours. Second, the matter involved thousands of pages of discovery, depositions, and the preparation of a comprehensive and ultimately successful summary judgment motion. The action was heavily litigated from its outset, requiring substantial coordination among co-defendants and several attorneys, as well as significant preparation for a potential trial. Given the complexity and volume of the work required, the hours billed were proportionate to the demands of the case.

However, the Court does adjust the lodestar amount downward because the amount sought by Williamson - \$49,120.00 – is \$1,779.00 more than what the Court calculated above.

The Court awards \$47,341.00 in attorney's fees: \$5,149.00 to Brownstein Hyatt and \$42,192.00 to Patterson Ripplinger.

B. Costs.

C.R.C.P. 54(d) provides "[e]xcept when express provision therefor is made either in a statute of this state or in these rules, reasonable costs shall be allowed as of course to the prevailing party considering any relevant factors which may include the needs and complexity of the case and the amount in controversy." Colorado Revised Statutes § 13-16-122 sets forth items that may be included as costs associated with litigation. The list is illustrative, not exclusive, and it may be expanded upon if other items are reasonably necessary for the development of the case. See Cherry Creek Sch. Dist. #5 v. Voelker, 859 P.2d 805, 813 (Colo. 1993).<sup>6</sup> As such, the statute does not deprive the court of discretion to award all reasonable costs. Am. Water Dev., 874 P.2d at 389-90. A party seeking costs "shall itemize and provide a total of costs being claimed[,]" C.R.C.P. 121, section 1-22(1), and must provide the court with sufficient information and supporting documentation to allow it to make a reasoned decision for each cost item presented. Brody v. Hellman, 167 P.3d 192, 206 (Colo. App. 2007). As such, the burden of proving that costs are reasonable and necessary falls on the party seeking those costs. Id.

"Whether to award costs and what amount to award are decisions within the sound discretion of the trial court..." Wark v. McClellan, 68 P.3d 574, 582 (Colo. App. 2003). The Court's goal "'is to do rough justice, not to achieve auditing perfection.'" Danko v. Conyers, 2018 COA 14, ¶ 81. Such decisions "will not be disturbed on appeal absent an abuse of discretion." Morris v. Belfor USA Group, Inc., 201 P.3d 1253, 1261 (Colo. App. 2008). An abuse of discretion is manifest only when the trial court's decision is "arbitrary, unreasonable, or unfair." Fort Morgan Reservoir and Irr. Co. v. Groundwater Appropriators of South Platte River Basin, Inc., 85 P.3d 536, 541 (Colo. 2004).

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<sup>6</sup> C.R.S. § 13-16-122 states that such costs may include:

- (a) Any docket fee required by article 32 of this title or any other fee or tax required by statute to be paid to the clerk of the court;
- (b) The jury fees and expenses provided for in article 71 of this title;
- (c) Any fees required to be paid to sheriffs pursuant to section 30-1-104, C.R.S.;
- (d) Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case;
- (e) The witness fees, including subsistence payments, mileage at the rate authorized by section 13-33-103, and charges for expert witnesses approved pursuant to section 13-33-102(4);
- (f) Any fees for exemplification and copies of papers necessarily obtained for use in the case;
- (g) Any costs of taking depositions for the perpetuation of testimony, including reporters' fees, witness fees, expert witness fees, mileage for witnesses, and sheriff fees for service of subpoenas;
- (h) Any attorney fees, when authorized by statute or court rule;
- (i) Any fees for service of process or fees for any required publications;
- (j) Any item specifically authorized by statute to be included as part of the costs.

Williamson seeks the following costs: Brownstein Hyatt - \$24.00 and Patterson Ripplinger - \$3,149.70 for a total award of \$3,173.70. Carpenter does not challenge any of Williamson's costs. The Court has reviewed the expense reports for each firm and finds them reasonable. The Court awards a total of \$3,173.70 in costs: \$24.00 to Brownstein Hyatt and \$3,149.70 to Patterson Ripplinger.

### **III. The Association's Award.**

#### **A. Attorney's Fees.**

The Association seeks \$191,438.00 in attorney's fees (which include the fees of Mr. Short of Altitude Community Law P.C. in the amount of \$99,076.00, and of Ms. Ellis of Keller Law and First & Fourteenth, PLLC in the amount of \$92,362.00).<sup>7</sup>

##### **1. The Basis of the Award.**

The Court awarded fees to the Association pursuant to C.R.S. § 38-33.3-123(1)(c). (Findings of Fact Conclusions of Law ¶¶ 135-137). The Court has already found that an award of fees is authorized because the Association is the prevailing party and Carpenter does not dispute these findings.

