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PART 16 DOCKETS

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FEDERAL AVIATION ADMINISTRATION

PART 16 AIRPORT PROCEEDING

DAKOTA TERRITORY TOURS,
A.C.C, an Arizona corporation, and
SOLID EDGE AVIATION, LLC, an
Arizona limited liability company,

Complainant,

vs.

YAVAPAI COUNTY, ARIZONA,
through and with the SEDONA-OAK
CREEK AIRPORT AUTHORITY, an
Arizona non-profit corporation,

Respondent.

Docket No.: 16-17-18

**RESPONDENT YAVAPAI COUNTY'S
THIRD SUPPLEMENT TO PART 16
ADMINISTRATIVE RECORD**

Respondent Yavapai County (the "County") submits this Third Supplement to the Part 16 Administrative Record on Complainants Dakota Territory Tours, A.C.C.'s ("Dakota") and Solid Edge Aviation, LLC's ("Solid Edge") (collectively, "Complainants") Part 16 Complaint.

As set forth more fully in the County's Combined Motion to Dismiss & Motion for Summary Judgment, Answer, and several supplements to the record (including the County's January 9, 2020 & September 9, 2020 supplements), Dakota's Part 16

1 Complaint was one of a series of complaints filed against the County and/or Sedona-Oak
2 Creek Airport Authority, Inc. ("SOCAA") (the separate entity charged with operating the
3 Sedona Airport) between 2014 and 2017 in state court, federal court, and before the
4 Federal Aviation Administration.

5 Issues regarding Dakota's disclosures and discovery, and the parties' briefing in
6 those cases, along with judicial decisions on relevant issues, form the basis for this
7 Supplement. This Supplement supports the County's prior motions and Answer, and
8 makes clear that Dakota's Part 16 Complaint against the County should be summarily
9 dismissed or determined in the County's favor as a matter of law.
10

11 **SUMMARY OF SUPPLEMENTAL EVIDENCE**

12 The following Supplemental Evidence supports the County's previously-articulated
13 positions, including that: (1) the County did not economically discriminate against Dakota
14 when SOCAA did not select Dakota's response to SOCAA's May 1, 2017 proposal to
15 conduct 14 CFR Part 135 operations, because – among other things – Dakota did not
16 submit a responsive proposal (Dakota is not a Part 135 operator or certificate holder *and*
17 Dakota submitted false/inaccurate financial statements, a prerequisite to a responsive
18 proposal); and (2) Dakota, the only entity that submitted a proposal in response to the
19 RFP, cannot – as it has claimed in state court – conduct Part 135 operations at Sedona
20 Airport "through" the Part 135 certificate issued to Solid Edge.
21

22 1. **Sanctions Briefing.**

23 In the state court litigation between SOCAA and Dakota, SOCAA moved for
24 sanctions against Dakota for substantial disclosure and discovery failures in violation of
25 Arizona's Rules of Civil Procedure. Although Dakota admitted to a number of the failures,
26

1 it blamed its former counsel for the misconduct. As a result, the trial court ordered an
2 evidentiary “culprit” hearing to determine whether Dakota or its former counsel bears
3 responsibility for what the court deemed to be “massive” discovery violations.

4 The newly disclosed evidence supports the County’s position that Dakota’s
5 complaint fails both as a matter of law (because Dakota and Solid Edge lack standing)
6 and on the merits (because Dakota failed to submit a responsive proposal to SOCAA’s
7 RFP for a Part 135 operator at the Sedona Airport).
8

9 The following exhibits are attached for the FAA’s consideration:

10 a. SOCAA’s Motion for Sanctions, attached as **Exhibit A**. SOCAA’s Motion for
11 Sanctions details relevant evidence withheld by Dakota, including evidence
12 showing that:

- 13 i. Dakota failed to submit a complete and accurate financial statement
14 and therefore submitted a non-responsive proposal in response to the
15 RFP;
16
- 17 ii. Dakota asked a person who was not employed by either Dakota or
18 Solid Edge to take a check ride for Solid Edge.

19 b. Dakota’s Response to Motion for Sanctions, attached as **Exhibit B**, wherein
20 Dakota admits to certain disclosure and discovery violations, but blames its
21 former counsel.

22 c. SOCAA’s Reply in Support of its Motion for Sanctions, attached as **Exhibit C**,
23 wherein SOCAA points the court to additional late-disclosed evidence,
24 including that Dakota withheld emails with the FAA showing that:
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- i. Eric Brunner and Dakota represented to the court that the FAA was aware of and agreed to allow Dakota to operate under Solid Edge's Part 135 certificate despite the fact that Solid Edge's certificate does not permit operation under the name Dakota Territory Tours, the FAA was not aware that Dakota Territory Tours was operating under Solid Edge's Part 135 certificate; and Solid Edge's Operations Specifications prohibit "wet lease" operations.
- ii. Dakota never told the FAA that Solid Edge was a shell and had no business other than holding the Part 135 certificate as Dakota repeatedly represented to the trial court.
- iii. Eric Brunner falsely told the FAA the pilots were employees of Solid Edge when that entity had no employees and Solid Edge's Operations Specifications require the pilots to be direct hires of that entity.
- iv. Eric Brunner told the FAA that Dakota is a dba of Solid Edge and vice versa, and/or that the entities are somehow related or joined when that is not consistent with Arizona law and the corporate structure as reflected in Arizona records.
- v. In response to queries by the FAA in November 2017 and April 2018 about Dakota's and Solid Edge's entity structures and ownership, Dakota represented to the trial court that there was no further communication with the FAA about Dakota's and Solid Edge's corporate structure when it is highly likely that such written

1 communication occurred, and that no oral approval for joint operations
2 was given.

3 d. SOCAA's Supplemental Motion for Sanctions (not attached because SOCAA
4 was required to file the motion under seal in light of Dakota's claim to
5 confidentiality of certain exhibits). SOCAA detailed Dakota's failure to disclose
6 information related to its business operations, and alleged that Dakota
7 obtained injunctive relief on false pretenses by misrepresenting that its
8 business was wholly reliant upon business at Sedona Airport when the bulk of
9 its income was generated by fixed wing tours from Cottonwood Airport (which
10 may be a violation of that Airport's lease or regulations), and failed to portray
11 accurately income and expenses to support lost profits claim.
12

13 e. Dakota's Response to Supplemental Motion for Sanctions (not attached
14 because Dakota filed it under seal).
15

16 f. SOCAA's Reply in Support of Supplemental Motion for Sanctions (not
17 attached because SOCAA was required to file the reply under seal in light of
18 Dakota's claim to confidentiality of certain exhibits). The reply demonstrates
19 that Dakota's descriptions of its business have changed over time and cannot
20 be reconciled with each other.