##### **2. The Reasonableness of the Award.**

In support of its Motion, the Association provides the Affidavit of William H. Short (Mot. Ex. A); an itemization of the work performed by Mr. Short and Paralegal Carole Zarrella, including who performed the work, the number of hours devoted to each line-item, and a description of the actual work performed (Id. at Ex. A-1, A-2); the Affidavit of Laura J. Ellis (Id. at Ex. B); an itemization of the work performed by Ms. Ellis, Jacy Rock (attorney at Keller Law), Kelly Callender (Paralegal at First & Fourteenth), and Milly Mollica (Paralegal at First & Fourteenth), including the number of hours devoted and a description of the work performed (Id. at Exs. B-2, B-3); the engagement letter between the Association and Keller Law (Id. Ex. B-4);<sup>8</sup> and a State Farm Insurance Claim letter to the Association and Mr. Short, dated July 24, 2024 (Mot. Ex. H).

To reiterate, the Court must first calculate the "lodestar" amount to determine the initial estimate. Payan, ¶ 18 (i.e. "the number of hours reasonably expended multiplied by a reasonable hourly rate."); Am. Water Dev., 874 P.2d at 386.

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<sup>7</sup> Ms. Ellis was Of Counsel for Keller Law, LLC when the Association originally retained counsel in this matter. (Mot. Ex. B ¶ 3). Keller Law represented the Association from July 2023 to March 2024. Ms. Ellis is currently a partner at First & Fourteenth, PLLC. (Id.). First & Fourteenth represented the Association from March 2024 to October 2025. Attorney Jacy Rock of Keller Law also worked on the matter from July 2023 to March 2024.

<sup>8</sup> First & Fourteenth and the Association did not execute a separate fee agreement when Ms. Ellis changed firms. (Mot. Ex. B ¶ 22).

a. Number of Hours Expended.

Several attorneys and paralegals performed legal work for the Association, as outlined above: Mr. Short, Ms. Ellis, Ms. Rock, Ms. Zarrella (paralegal), Ms. Callender (paralegal), and Ms. Mollica (paralegal). Mr. Short and Ms. Ellis each provided affidavits as to their requested fees. (Mot. Exs. A and B). Carpenter does not object to Ms. Rock's, Ms. Callender's, Ms. Mollica's, or Ms. Zarrella's time spent on this matter. Instead, Carpenter directs the Court to Ms. Ellis's and Mr. Short's time and contends the same are unreasonable.

The Court turns to Mr. Short and Ms. Ellis's declarations and associated exhibits.

i. Altitude Community Law.

Mr. Short does not state the total number of hours billed, either for himself or for Ms. Zarrella. Instead, Mr. Short attached the timesheets for his firm, listing the date of work, the name of the attorney and paralegal performing the work, a description of the work performed, the number of hours worked based on each line-item, and the charges per each work session. However, the Court is unable to calculate how many total hours Mr. Short or Ms. Zarrella billed. The client invoices consist of over 100 pages. It is not the Court's function to tally Mr. Short's and Ms. Zarrella's total hours billed.

[T]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees ... is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time.

Payan, ¶ 35. Without the initial claimed total hours, the Court is unable to accurately calculate a lodestar amount because of the inadequate information provided to the Court.

The motion is DENIED as to Mr. Short's requested attorney's fees without prejudice. Mr. Short is free to submit a revised motion, with corresponding declaration and supporting documents within 15 days of this order to support the requested fees. Carpenter will then have 21 days in which to file a response and then seven more days for the Association to file its reply.

ii. Keller Law and First & Fourteenth.

Ms. Ellis attests that she billed 113 hours at Keller Law and an additional 201.3 at First & Fourteenth; Attorney Jacy Rock billed 7.35 hours; Paralegal Kelly Callender billed 57.3 hours; and Paralegal Milly Mollica billed 14.9 hours, totaling 393.85 combined hours. (Mot. Exs. B, B-2, and B-3).

Initially, the Court notes that Ms. Keller's billed hours at Keller Law differ from her Declaration and that which is reflected in the timesheets. Her Declaration states 110 hours while the timesheets reflect 63.05 hours. As such, the Court applies 63.05 hours to Ms. Ellis's time at Keller Law.

Carpenter objects to any award that includes duplicative work by Ms. Ellis, contending that many of Ms. Ellis's fees were unnecessarily incurred because the case did not require "the nearly daily attention of two senior-level attorneys with almost sixty-years of combined legal experience." (Resp. at 7). Carpenter directs the Court to the following entries:

1. \$10,400.00 by Ms. Ellis to "[p]repare and appear for trial in Routt County Court" between September 8 and September 11, 2025 (Mot. Ex. B-3);
2. \$4,727.00 by Ms. Ellis for attending depositions taken or defended by Mr. Short (Id.);
3. Entries in which Ms. Ellis attended meetings or engaged in communications in which Mr. Short was also a participant, including the conferences and preparation performed on 6/11/2025, 6/27/2025, 7/1/2025, 7/2/2025, 9/6/2025 (Id.);
4. Ms. Ellis's entries for "strategy conferences" with Mr. Short, including 7/28/2024; 8/6/2024; 8/13/2024; 8/14/2024; 8/20/2024; 9/10/2024; 9/18/2024; 2/24/2025; 4/30/2025; 6/16/2025; 6/19/2025; 6/30/2025; 7/5/2025; 7/31/2025; and 9/11/2025 (Id.); and
5. Ms. Ellis's time for reviewing trial and litigation materials on 8/27/2024, 3/13/2025; 6/11/2025; and 8/26/2025 (Id.).

Carpenter does not object to any duplicative time spent by Ms. Ellis while at Keller Law. Carpenter does object to Keller Law fees for other reasons, but the Court addresses those objections below in its adjustment to the lodestar amount.

Hours that were "excessive, redundant, or otherwise unnecessary" must be excluded from the lodestar amount. Payan, ¶ 23 (percentage deductions to the total hours billed should be applied before applying the hourly rate multiplier). "The more lawyers representing a side of the litigation, the greater the likelihood will be for duplication of services." Ramos v. Lamm, 713 F.2d 546, 554 (10th Cir. 1983). Multiple attorneys at trials or depositions must be justified to the court. *Id.* at 554 n.4. However, "[t]here is nothing inherently unreasonable about a client having multiple attorneys." Anchondo v. Anderson, Crenshaw & Associates, L.L.C., 616 F.3d 1098, 1105 (10th Cir. 2010).

The Court has reviewed the corresponding time-entries for Ms. Ellis and Mr. Short for the dates specified by Carpenter, as well as their attestations. Ms. Ellis attests that she collaborated with Mr. Short on overall litigation strategy; provided second-layer drafting for all filings, discovery, motions, and trial submissions; assisted with deposition preparation; supported trial preparation and execution by identifying key exhibits, developing trial themes, preparing witnesses, presenting exhibits, and strategizing throughout trial; and helped draft proposed findings of fact and conclusions of law. (Mot. Ex. B ¶ 7-8).

The Court finds that her involvement ensured a proper transition to Mr. Short and preserved consistency in the Association's legal and factual positions. Given the case's complexity and the need for both historical knowledge and active litigation management, dividing responsibilities between counsel was necessary for effective and efficient representation of the Association. For these reasons, the Court finds her time on 6/11/2025, 6/27/2025, 7/1/2025, 7/2/2025, 9/6/2025

reasonable. These entries involved a telephone conference with expert Effinger regarding his response report and opposing counsel's expert report; preparation for the depositions with Mr. Short and Mr. Ripplinger, and trial preparation. As to strategy conferences, many of Ms. Ellis's entries involved getting Mr. Short up to speed on the case. The remaining were periodic and then followed by meetings in preparation for depositions and trial. This is entirely reasonable. Ms. Ellis's time for reviewing the following is also reasonable: joint status report (8/27/2024 = .20), drafting and revising discovery responses (3/13/2025 = 1.4); and meeting with expert Effinger which the Court has already found reasonable (6/11/2025 = 1.2). The time spent on 8/26/2025 is not duplicative because Mr. Short does not have a time entry for this matter.

However, the Court agrees with Carpenter that some of Ms. Ellis's time was duplicative. Her time at trial does not appear to have been necessary as she did not actively participate in the proceedings yet billed at a senior attorney rate. While Ms. Ellis attests that she "helped identify key exhibits, provide[d] second-layer drafting for pre-trial motions and trial-related submissions, develop[ed] trial themes, prepare[d] witnesses for trial, present[ed] exhibits during Mr. Short's trial presentation, and strategize[d] with Mr. Short before and after trial days" the bulk of these tasks did not take place during trial. Her billing records reflect nothing more than "prepare and appear for trial in Routt County Court (8.0)." If multiple attorneys are present at trial when only one would suffice, "compensation should be denied for the excess time." Ramos 713 F.2d at 554. The Court deducts 32 hours (September 8, 2025 to September 11, 2025). The Court also finds Ms. Ellis's time duplicative for the depositions. While she attests that she "assisted with witness deposition preparation efforts and attended depositions remotely to ensure key facts were established and accurately communicated on the record[.]" the transcripts themselves reveal that she did not participate in questioning. The Court deducts 4.5 hours (7/1/25); 1.5 hours (7/2/25); and 5.6 hours (7/3/25) for a total of 11.6 hours reduction.