21 2. Court of Appeals Decision Regarding Forcible Entry & Detainer. Attached as
22 Exhibit D is the Arizona Court of Appeals' Decision affirming the trial court's
23 summary judgment order in SOCAA's favor. See SOCAA v. Dakota Territory
24 Tours, ACC, No. 1 CA-CV 20-0158 (Jan. 12, 2021). Dakota filed a petition for
25
26

1 review with the Arizona Supreme Court, and SOCAA opposed the petition. The
2 court has not ruled on whether it will accept the petition.

3 3. **FAA Decisions Rejecting Part 13 Complaints**. Dakota filed two separate Part
4 13 Complaints against the County and SOCAA.

5 a. The first informal complaint alleged that SOCAA was improperly spending
6 funds on its attorneys to defend itself against Dakota's numerous lawsuits
7 and administrative actions against it. The FAA rejected Dakota's complaint
8 in its entirety. See August 12, 2020 Informal Complaint Determination,
9 attached as **Exhibit E**.

10 b. The second alleged that SOCAA improperly restricted Dakota's ability to
11 self-fuel its aircraft. The FAA rejected Dakota's complaint in light of
12 Dakota's pending Part 16 Complaint. See February 25, 2021 FAA Letter,
13 attached as **Exhibit F**.
14
15

16 DATED June 15, 2021.

17 **JONES SKELTON & HOCHULI, PLC**

18
19 By: /s/ Robert R. Berk
20 Georgia A. Staton
21 Robert R. Berk
22 40 N. Central Avenue, Suite 2700
23 Phoenix, Arizona 85004
24 *Attorneys for Yavapai County*
25
26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 15, 2021, I caused to be E-mailed a true copy of the foregoing to:

FAA Part 16 Docket Clerk
9-AWA-AGC-Part-16@faa.gov

I HEREBY CERTIFY that on June 15, 2021, I caused to be emailed and mailed a true copy of the foregoing to:

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1 I HEREBY CERTIFY that on June 15, 2021, I caused to be shipped via Federal
2 Express the **ORIGINAL** and three (3) **COPIES** to:

3 Office of the Chief Counsel
4 Attention: FAA Part 16 Docket Clerk, AGC-600
5 Federal Aviation Administration
6 800 Independence Avenue S.W.
7 Washington D.C. 20591

8 By: /s/ Kathy Kleinschmidt

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Walenga, Pat (FAA)

From: Kathy Kleinschmidt <KKleinschmidt@Jshfirm.com>
Sent: Tuesday, June 15, 2021 6:04 PM
To: 9-AWA-AGC-Part-16 (FAA)
Cc: ROBERT BERK
Subject: Dakota Territory Tours v Yavapai County, Docket No.: 16-17-18
Attachments: Third Supplement.pdf

Follow Up Flag: Follow up
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Attached is Respondent Yavapai County's Third Supplemental to Part 16 Administrative Record. Set forth below is the drop box link for the exhibits.

<https://www.dropbox.com/sh/9fe0204hh1f4vxp/AACPM1SVnVQfMiG7SQUGQhVpa?dl=0>



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EXHIBIT A

(SOCAA's Motion for
Sanctions)

1 J. Daniel Campbell, Bar No. 005395
2 Ellen B. Davis, Bar No. 013806
3 **KOELLER, NEBEKER, CARLSON & HALUCK LLP**
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8 Dan.Campbell@knchlaw.com
9 Ellen.Davis@knchlaw.com
10 *Attorneys for Defendant*
11 *Sedona-Oak Creek Airport Authority, Inc.*

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF YAVAPAI**

14 DAKOTA TERRITORY TOURS, ACC,

Case No.: V1300CV201780201

15 Plaintiff,

**DEFENDANT SOCAA'S MOTION FOR
SANCTIONS DUE TO DAKOTA'S
VIOLATION OF THIS COURT'S
ORDERS, DISCOVERY AND
DISCLOSURE OBLIGATIONS**

16 vs.

17 SEDONA-OAK CREEK AIRPORT
18 AUTHORITY, INC., an Arizona non-
19 profit corporation, AMANDA
20 SHANKLAND and JOHN DOE
21 SHANKLAND, husband and wife,

22 Defendants.

(Assigned to the Honorable John D. Napper)

23 Defendant Sedona-Oak Creek Airport Authority, Inc. ("Defendant" of "SOCAA")
24 requests that this Court impose sanctions on Plaintiff Dakota Territory Tours, ACC
25 ("Dakota") for violations of this Court's orders and disclosure and discovery obligations
26 for the reasons stated herein.¹ More specifically, SOCAA seeks:

¹ On July 28, 2020, Judge Carman granted the parties permission to brief this motion in lieu of filing a Rule 26 (d) discovery dispute. **Exh. 1.**

1 (1) an order prohibiting Dakota from offering any of the late-disclosed/produced
2 documents or any information therein as support for its claims or in defense
3 against SOCAA's counterclaims regardless of whether SOCAA offers any of the
documents;

4 (2) instructions to the jury that Dakota failed to comply with this Court's orders,
5 failed to comply with its disclosure obligations under Rule 26.1, and failed to
6 comply with its discovery obligations under Rules 26, 33, and 34;

7 (3) an order prohibiting Dakota from offering any new documents or testimony
8 explaining or regarding the \$1,396,725 "other income" or "management fee" line
9 item in its profit and loss statement in its RFP response, other than as previously
10 testified to by its 30(b)(6) witnesses and contained in the documents produced
11 before close of discovery, and as a result, an order that Dakota's RFP was not a
12 responsive bid;

13 (4) Alternatively, if these requests are not granted, SOCAA asks that this Court
14 reopen discovery at Dakota's sole expense and allow SOCAA to discover the
15 reasons for Dakota's failures and regarding all of the issues raised by the late-
disclosed information.

16 (5) Reimbursement of SOCAA's attorneys' fees, costs and professional witness
17 fees associated with Dakota's violations.

18 I. THE APPLICABLE LAW

19 Rule 26.1 (a) (7) of the Arizona Rules of Civil Procedure requires the Plaintiffs to
20 disclose:

21 (1) **the factual basis** of each of the disclosing party's claims or defenses;

22 (4) the name and address of each person whom the disclosing party believes
23 may have knowledge or information relevant to the subject matter of the
24 action, and **a fair description of the nature of the knowledge or
information each such person is believed to possess;**

25 (7) **a computation and measure of each category of damages** alleged by the
26 disclosing party, the documents and **testimony on which such
computation and measure are based,** and the **name, address and
telephone number of each witness** whom the disclosing party expects to
call at trial to testify on damages.

1 (8) the existence, location, custodian, and **general description of any tangible**
2 **evidence**, documents, or electronically stored information that the
3 disclosing party plans to use at trial, including any material to be used for
4 impeachment;

5 (9) the existence, location, **custodian, and general description of any**
6 **tangible evidence**, documents, or electronically stored information that
7 may be relevant to the subject matter of the action

8 The purpose of the pretrial disclosure rules is to provide the parties with a reasonable
9 opportunity to prepare for trial. *Breitbart-Napp v. Napp*, 216 Ariz. 74, ¶. 21 80 163 P.3d
10 1024, 1030 (App. 2007). Rule 26.1 was “intended to deter parties from practicing
11 ‘litigation by ambush.’” *Schwartz v. Arizona Primary Care Physicians*, 192 Ariz. 290,
12 296, ¶21, 964 P.2d 491, 497 (App. 1998).