Carpenter also argues that Ms. Ellis's hours should be reduced because "it was a simple breach of contract and fiduciary duty case" in which "Carpenter did not over-litigate" or "file additional pre-trial or dispositive motions or otherwise take actions to delay the case[.]" there were no "novel" issues, and the "outcome of the litigation was not a multi-million dollar award or sanction, but rather was to preserve the status quo that Carpenter could not build a home higher on a ridgeline in a more reasonable location." (Resp. at 7-8).

The Court is in "the best position to observe and determine the relative complexity of the issues and arguments presented to it." Payan, ¶ 39. It is best practice to reduce hours for lack of complexity in the determination of "reasonable hours" portion of the initial lodestar calculation and not after. Id. ¶ 43-44.

Contrary to Carpenter's characterization, this was more than a simple breach of contract case. It also involved homeowner association governance, governing document interpretation and a defense thereof as Carpenter challenged the legitimacy of the plat that created the defined building envelope, three variance requests, the intersection of subdivision laws and zoning laws because Carpenter pursued administrative proceedings before Routt County to remove the defined building envelope from the County's plat, several motions, and the compilation of extensive evidence including expert testimony, architectural plans, and property surveys, as well as the gathering of evidence of prior approvals, board minutes, enforcement history, and transactions

regarding similar variance requests. All in all, this matter presented a complex set of technical and nuanced legal issues, and the Association's reliance on legal counsel was necessary to conduct a thorough analysis and implement an appropriate process to avoid litigation, while ensuring the continued enforceability of its governing documents and preventing the creation of a precedent that would permit or encourage homeowner noncompliance.

Carpenter's remaining objections to Ms. Ellis's expended time relate only to an adjustment to the lodestar amount, which the Court addresses after calculating the number of hours reasonably expended multiplied by a reasonable hourly rate.

The Court has reviewed Keller Law's and First & Fourteenth's billing entries and finds them reasonable for many of the same reasons expressed above: the lengthy complaint, the required coordination with the Association's counsel, and their complete success at trial. Ms. Ellis demonstrated how she calculated her attorney fees and provided two spreadsheets laying out the respective hourly rates and the total hours worked for each entry. (Mot. Exs. B-2, B-3).

The Court deducts a total of 43.60 hours from Ms. Ellis's time as duplicative. The remaining entries are reasonable.

b. Hourly Rate.

For the reasons discussed above, the Court does not examine Mr. Short or Ms. Zarrella's hourly rates. Ms. Ellis' hourly rate was \$300-325 at Keller Law and is now \$325 at First & Fourteenth; Ms. Rock's hourly rate is \$350-370; and Ms. Callender's and Ms. Mollica's hourly rates are each \$150.

Carpenter does not argue that any of these rates are unreasonable, nor does he provide evidence that the rates do not reflect "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Again, "unrebutted testimony of an attorney may be sufficient to support a finding of reasonableness of fees awarded[,]" Roget, 5 P.3d at 347, and the court may take judicial notice of fees charged in the community when there is other evidence in the record of the reasonableness of those fees. In re W.P.A.S., ¶ 35.

Ms. Ellis attests that, based on her knowledge, Ms. Rock's and her rates are lower than rates charged by partners in comparable law firms with comparable skill and experience. (Mot. Ex. B). She further attests that she is familiar with the hourly rates charged in Colorado for paralegal services at private law firms and that the \$150/hour fee for paralegal support is lower than the typical hourly rate that the firm charges for paralegal's time. (Id.).

Based on these attestations and the Court's own familiarity with the range of prevailing rates in other cases involving real estate and subdivision disputes in resort communities, see In re W.P.A.S., ¶ 35; Bee, 910 F.2d at 686, the Court finds these rates reasonable, with the following modifications. Ms. Ellis had different rates at two different firms. She did not provide a breakdown of the total number of hours attributable to each hourly rate but rather provided a total number of hours attributable to each firm. Ms. Ellis's hourly rate at Keller Law was \$300/hour from July 2023 to December 2023, at which point her rate increased to \$325/hour until her

departure to First & Fourteenth where she billed \$325/hour. Rather than attempt to calculate each entry, the Court applies \$312.00/hour for the entire time Ms. Ellis worked at Keller Law, which is the middle point between \$300 and \$325. Similarly, Ms. Rock's hourly rate in 2023 was \$350/hour and was increased in 2024 to \$370. The Court therefore applies \$360/hour to her entries.

In summary, the hourly rates and time billed for the following attorneys and paralegals are reasonable and deemed to be the lodestar amount(s):

| <b>Name</b>                                                     | <b>Time</b> | <b>Deduction</b> | <b>Applied hours</b> | <b>Rate</b> | <b>Amount</b>      | <b>Notes</b>                                                                                           |
|-----------------------------------------------------------------|-------------|------------------|----------------------|-------------|--------------------|--------------------------------------------------------------------------------------------------------|
| Ms. Ellis (Keller Law)                                          | 63.05       |                  | 63.05                | \$312.00    | \$19,671.60        |                                                                                                        |
| Ms. Rock (Keller Law)                                           | 7.35        |                  | 7.35                 | \$360.00    | \$2,646.00         |                                                                                                        |
| <b>Lodestar (Keller Law)</b>                                    |             |                  |                      |             | <b>\$22,317.60</b> |                                                                                                        |
| Ms. Ellis (First & Fourteenth)                                  | 201.30      | 43.60            | 157.70               | \$325.00    | \$51,252.50        |                                                                                                        |
| Ms. Callender (First & Fourteenth)                              | 57.30       |                  | 57.30                | \$150.00    | \$4,158.75         | the actual amount is \$8,595.00, but because of courtesy discounts, \$4,158.75 is the requested amount |
| Ms. Mollica (First & Fourteenth)                                | 14.90       |                  | 14.90                | \$150.00    | \$1,200.00         | the actual amount is \$2,235.00, but because of courtesy discounts, \$1200 is the requested amount     |
| <b>Lodestar (First &amp; Fourteenth)</b>                        |             |                  |                      |             | <b>\$56,611.25</b> |                                                                                                        |
| <b>Total Lodestar for Keller Law and First &amp; Fourteenth</b> |             |                  |                      |             | <b>\$78,928.85</b> |                                                                                                        |

(Mot. Exs. B, B-2, and B-3).

c. Adjustment to the Lodestar Amount.

Carpenter urges the Court to adjust the lodestar amount downward for three reasons: (1) C.R.S. § 38-33-3-123(1)(c) does not permit recovery of fees incurred before the filing of a complaint; (2) Ms. Ellis's time was duplicative; and (3) this was not a complex case. The Court has already addressed (2) and (3). The Court turns to whether fees incurred before filing the action are recoverable under C.R.S. § 38-33-3-123(1)(c).

Carpenter argues the statute permits an award of fees only after a suit is filed and that the Court must strike or reduce Ms. Ellis's fees that predate its filing of the Complaint on July 1, 2024.<sup>9</sup> According to Carpenter, any fees pre-dating July 1, 2024 (\$26,975.75) are not related to the lawsuit and were instead responses solely to Carpenter's "efforts to build a home outside the prescribed building envelope." The Association argues that these fees were necessary because of "Carpenter's express threats of litigation starting in July 2023."

The Court agrees with the Association.

"Attorney fees granted for costs incurred prior to the filing of a lawsuit are generally allowable." Cody Park Prop. Owners' Ass'n, Inc. v. Harder, 251 P.3d 1, 9 (Colo. App. 2009) (affirming order granting attorney's fees to prevailing party under C.R.S. § 38-33-3-123(1)(c) including those incurred prior to the initiation of the lawsuit). C.R.S. § 38-33-3-123(1)(c) does not contain any temporal limitations restricting fees to only those incurred after filing. Pursuant to Cody Park, the statute's fee-shifting provision clearly encompasses pre-litigation work, not merely fees incurred after a complaint is filed. CCIOA's remedies "shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed." C.R.S. § 38-33-3-114(1).

Moreover, the evidence demonstrates that Carpenter notified the Association in July 2023 of its intent to pursue litigation. (Mot. Ex. B-1) ("I have instructed my Legal Counsel Alen [sic] Keefe and Christian Hendrickson of Sherman & Howard of Denver to proceed with legal action against all above persons and Red Creek HOA & ACC"); (Tr. Exs. 127, 131, 133, 134, 139, 140, and 141). Carpenter's contested entries all occurred after July 2023. As such, Carpenter's argument is meritless.