13 Rule 30 (b) (6) requires the entity to produce a witness who can testify to
14 information “known or reasonably available” to the entity:

15 (6) Notice or Subpoena Directed to an Entity. In its deposition notice or
16 subpoena, a party may name as the deponent a public or private corporation
17 * * * The named entity must then designate one or more * * * persons who
18 consent to testify on its behalf. * * * **Each designated person must testify**
19 **about information known or reasonably available to the entity.**

20 Rule 33 (b) also requires the responding entity to answer interrogatories under oath
21 within thirty days and to provide all information available to it after a reasonable inquiry.

22 (b) **Answers and Objections.**

23 (1) *Time to Respond.* Unless the parties agree or the court orders otherwise,
24 the responding party must serve its answers and any objections within 30
25 days after being served with the interrogatories. * * *

26 (2) *Answers Under Oath.* Subject to Rule 33(b) (3), an answering party **must**
answer each interrogatory separately and fully in writing under oath.
In answering an interrogatory, a party--including a public or private entity--
must furnish the information available to it. * *

1 (3) *Objections.* * * * If a party states an objection, it must still answer the
2 interrogatory to the extent that it is not objectionable.

3 (4) *Signature.* * * * If the answering party is a public or private entity, an
4 authorized representative with knowledge of the information contained in
5 the answers, **obtained after reasonable inquiry, must sign them under
oath.** * * *

6 Rule 34 (b) (3) requires the responding party to respond and produce documents within
7 thirty days and respond to each item:

8 (A) Time to Respond. Unless the parties agree or the court orders otherwise, the
9 party to whom the request is directed must respond in writing within 30 days after
being served. * * *

10 (B) Responding to Each Item. For each item or distinct category of items, the
11 response must either state that inspection and related activities will be permitted as
12 requested or state the grounds for objecting with specificity, including the reasons.

13 Rule 37 (b) (2) (A) provides for sanctions due to a party's failure to obey a court order,
14 including without limitation the following

- 15 (i) **directing that the matters** described in the order or other
16 **designated facts be taken as established** for purposes of the action,
as the prevailing party claims;
17 (ii) **prohibiting the disobedient party from supporting or opposing**
18 **designated claims or defenses, or from introducing designated**
matters in evidence;
19 (v) dismissing the action or proceeding in whole or in part;

20 Rule 37(c) (1) prohibits the Plaintiffs from using non-disclosed evidence or documents at
21 trial. That rule states:

- 22 (1) Failure to Timely Disclose. Unless the court specifically finds that such
23 failure caused no prejudice or orders otherwise for good cause, **a party**
24 **who fails to timely disclose information, a witness, or a document**
25 **required by Rule 26.1 may not use the information, witness, or**
26 **document as evidence at trial,** at a hearing, or with respect to a motion. In

appropriate circumstances, the court may also order any of the sanctions set forth in Rule 37(g) (2) (B) for the failure to disclose.

(2) Inaccurate or Incomplete Disclosure. On motion, the court may order a party or attorney who makes a disclosure under Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for the reasonable cost, including attorney's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.

(3) Other Available Sanctions. In addition to or instead of the sanctions under Rule 37(c) (1) and (2), the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) **may inform the jury of the party's failure;** and

(C) **may impose other appropriate sanctions, including any of the orders listed in Rule 37(b) (2) (A) (I) through (vii) . . .**

(4) Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than 60 Days Before Trial. **A party seeking to use information, a witness, or a document** that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or--in the absence of such a deadline--60 days before trial, **must obtain leave of court by motion. The motion must be supported by affidavit** and must show that:

(A) the information, witness, or document would be allowed under the standards of Rule 37(c) (1); and

(B) **the party disclosed the information, witness, or document as soon as practicable after its discovery.**

Rule 37 (f) provides for sanctions for failure to answer interrogatories or respond to requests for production .

(f) Party's Failure to * * * Respond to Interrogatories or Requests for Production.

1 (1) Generally.

2 (A) Motion; Grounds for Sanctions. The court where the action is
3 pending may, on motion, order sanctions if:

4 (ii) a party--after being properly served with
5 interrogatories under Rule 33 or requests for
6 production under Rule 34--fails to serve its answers,
7 objections, or written response.

8 (2) Unacceptable Excuse for Failing to Act. A failure described in Rule
9 37(f)(1)(A) **is not excused** or mitigated on the ground that the
10 discovery sought was objectionable, **unless the party failing to act**
11 **has a pending motion for a protective order** under Rule 26(c)

12 (3) Types of Sanctions. **Sanctions may include any of the orders listed in**
13 **Rule 37(b) (2) (A) (I) through (vii).** Instead of or in addition to these
14 sanctions, the court may require the party failing to act, the attorney
15 advising that party, or both, to pay the reasonable expenses--including
16 attorney's fees--caused by the failure, unless the failure was substantially
17 justified or other circumstances make an award of expenses unjust.

18 By the plain language of Rule 37, if a party fails to answer an interrogatory, the evidence
19 is to be excluded at the time of trial. *DeElena v. Southern Pacific Co.*, 121 Ariz. 563,
20 568, 592 P.2d 759, 764 (1979). When the plaintiff failed or refused to answer an
21 interrogatory, it was not error for the trial court to refuse to permit plaintiff to answer the
22 question during trial and to require him to stand on his prior answer. *Schwartz v.*
23 *Schwerin*, 85 Ariz. 242, 247, 336 P.2d 144, 147 (1959). This is true even if the non-
24 disclosure was due to the failure of former trial counsel. See, e.g. *Carver s. Salt River*
25 *Valley Water User's Association*, 104 Ariz. 513, 456 P.2d 371 (1969) (where the plaintiff
26 failed to identify a witness in answering an interrogatory thus depriving defendant of an
adequate opportunity to prepare for trial, it was not an abuse of discretion to exclude the
witness despite blaming a former trial counsel who left the firm prior to submission of
the answers, when there was no showing that "with due diligence the witnesses could
have been discovered prior to the deadline.").

1 Sanction are appropriate, more so when trial date is imminent. A defendant is not
2 entitled to ignore the requirements of Rule 33 and a court order "with impunity." *Central*
3 *Cycle Sales v. Obert*, 23 Ariz. App. 378, 379, 533 P.2d 686, 687 (App. 1975) (default
4 judgment was appropriate due to defendants' failure to answer interrogatories despite a
5 court order when the only excuse given was absence of a secretary in defendant's
6 counsel's office after the deadline, and there was a total disregard for the rules and
7 order.) The sanction applies whether or not a motion to compel was filed. Rule 37(d)
8 [now (f) sanctions for failure to answer interrogatories] "does not require disobedience of
9 an order to compel before sanctions are authorized." *Verde Ditch Co. by Allert v. James*,
10 157 Ariz. 369, 372 758 P.2d 144, 147 (App. 1988) (the responding party has an "absolute
11 duty" to respond so that a motion for sanctions is appropriate without a violation of a
12 prior court order).