The Court turns to the other factors of Rule 1.5(a). Carpenter utilized four attorneys in pursuing its claims (Alan Keefe, Christian H. Hendrickson, Ryan T. Shaffer, and Robert E. Neel). In assessing the necessity of multiple attorneys, the number of lawyers the other side utilized is relevant because it is an indication of the effort required. Ramos, 713 F.2d at 554. The amount in controversy was significant - between \$2,000,000 and \$2,600,000, plus "costs and expenses associated with Carpenter's applications and materials provided with them, and surrounding its attempts to work with the Association to obtain approval for a location to build on Carpenter's lot" and "damages associated with the loss of use of Plaintiff's real estate..." (Trial Management Order ¶ V.). The length of time representing the Association was also significant – from July 2023 when Carpenter made its initial threats of litigation, to December 2025 when the present motion was filed. The Court has already addressed the complexity of the case in its analysis above. The value of the legal services to the Association was great because Carpenter vigorously pursued its quest

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<sup>9</sup> The Association seeks to recoup Ms. Ellis's fees beginning one year prior, starting in July 2023.

to build outside the building envelope, whether by variance, county applications or a civil suit, and the Association is authorized to enforce its governing documents. Carpenter's conduct materially expanded the time, effort, and complexity involved in resolving this matter resulting in aggressive litigation. (Mot. Ex. A ¶ 7-9); See Shifrin, 342 P.3d at 526 (affirming attorney's fee award in part because defendant "greatly contributed to the inflation of time and effort necessary" to resolve the litigation). Both Ms. Ellis and Mr. Short "no-charged" or provided courtesy discounts to the Association, demonstrating that even if there was duplication, counsel was cognizant of their billing. Mr. Short reduced almost 100 hours of his time and further reduced his total fees by \$2,327.00. (Id. at ¶ 4, 10; Mot. Ex. A-1).<sup>10</sup> Mr. Short also "applied percentage discounts to some of the monthly invoices to account for time where [he] was getting up to speed or for potentially duplicative time." (Mot. Ex. A ¶ 4). Ms. Ellis provided significant courtesy discounts for her paralegals' work. (Mot. Ex. B-3). Lastly, the Association achieved total success in this matter.

The Court sees no reason to reduce the lodestar amount, nor does it see a reason to increase it. In its discretion, the Court finds that the attorney's fees outlined above are reasonable and GRANTS to the Association's attorney's fees of **\$78,928.85** (total lodestar for Keller Law and First & Fourteenth)

B. Costs.

The Association seeks \$31,444.03 in costs pursuant to C.R.C.P. 54(d) and C.R.S. §§13-16-105 and 13-16-122. The request includes costs incurred by each attorney and paralegal at the law firms identified above, specifically:

1. \$423.00 in docket fees for its Answer and jury demand (Bill of Costs Ex. B);
2. \$4,396.60 for deposition transcripts (Id. Ex. C);
3. \$11,400.00 for expert witness Tom Effinger and \$287.50 for consultation with Ron Goodrich, formerly of the Routt County Building Department (Id. Ex. D);
4. \$2,875.78 for the exemplification and copies of papers (including \$6.50 for a Plat; \$4.11 to the Texas Office of the Secretary of State to review corporate entities involving Mark Carpenter; and \$2,865.17 for trial exhibits) (Id. Ex. A); and
5. \$11,697.42 for miscellaneous costs including:
  - \$4,144.88 for e-discovery vendor and monthly storage;
  - \$363.70 for Ms. Ellis' travel expenses on May 28, 2024, to attend the Board of Directors meeting in Clark, CO (\$329.64 in mileage and \$34.06 in meals);
  - \$787.73 for Mr. Short's lodging, mileage and meals in November 2024 for a site inspection and to meet with clients;
  - \$1,418.28 for Mr. Short's lodging, mileage and meals in July 2025 for depositions in Routt County;
  - \$2,457.59 for Mr. Short's lodging and mileage in September 2025 for trial;
  - \$915.27 for Mr. Short's meals during trial preparation and trial;

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<sup>10</sup> The Court ran a key term search of "no charge" to arrive at this number.

- \$1,265.70 for Ms. Ellis' lodging and mileage for the trial; and
- \$708.00 for court filing fees (\$684.00 by Altitude Community Law and \$24.00 by First & Fourteenth), outside of the statutory filing fees addressed above.

(Bill of Costs). Carpenter objects to several of these costs contending that some of the expert fees pre-date the litigation, there was evidence of overbilling, and counsel incurred unnecessary hotel and meal charges. (Resp. 10-12).

In addition to C.R.C.P. 54(d), C.R.S. § 38-33.3-123(1)(c)(I) authorizes an award of actual costs to the prevailing party “[i]n any civil action to enforce or defend this article 33.3 or the declaration, bylaws, articles, or rules and regulations.” The Court turns to each of Carpenter’s objections.