13 **II. STATEMENT OF FACTS**

14 **A. Dakota Produced Documents Eight Months After Close of Discovery** 15 **That Should Have Been Produced in 2018 and That Would Have** 16 **Radically Altered Much of SOCAA's Discovery.**

17 Dakota is a disappointed bidder suing because SOCAA allegedly rejected its RFP
18 for 14 CFR Part 135 air tours operations at the airport in bad faith. SOCAA contends
19 that Dakota's bid was objectively inferior for a host of reasons, including that it did not
20 meet the bid requirements, the company was insolvent, and Dakota repeatedly lied to
21 SOCAA².

22
23
24 ² In light of Dakota's disclosure and discovery failures, Dakota's new counsel is searching for
25 additionally relevant or responsive materials. SOCAA should be able to use those materials in defense of
26 Dakota's claims, and affirmatively in support of its counterclaims. For all the reasons set forth herein,
Dakota should not. Although SOCAA appreciates new counsel's willingness to undertake that search, this
does not excuse Dakota's prior conduct.

1 As just one example, the RFP required a current financial statement signed by the
2 proposer and the person who prepared the financial statement. Dakota instead submitted
3 a financial statement stamped with the name of a non-existent CPA and company, with a
4 significant \$1,027,169.10 loss in net ordinary income, and an unexplained larger number,
5 \$1,396,725.31 in a "management fee" / "other income." **Exh. 2.** For years and at great
6 cost, SOCAA sought to discover whether Dakota was insolvent, whether Dakota
7 intentionally lied about in its finances, or whether Dakota's operations at the airport were
8 profitable in order to contest Dakota's claim that it was a qualified bidder and challenge
9 its claim for damages. SOCAA also sought to obtain copies of communications with the
10 FAA to dispute Dakota's contention that the FAA permitted Dakota to conduct Part 135
11 operations with Solid Edge's certificate. In 2018, SOCAA filed a motion for summary
12 judgment because Dakota was not a Part 135 operation or a qualified bidder. In 2019,
13 SOCAA sought summary judgment because Dakota had not met the bid qualifications
14 due its material misrepresentations in its RFP response, and because Dakota had not been
15 damaged. The court found material facts in dispute and denied the motions.

16 Discovery closed on November 29, 2019. On May 11, 2020, SOCAA moved to
17 delay the trial to depose a former Dakota pilot.³ In July 2020, on the eve of that
18 deposition, Dakota's new counsel suddenly produced 722 pages of Dakota's emails it
19 believed impeached some of the expected testimony. Those documents either: a) related
20 to Dakota's response to SOCAA's Request for Proposal ("RFP") dated 05/31/2017; or b)
21 was communications with the FAA. As explained below, those documents should have
22 been produced in 2018 or 2019, long before the close of discovery.

23
24 ³ On 05/11/2020, SOCAA moved depose pilot Steve Shattuck because Dakota, notwithstanding its
25 disclosure and discovery obligations, did not disclose Shattuck's alleged role in the creation of Dakota's
26 financial statement or his whereabouts, or produce documents Shattuck possessed until February and
March 2020. SOCAA was not able to serve Shattuck until June 2020 or depose him until July 2020.

1 Among other issues, the late-produced documents are relevant to Dakota's claims
2 about the strength and responsiveness of its proposal. Those three-year old but newly
3 produced email demonstrate that Dakota altered its profit and loss statement included
4 within its RFP response and/or conspired with its bookkeeper to hide a substantial loss
5 and make Dakota appear profitable. In an email dated May 31, 2017 (the day the RFP
6 response was due), Ann-Marie Brunner instructed the bookkeeper to add "other income"
7 to erase a significant loss in a way not to increase the amount Dakota owed to SOCAA
8 for percentage rents. **Exh. 3.** CL000317-20⁴. Bookkeeper Sterling allegedly said:

9 Hi! I'm trying to justify changes to the P&L, and even if I take all of
10 the advertising, aircraft repairs and maintenance, auto expense, insurance,
11 freight, legal & accounting, and penalties & fines off the books, **that still**
12 **leaves a loss of around 522,000.**

13 Question, **instead of adjusting all the actual expenses**, if we show "other
14 income" at the bottom of the form, **such as a management fee, to get the**
15 **amount of net income to around 200k+**, do you pay tax on that to the
16 airport? Marc

17 Ann-Marie Brunner instructed Sterling to make changes to show a \$200,000 profit.

18 Marc, Marc Sterling[marc@sterlingfinancialaz.com]
19 Ann-Marie Klein-Brunner Wed 5/31/2017 9:12:56 AM
20 RE: questions

21 We will need completed financials this morning signed by you so we can
22 print and submit with application early this afternoon.

23 The only income we pay percent of gross on is income generated from the
24 Sedona Airport. We do not pay percent on other income. **If you show a**
25 **200,000.00 profit that is fine. A management fee for other services**
26 **outside** of Sedona Airport no percent paid on that. Please advise of
timeline.

Until this recent production, Dakota never disclosed any of its internal communications
regarding its preparation of the RFP response, or disclosed the identity of all of the
person who participated.

⁴ There is reason to doubt the authenticity of this email. If Dakota were allowed to introduce it, SOCAA
ask that Dakota be order to pay for the cost of SOCAA's forensic examination.

1 Dakota also produced recently produced email that casts doubt on Dakota's claim
2 that the FAA knowingly permits Dakota to operate using Solid Edge's certificate: a two-
3 page email, CL000771-772, dated November 30, 2017 between pilot Shattuck, Eric
4 Brunner, and the FAA's principal operations inspector, Darren Henley. **Exh. 4.** In the
5 email, Brunner and Shattuck request that the FAA schedule a "check ride" for Shattuck
6 to meet Solid Edge's Part 135 pilot competence requirements. *Id.* This email was sent to
7 the FAA *after* the preliminary injunction hearing in this case, *after* SOCAA discovered
8 that Dakota did not hold a Part 135 certificate, and *after* Dakota informed this Court that
9 the FAA was fully aware of and approved of the "joint nature" of Dakota's operations
10 with Solid Edge. Yet, this email gives the FAA the misimpression that Shattuck works
11 for Solid Edge. Shattuck never worked for Solid Edge. Shattuck stopped working for
12 Dakota on September 10, 2017, months before the email was sent.

13 The fact that Dakota has just now produced key documents is also highly relevant
14 to SOCAA's counterclaim for abuse of process. That fact that Dakota waited until after
15 discovery closed is itself abusive. Dakota deprived SOCAA of the opportunity to
16 conduct discovery in support of its counterclaim.