#### 1. Expert Witness Fees.

Carpenter argues that the Association has failed to explain why its expert witness fees were reasonable, that defense expert Effinger’s hourly rate was unreasonable, and that expert witness fees incurred prior the filing of the Complaint are unrecoverable. Carpenter does not cite specific entries of expert Effinger’s invoice which it seeks to eliminate.

Charges for expert witnesses approved pursuant to C.R.S. § 13–33–102(4) are expressly allowed as costs. Am. Water Dev., 874 P.2d at 388 - 89. C.R.S. § 13-33-102(4) states “[w]itnesses in courts of record called to testify only to an opinion founded on special study or experience in any branch of science or to make scientific or professional examinations and state the result thereof shall receive compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required.” This includes discovery depositions of expert witnesses. Cherry Creek, 859 P.2d at 813-14; C.R.S. §13-16-122(1)(g).

Carpenter directs the Court to Steele v. Law for the proposition that a party must demonstrate and explain that the requested expert fees are reasonable. 78 P.3d 1124, 1127 (Colo. App. 2003). But in Steele, the party seeking costs made no showing whatsoever as to the expert’s hourly rate or the time the expert spent on the case. Id. at 1128. Here, expert Effinger provided both of the missing elements identified in Steele.

The Court has reviewed the invoices and billing of Mr. Effinger. The hourly rate charged at \$300.00 per hour is reasonable and in line with other similar experts based on the Court’s experience. Carpenter has not presented any evidence demonstrating that Mr. Effinger’s fees are inflated, other than by comparing them to his own expert, Mr. Magill. (Bill of Costs Ex. D). The parties have not provided any evidence of commensurate rates in Routt County for similar experts. The Court does not find this argument compelling but rather finds Mr. Effinger’s fees reasonable for his expertise and skill.

Carpenter does not provide any legal authority that a prevailing party may not recover its costs for events relating to, but occurring before, the initiation of a lawsuit. Nor has it explained why or how those fees were not related to the present dispute, other than arguing that they occurred before the filing of the Complaint. The Court has already determined that because Carpenter

threatened litigation in July 2023, it was reasonable for the Association to prepare for a defense. Moreover, an award for expert witness fees may include the expert's time spent in court as well as time spent in preparation for trial. Am. Water, 874 P.2d at 389. The Court finds that the expert witness fees associated with Mr. Effinger were reasonable and necessary for the Association's trial preparation and awards the requested \$11,400.00 in expert fees.

The Court does not award costs for the consultation with Ron Goodrich, the former chief of the Routt County Building Department. (Bill of Costs Ex. D). The Association has not provided any legal authority that consultation fees with a person who did not testify as an expert are a recoverable expense. The Court deducts \$287.50 from the award.

i. Hotel Stays.

A party is entitled to recover hotel costs so long as they were necessary and reasonable. Brody, 167 P.3d at 206. This includes the costs associated with hotel stays for out-of-town counsel. Madison Capital Co., LLC v. Star Acquisition VIII, 214 P.3d 557, 561 (Colo. App. 2009); Valentine v. Mountain States Mut. Cas. Co., 252 P.3d 1182, 1189 (Colo. App. 2011) (affirming award including "\$15,188.48 for hotel expenses for pretrial matters and trial" where counsel was Denver-based but case was litigated in Colorado Springs).

Carpenter contends Mr. Short's hotel stay for trial was excessive because trial lasted from September 9 to September 11, 2025, while Mr. Short stayed in Steamboat Springs from September 8 until September 13. The Court has reviewed Mr. Short's time entries for these dates and finds them reasonable. (Bill of Costs Ex. F). There is nothing unreasonable to show up a day in advance of trial, nor is there anything unreasonable with departing the day after. The only entry that is unreasonable for a hotel stay is 9/12/2025 because that work could have been performed from the Denver area. The Court deducts \$238.64 from the award.

Ms. Ellis seeks \$363.70 in travel expenses for the May 28, 2024 Board of Directors meeting and \$1,265.70 for the September 2025 trial. (Bill of Costs ¶ 6). The Court deducts \$1,265.70 from the award because it has already determined that Ms. Ellis's September 2025 stay was duplicative and further deducts \$363.70 from the award for the May 28, 2024 board meeting because no receipts were provided for this cost.

ii. Large Group Meals.

"[T]he cost of meals incurred as part of necessary travel expenses may be awarded, so long as the cost is demonstrated to be reasonable and necessary." Madison Capital, 214 P.3d at 561.