17 **B. SOCAA Long Sought To Discover the Documents and Information**

18 Dakota should have produced these documents as part of its disclosure
19 obligations, in response to an explicit discovery request, or – at the very least – when
20 ordered to do so by this Court. At a discovery dispute hearing on May 21, 2019, this
21 Court ordered Dakota to produce its internal emails related to the RFP process, and
22 specifically warned Dakota that anything not so produced would be excluded.⁵ After
23

24 ⁵ See, 5/21/2019 Hearing Transcript p. 45:23 "The Court, I think [Dakota's] internal emails related to the
25 RFP submission would certainly be relevant. P. 46:9-12 "They should go through their email and look
26 through that and anything they have related to the RFP process should be disclosed." p.47:4-10: The
Court: Okay. So Mr. Weech, seems to me that your client needs to go through the email and find emails

1 that deadline passed, on June 28, 2019, Dakota answered NUI #1, identifying persons
2 who worked on Dakota's response to SOCAA's RFP. **Exh. 6.** Dakota omitted Lynn
3 Brownd. *Id.* The recently produced emails prove that she should have been identified.
4 **Exh. 7.** In its 06/28/2019 response, Dakota represented that Ann-Marie Brunner had
5 only "verbal communications" with Eric Brunner and Steve Shattuck regarding the RFP.
6 **Exh. 6** p.2:17-18. The recently produced emails prove otherwise. See, e.g. **Exhs. 3,7.**
7 On June 28, 2019, Dakota answered the accompanying Request for Production #2,
8 documents related to its RFP response, but produced next to no documents. **Exh. 8.**
9 Again, Dakota neglected to mention or produce these emails.

10 SOCAA sought to discover, but Dakota refused to explain the "other income" on
11 its profit and loss statement in its RFP response. On June 11, 2018, Dakota refused to
12 answer written discovery and claimed that the "management fee" was not relevant to any
13 claim or defense:

14 **NUI #9:** Identify the payor(s) and the nature of the services or value provided by
15 Dakota that generated the management fee that Dakota reported as "Other Income"
16 on page 1 of the Profit & Loss statement dated 5/31/2017 included as Exhibit D3
in Dakota's RFP submission to SOCAA.

17 **Response:** Dakota objects to this interrogatory as the identified claimed
18 **"management fee" is not relevant to any party's claim or defense;** this
19 interrogatory has no relevance to Dakota's claims relating to the parties' Settlement
20 Agreement and the RFP, nor does this interrogatory relate to SOCAA's
counterclaims regarding Dakota's overall status as a Part 135 operator. * * *

21 **Exh. 9.** Dakota never supplemented its answer to NUI#9 or sought a protective order.
22
23

24 related to the RFP process and related to the agreement related to the 135 operations between Solid Edge
25 and Dakota. Do you have any disagreement with that? Mr. Weech: None." p. 48:23-49:49:4: The Court:
26 "Communications between Dakota and Solid Edge on those two topics will be due to be disclosed by
June 25th. If nothing's disclosed by June 25th, the assumption will be that they do not exist, and anything
disclosed after the 25th will be precluded unless SOCAA wants to use the information." **Exh. 5.**

1 When deposed on 09/12/2018, Ann-Marie Brunner blithely testified she did not
2 assist in Sterling's preparation of Dakota's profit and loss statement for the RFP (**Exh. 10**
3 9/12/2018 p.37:22 – 38:4); was not involved in preparing Dakota's financial statement
4 for the RFP "at all" (*Id.* p. 77:5-16); she did not assist in the preparation of Dakota's
5 response to SOCAA's RFP other than "to make it look pretty" (*Id.* p. 56:5-22); and did
6 not know who else worked on the RFP (*Id.* p. 57:7-14). The recent emails prove that she
7 had contemporaneous email exchanges about Dakota's RFP response with Eric, Sterling,
8 Shattuck, and Lynn Brownd. **Exhs. 3, 7.**

9 In October of 2019, SOCAA deposed Dakota's 30(b)(6) witnesses on two topics:
10 its damages; and preparation of the profit and loss statement included in the RFP. Ann-
11 Marie appeared again and testified as to both topics. As Dakota's 30(b)(6) witness, she
12 testified that the only role she had in creating the financials for the RFP was providing
13 credit card and bank statements. **Exh. 11.** 10/04/2019 2:37 p. 42:4-43:6. Ann-Marie
14 swore she never had a conversation with anyone before June of 2019 about whether or
15 not the profit and loss statement "might be inaccurate in any way." **Exh. 12.** 10/04/2019
16 3:52 p.m. at p.6:12-14. While testifying as Dakota's representative and charged with
17 divulging information known or reasonably available to the entity, Ann-Marie avowed
18 that Dakota had no idea how Dakota's financial came to be stamped with the name of a
19 non-existent CPA and entity (*Id.* p. 9:3-23); and denied having any idea how the
20 \$1,396,725.31 in "other income" came to be included into the profit and loss statement in
21 the RFP (*Id.* p. 10:3- 11:10; 19:1-19) or knowing whether the largest number on the
22 profit and loss statement was a "journal error. *Id.* She could not even say whether
23 Dakota's financial statement was complete and accurate. **Exh. 12.** 3:52 p.m. p. 11:19-
24 12:13. The recently produced email suggests the memory loss was intentional.

1 Dakota's other 30(b)(6) witness, bookkeeper Logan Acciavatti, testified that the
2 \$1,396,725.31 in "other income" was a journal error that she discovered in "June or July
3 of 2017;" that she had asked Eric, Ann-Marie and Marc Sterling about the entry when she
4 discovered it – but that they could not explain it. **Exh. 13**, 10/4/2019 Transcript p. 62:17-
5 64:20; 89:23 – 92:4. Dakota produced a 04/12/2019 letter from Acciavatti attesting that
6 the \$1,396,725.31 was an error that was taken off Dakota's books before it filed its taxes.
7 **Exh. 14**. In other words, Dakota admitted keeping two sets of books: one reporting
8 significant income to support the RFP, and another showing very little income for taxes.
9 Given Ann-Marie's amnesia, Acciavatti was Dakota's only witness who offered any
10 explanation of Dakota's financials or the "other income." Dakota never supplemented its
11 disclosure statement, or discovery responses, or provided any other or further
12 explanation. Dakota should not be permitted to offer a third explanation now. SOCAA
13 should not be forced to chase another one down.

14 On June 11, 2018, Dakota answered Request for Production #6 and indicated that
15 it would produce Dakota's and Solid Edge's communications with the FAA. **Exh. 15**.
16 Dakota's counsel later repeatedly avowed to the Court that all FAA communications had
17 been produced.⁶ This recent production proves that to be false.

18 SOCAA was deprived of the ability to conduct critical discovery. Neither Ann-
19 Marie's nor Acciavatti's prior testimony can be reconciled with the email exchange Ann-
20 Marie had with Dakota's bookkeeper on the very day the RFP response was due. **Exh. 3**.
21 The \$1,296,725.31 was not a "journal error." It was an intentionally made up number.
22 Ann-Marie knew when and how that number got on that page. She instructed Sterling to
23 change them (or changed them herself). There is no reason to believe that Dakota could
24

25 ⁶ Mr. Weech twice avowed to the Court that all communications with the FAA had been produced. See,
26 **Exh. 16**, 02/21/2019 Transcript p. 27:3-13; **Exh. 5**, 05/21/2019 Transcript p. 29:9-30:7.

1 not have located this email years earlier. Even if Dakota's counsel were somehow
2 responsible for Dakota's failure to produce documents, that does not explain or excuse
3 Ann-Marie Brunner's 30(b) (6) testimony. If Dakota had produced the missing emails
4 relating to Dakota's response to SOCAA's RFP, SOCAA would have taken a very
5 different deposition of Eric Brunner, Ann-Marie Brunner, and Logan Acciavatti.
6 SOCAA may have deposed Marc Sterling or Lynn Brownd. If Dakota had produced the
7 FAA emails in 2018, SOCAA also would have taken a very different deposition of
8 Dakota's former principal operations inspector, Jacob Hansen on October 11, 2019.
9 SOCAA's FAA expert would have offered a different opinion. SOCAA may have been
10 able to expose Mr. Weech's avowal that the FAA approved Dakota's operations as a
11 fabrication. SOCAA might have won either its December 2018 or its January 2020
12 motion for summary judgment because Dakota's misrepresentations disqualified it.

13 This case was set for trial in April 2020. But for the pandemic and Shattuck's
14 deposition, the recently produced documents would have stayed hidden. Dakota could
15 have avoided its disclosure and discovery obligations. Its violation of this Court's order
16 could have gone undetected. Astoundingly, now that it has been exposed, Dakota wants
17 to introduce the documents to the extent they benefit Dakota. **Exh. 17**, 08/31/2020 7th
18 Supplemental Disclosure Statement. This is ridiculous. Dakota should not benefit from
19 its misconduct. SOCAA should not be prejudiced. SOCAA did its job. It spent tens of
20 thousands in attorneys' fees and years in discovery. SOCAA should not have to redo that
21 work or suffer a further delay in the trial.

22 **III. SEVERE SANCTIONS SHOULD BE IMPOSED**

23 Dakota has no excuse or even explanation for its failure to produce these emails
24 years ago. Importantly, Dakota did nothing until it perceived an advantage, and only
25 because SOCAA forced its hand by tracking down and deposing Shattuck -- despite
26

1 Dakota's attempts to mislead as to Shattuck's location and involvement. Dakota may
2 attempt to shrug off its malfeasance, but that would effectively twist the rules of civil
3 procedure into a heads-I-win tails-you-lose proposition. After stonewalling SOCAA at
4 every turn, Dakota now wants to use the evidence and information it denied existed and
5 whose relevance it disputed. The rules prohibit such conduct and instead call for
6 sanctions.

7 **A. This Court Should Enter an Order Preventing Dakota from Offering**
8 **the Late Produced Documents While Permitting SOCAA to Use Them,**
9 **and Preventing Dakota from Offering Any New Explanation for the**
10 **"Management Fee."**

11 Dakota clearly disobeyed Rules 26.1, 33 and 34 when it failed to: a) identify
12 witnesses responsible for creating the RFP; b) identify and produce emails relating to the
13 RFP; c) produce communications with the FAA; or d) explain the "other income" in
14 response to SOCAA's interrogatory. Dakota violated Rule 30 (b) (6) when it produced a
15 testifying witness who failed to testify to information "known or reasonably available to
the entity."

16 Under Rules 26.1 and Rule 37 (c) (1) and (4), *Dakota cannot offer any late-*
17 *produced documents into evidence* after close of discovery and on the eve of trial unless
18 it makes a motion seeking leave of court, supported by the affidavit attesting that it
19 disclosed the documents or the information as soon as practicable after discovery.
20 Dakota cannot produce such an affidavit. Dakota knew it had exchanged email relating
21 to its RFP response. Assuming this recent production is accurate, Dakota did not start
22 working on its response until May 21. There was only 10 days worth of email to search.
23 Dakota could readily have found email dated the day of the submission. At best, Dakota
24 failed to look. That alone is inexcusable. Dakota cannot offer the late disclosed
25 documents because it has no legitimate excuse for its behavior.

1 Moreover, *these particular late disclosed documents cannot be offered because*
2 *they were the subject of discovery and of a court order.* As required by Rule 26.1,
3 Dakota should have identified the relevant witnesses and produced its emails relating to
4 the RFP with its initial disclosure in the spring of 2018. Under Rule 33, Dakota was
5 required to provide all information reasonably available to it to explain the “other
6 income” in 2018 in response to NUI#9. **Exh. 6.** Under Rule 34, Dakota was required to
7 produce its correspondence with the FAA in June 2018 in response to RFP #6. **Exh. 15.**
8 Dakota should have produced its email relating to the RFP no later than June 25, 2019, as
9 ordered by this Court. **Exh. 5.** Having been warned what would happen if it disobeyed,
10 Dakota should not now be permitted to complain. And even if those failures were in
11 sufficient to justify sanctions. Dakota has no excuse for failing to produce the email on
12 06/28/2019 in response to the request for production explicitly seeking them. **Exh. 8.**

13 Similarly, *Dakota cannot offer new information.* Rules 33 prohibits Dakota from
14 offering a new explanation for its “other income” because it failed and refused to do so
15 previously, and never made a motion for a protective order. As the Supreme Court found
16 in *Swartz v. Schwerin*, 85 Ariz. At 247, *supra*, the disobedient party should be required to
17 “stand on its prior answer.” This sanction is consistent with Rule 37(b)(2)(A) (i) and (ii)
18 ordering that matters be taken as established, or prohibiting the disobedient party from
19 “supporting or opposing designated claims or defenses, or from introducing designated
20 matters in evidence.” Having taken the position that the “other income” is not relevant to
21 any claim or defense, and that the \$1,396,727.31 was a “journal error” in its 30(b)(6)
22 depositions, and having ignored this Court’s order, Dakota should not be permitted to
23 offer a new or different explanation now.

1 **B. At a Minimum, SOCAA Is Entitled to Jury Instructions. The Court**
2 **Could Dismiss.**

3 This Court could dismiss Dakota's claims "in whole or part" if it finds that Dakota
4 disobeyed its May 21, 2019 order to produce these emails by June 25, 2019. Rule 37(b)
5 (2) (A) (v) permits dismissal for disobedience of a Court order whenever that would be
6 "just." If this Court is so inclined, SOCAA requests that this Court hold an evidentiary
7 "culprit" hearing and consider dismissal as an appropriate sanction.

8 At a minimum, this Court should issue the orders listed above, and employ the
9 sanction in Rule 37(c) (3) (B) to "inform the jury of the party's failures." SOCAA asks
10 that the Court instruct the jury that 1) Dakota failed to follow this Court's order to
11 produce documents by June 25, 2019; 2) Dakota failed to meet its discovery and
12 disclosure obligations; and 3) that adverse inferences can be drawn from those failures.