Carpenter objects to the following expenses: \$89.29 on September 7, 2025; \$144.89 on September 8, 2025; \$136.45 on September 9, 2025; \$189.92 on September 10, 2025; and \$148.00 on September 11, 2025. The Association maintains that

counsel met with members of the Board of Directors and the Architectural Review Board (ARB) while present in the Clark/Steamboat area as part of the site inspection, depositions, trial preparation, and trial presentation. The clients have

the knowledge to present evidence at trial. The lawyers use their expertise to marshal and present that evidence. The troops need to eat while on extended duty, and it was reasonable for counsel to maximize in-person time with the client representatives and witnesses by facilitating working meals.

(Reply ¶ 13).

The Court agrees with Carpenter. The Association has not provided any legal authority that group dinners with clients are a reasonable or necessary expense for trial preparation or presentation. Moreover, the charges on September 9, 2025, and September 10, 2025 were billed to Robert Wakeman and Joe Nance, respectively, not Mr. Short, and included total parties of 6. Simply because an attorney is included in a group meal does not transform the meal into a recoverable cost. If a client wishes to treat a group to dinner, that cost rests with the client personally. The Court deducts \$708.55 from the award.

iii. The Cost Award.

In light of these findings, the Court awards the following costs:

1. \$423.00 in docket fees for its Answer and jury demand filing fees. (Bill of Costs Ex. B). These are recoverable costs under C.R.S. §13-16-122(1)(a);
2. \$4,396.60 for deposition transcripts. (Id. Ex. C). These are recoverable costs under C.R.S. § 13-16-122(1)(g);
3. \$11,400.00 for expert witness Tom Effinger (Id. Ex. D). This is a recoverable cost under C.R.S. § 13-33-102(4) and C.R.S. § 13-16-122(e).
4. \$2,875.78 for the exemplification and copies of papers (including \$6.50 for a Plat; \$4.11 to the Texas Office of the Secretary of State to review corporate entities involving Mark Carpenter; and \$2,865.17 for the preparation of trial exhibits). (Id. Ex. A). These are recoverable costs under C.R.S. § 13-16-122(1)(f);
5. \$9,460.56 for miscellaneous costs that are recoverable costs under C.R.S. § 13-16-122(1), including:
  - \$4,144.88 for e-discovery vendor and monthly storage;
  - \$0 for Ms. Ellis's travel expenses on May 28, 2024, to attend the Board of Directors meeting in Clark, CO (this reflects the \$363.70 deduction);
  - \$787.73 for Mr. Short's lodging, mileage and meals in November 2024 for a site inspection and to meet with clients;
  - \$1,418.28 for Mr. Short's lodging, mileage and meals in June-July 2025 for depositions in Routt County;
  - \$2,218.95 for Mr. Short's lodging and mileage in September 2025 for the trial (this reflects the \$287.50 deduction);
  - \$206.72 for Mr. Short's meals during trial preparation and trial in September 2025 (this reflects the \$708.55 deduction);
  - \$0 for Ms. Ellis's lodging and mileage for the September 2025 trial (this reflects the \$1,265.70 deduction); and

- \$684.00 for court filing fees incurred by Altitude Community Law. The Court does not award the \$24.00 incurred by First & Fourteenth because the firm has not provided evidence to support the award. These costs are recoverable under C.R.S. § 38-33.3-123(1)(c)(I).

The Court therefore grants \$28,555.94 in costs to the Association.

### **CONCLUSION**

THEREFORE, IT IS ORDERED as follows:

1. Williamson's Motion for Attorneys' Fees & Costs is GRANTED as follows:
  - Fees: \$47,341.00 (\$5,149.00 to Brownstein Hyatt and \$42,192.00 to Patterson Ripplinger);
  - Costs: \$3,173.70 (\$24.00 to Brownstein Hyatt and \$3,149.70 to Patterson Ripplinger); with
  - Post-judgment interest to continue to accrue pursuant to C.R.S. § 5-12-102.
2. The Association's Motion for Determination of Amount of Attorney Fees and Costs is GRANTED in part and DENIED in part as follows:
  - Fees: \$78,928.85 (\$22,317.60 to Keller Law; and \$56,611.25 to First & Fourteenth);
  - Costs: \$28,555.94 to Altitude Law; with
  - Post-judgment interest to continue to accrue pursuant to C.R.S. § 5-12-102.
  - The Association may file a revised motion regarding Mr. Short's and Altitude Law's fees with a corresponding declaration and supporting documents within 15 days of this order to support the requested fees. Carpenter will then have 21 days in which to file a response and then seven more days for the Association to file its reply.

SO ORDERED this 9<sup>th</sup> day of June 2026.

BY THE COURT:



Billy-George Hertzke  
District Court Judge