13 **C. Alternatively, if Discovery Is Reopened, Dakota Should Pay.**

14 If this Court declines to dismiss Dakota's claims, enter the requested orders, or to
15 issue SOCAA's jury instructions, then SOCAA asks to re-open discovery. At a
16 minimum, that would mean retaking all of the depositions of Dakota's witnesses, and
17 revising SOCAA's expert(s) opinions. Motions may have to be revisited. SOCAA
18 should not have to suffer that delay, bear that burden, or incur that cost because Dakota
19 caused this problem. If SOCAA has to start over, it should be at Dakota's expense. In
20 addition to redoing prior discovery, SOCAA should be entitled to discover why Dakota
21 ignored this Court's order, offered misleading deposition testimony, and ignored its
22 disclosure and discovery obligations. All of that would be compelling evidence in
23 support of SOCAA's abuse of process counterclaim. SOCAA should be entitled to
24 discover that if the trial is delayed.

1 Dated this 20th day of October, 2020.

2 **KOELLER, NEBEKER, CARLSON &**
3 **HALUK, PLC**

4 By: /s/ Ellen B. Davis
5 J. Daniel Campbell
6 Ellen B. Davis

7 **ORIGINAL** e-filed/e-served via
8 TurboCourt this 20th day of October, 2020.

9 The Honorable John D. Napper

10 Daryl Williams
11 Daniel Mestaz
12 William Mestaz, LLP
13 6225 N. 24th Street, Suite 125
14 Phoenix, AZ 85016
15 dwilliams@williamsmestaz.com
16 dmestaz@williamsmestaz.com
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18 *Tours, ACC*

19 Kiersten A. Murphy
20 HENZE COOK MURPHY, PLLC
21 722 East Osborn Road, Suite 120
22 Phoenix, Arizona 85014
23 *Attorney for Defendant Sedona-Oak Creek*
24 *Airport Authority, Inc.*

25 Tony S. Cullum
26 LAW OFFICE OF TONY S. CULLUM, PLLC
14 East Dale Avenue
Flagstaff, Arizona 86001
Attorney for Defendant Sedona-Oak
Creek Airport Authority, Inc.

By: /s/ Kim Miller

Exhibit #	Description
1	2020-07-28 Minute entry re motion briefing
2	2017-05-31 Dakota Profit and Loss Statement included in the RFP
3	2017-05-32 Email between Brunner and Sterling CL000317-320
4	2017-11-30 Email between Shattuck, Brunner and Henley of the FAA, CL000771-772
5	2019-05-21 Transcript, Discovery Hearing pp.29-30, 45-49
6	2019-06-28 Dakota's responses to non-uniform interrogatories
7	2019-05-28 Email from Brunners to Shattuck, Lynn Brownd, CL00069-70, 206
8	2018-06-68 Dakota's response to request for production
9	2019-06-11 Dakota's response to non-uniform interrogatories
10	2019-09-12 Deposition of Ann-Marie Brunner pp. 37-38, 56-57, 77
11	2019-10-04 Deposition of Ann-Marie Brunner 2:37 p.m. pp. 42-43
12	2019-10-04 Deposition of Ann-Marie Brunner 3:52 p.m. pp.6, 9-11, 19
13	2019-10-04 Deposition of Logan Acciavatti pp. 62-64, 89-92
14	2019-04-12 Letter from Verde Valley, Logan Acciavatti
15	2018-06-11 Dakota's response to request for production
16	2019-02-21 Transcript p. 27
17	2020-08-31 Dakota's 7 th Supplemental Disclosure

EXHIBIT 1

EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

FILED

DATE: 07/28/2020

5 O'Clock P.M.

Donna McQuality, CLERK

BY: L. WILLIAMS

Deputy

DIVISION: 4
HON. KRISTA M. CARMAN
CASE NO. V1300CV201780201

DONNA McQUALITY, CLERK
By: L. WILLIAMS, Deputy Clerk
DATE: July 28, 2020

TITLE:
DAKOTA TERRITORY TOURS ACC,

(Plaintiff)

COUNSEL:
Daryl M. Williams and Daniel B. Mestaz,
Williams Mestaz, LLP (e)
(For Plaintiff)

vs.

SEDONA-OAK CREEK AIRPORT AUTHORITY,
INC an Arizona non-profit corporation; AMANDA
SHANKLAND and JOHN DOE SHANKLAND,
husband and wife,

(Defendants)

J. Daniel Campbell and Ellen B. Davis,
Koeller, Nebecker, Carlson & Haluck LLP (e)
(For Defendants)

Kiersten A. Murphy,
Henze Cook Murphy, PLLC (e)

Tony S. Cullum,
Law Office of Tony S. Cullum, PLLC (e)
(For Defendants)

HEARING ON:
STATUS CONFERENCE

NATURE OF PROCEEDINGS

COURT REPORTER
FTR GOLD

START TIME: 2:33 p.m.

APPEARANCES: Daniel B. Mestaz, Counsel for the Plaintiff, telephonically
Tony S. Cullum, Counsel for the Defendant, telephonically
Kiersten A. Murphy, Counsel for the Defendant, telephonically
J. Daniel Campbell, Counsel for the Defendant, telephonically

This is the date and time set for a Status Conference.

Discussion ensues regarding scheduling in this matter, changes to the Administrative Order, discovery issues, and possible sanctions.

The Court **NOTES** should the parties reach an impasse in trying to resolve the discovery dispute as presented this date, they have permission to brief the discovery dispute request for sanctions as opposed to a Rule 26d Statement.

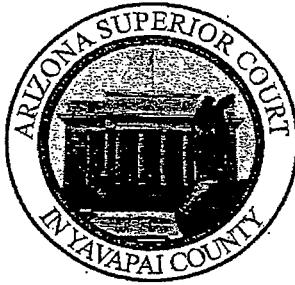
IT IS ORDERED:

- **Vacating** Trial previously set on October 20, 21, 22, 23, 26, 27, 28, 29, and 30, 2020 and Final Pretrial Conference on September 28, 2020.
- **Reassigning** this matter to Division 2 pursuant to Administrative Order 2020-12.
- **Setting** a Pretrial Conference on October 5, 2020 at 10:30 a.m. in Division 2. Telephonic appearances are permitted by calling (928) 777-7990 at the time of the Conference.

END TIME: 2:43 p.m.

cc: Krista M. Carman – Division 4 (e)
John D. Napper – Division 2 (e)

YAVAPAI COUNTY
SUPERIOR COURT



HEALTH & SAFETY
SCREENING
GUIDELINES

Effective June 1, 2020 the Yavapai County Superior Court will be practicing health and safety measures for those persons coming into the courthouses. Please note the following procedures that court staff will be following until further notice.

- All persons coming into the Superior Court facilities will be required to wear a mask at all times unless directed otherwise.
 - ◊ Please bring your own mask. If you do not bring a mask, one will be provided for you.
 - ◊ If you refuse to wear a mask, you will be denied entry into the courthouse.
- You will be asked the following three questions prior to entering through the magnetometer:
 - ◊ Have you tested positive for COVID-19 in the past 10 days or are you currently waiting for test results?
 - ◊ Have you had contact with someone who has tested positive for the COVID-19 virus in the last 14 days?
 - ◊ Have you experienced any symptoms of COVID-19 in the last 10 days?

** If you answer "yes" to any of these questions, you may be denied entry into the courthouse until cessation of symptoms, diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under the CDC guidelines. You may request an exception by completing a form and submitting it to Court Administration for consideration.*
- Court Security and/or other court staff will be checking your temperature upon entry.
 - ◊ Your temperature will be scanned by an infrared digital thermometer. It will be placed approximately two to five centimeters away from your forehead.
 - ◊ If your temperature reads 100.4° F or higher, you will be denied entry into the courthouse and directed to contact the Division or department in which you had business by telephone or alternate means. *Upon request, you may re-test once after 15 minutes.*
 - ◊ Court Security Officers will be equipped with masks and gloves while conducting temperature checks and screening equipment will be frequently sanitized for everyone's protection.

Some activities can raise your body temperature. Heavy exercise and/or caffeine intake can raise your body temperature. Ensure these activities are limited prior to coming to the courthouse.

SYMPTOMS OF COVID-19
Shortness of breath or difficulty breathing
Muscle pain
Body temperature over 100.4°F
Sore throat
Cough
New loss of taste or smell

Some medical conditions can affect temperatures. If you are willing, please discuss with us if you feel a separate condition exists that may cause an elevated reading.

EXHIBIT 2

EXHIBIT 2

Exhibit D3 (continued)

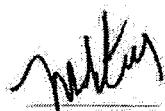
DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 1 of 3

9:37 AM
08/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C Profit & Loss April 2016 through March 2017

	Apr '16 - Mar '17
Ordinary Income/Expense	
Income	
Services	1,171,908.98
Total Income	1,171,908.98
Cost of Goods Sold	
Mdse Purchases	3,910.24
Total COGS	3,910.24
Gross Profit	1,167,998.74
Expense	
Advertising	77,843.47
Aircraft Fuel	127,885.81
Aircraft Repairs & Maintenance	185,454.60
Automobile Expense	37,802.52
Bank Charges	706.97
Merchant Charges	51,521.24
Commission	48,448.37
Continuing Education	450.00
Dues & Subscriptions	278.61
Equipment Rental	9,885.16
Flight Fees	157,212.49
Freight	44,000.00
Insurance	
Business Liability	150,102.41
Employee Insurance	8,366.30
Total Insurance	158,468.71
Janitorial	37.41
Legal & Accounting	69,938.85
Media & Entertainment	4,597.87
Office Supplies	29,311.06
Outside Services	320,834.78
Payroll Taxes	42,404.08
Payroll Processing Fees	1,085.27
Penalties & Fines	10,000.00
Pension Expense	6,000.00
Postage & Delivery	576.09
Promotional	5,236.00
Rent	101,252.53
Repairs & Maintenance	35,421.74
Salaries & Wages	427,956.10
Supplies	14,865.70
Taxes & Licenses	26,913.60
Telephone	12,453.47
Tour Fees	187,698.83
Travel	2,545.94
Uniforms	4,407.31
Utilities	10,801.16
Total Expense	2,195,167.84
Net Ordinary Income	-1,027,169.10
Other Income/Expense	
Other Income	
Management Fee	1,386,725.31
Interest Income	10.33
Total Other Income	1,386,735.64
Other Expense	
Depreciation Expense	120,289.00

 Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 1

Exhibit D3
(continued)

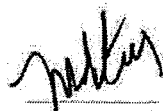
DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 2 of 3

9:37 AM
05/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C
Profit & Loss
April 2016 through March 2017

	Apr '16 - Mar 17
Interest Expense	36,821.74
Total Other Expense	157,110.74
Net Other Income	1,239,624.90
Net Income	212,455.80


Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 2

Exhibit D3
(continued)

DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 3 of 3

9:38 AM
08/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C
Balance Sheet
As of March 31, 2017

	<u>Mar 31, 17</u>
ASSETS	
Current Assets	520,935.88
Fixed Assets	279,307.49
TOTAL ASSETS	<u>800,243.37</u>
LIABILITIES & EQUITY	<u>800,243.37</u>


Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 1

EXHIBIT 3

EXHIBIT 3

To: eric@sedonaairtours.com[eric@sedonaairtours.com]; 'Ann-Marie Klein-Brunner'[gohelisedona@outlook.com]
From: Marc Sterling
Sent: Wed 5/31/2017 6:45:59 AM
Subject: questions

Hi!

I'm trying to justify changes to the P&L, and even if I take all of the advertising, aircraft repairs and maintenance, auto expense, insurance, freight, legal & accounting, and penalties & fines off the books, that still leaves a loss of around 522,000.

Question, instead of adjusting all the actual expenses, if we show "other income" at the bottom of the form, such as a management fee, to get the amount of net income to around 200k+, do you pay tax on that to the airport?

Marc



Virus-free. www.avast.com

To: Marc Sterling[marc@sterlingfinancialaz.com]
From: Ann-Marie Klein-Brunner
Sent: Wed 5/31/2017 9:12:56 AM
Subject: RE: questions

Marc,

We will need completed financials this morning signed by you so we can print and submit with application early this afternoon.

The only income we pay percent of gross on is income generated from the Sedona Airport. We do not pay percent on other income. If you show a 200,000.00 profit that is fine. A management fee for other services outside of Sedona Airport no percent paid on that.

Please advise of timeline.

Ann-Maire

Sent from Mail for Windows 10

From: Marc Sterling
Sent: Wednesday, May 31, 2017 6:46 AM
To: eric@sedonaairtours.com; 'Ann-Marie Klein-Brunner'
Subject: questions

Hi!

I'm trying to justify changes to the P&L, and even if I take all of the advertising, aircraft repairs and maintenance, auto expense, insurance, freight, legal & accounting, and penalties & fines off the books, that still leaves a loss of around 522,000.

Question, instead of adjusting all the actual expenses, if we show "other income" at the bottom of the form, such as a management fee, to get the amount of net income to around 200k+, do you pay tax on that to the airport?

Marc



Virus-free. www.avast.com

To: 'Ann-Marie Klein-Brunner'[gohelisedona@outlook.com]
From: Marc Sterling
Sent: Wed 5/31/2017 9:14:54 AM
Subject: RE: questions

Great!

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Wednesday, May 31, 2017 9:13 AM
To: Marc Sterling <marc@sterlingfinancialaz.com>
Subject: RE: questions

Marc,

We will need completed financials this morning signed by you so we can print and submit with application early this afternoon.

The only income we pay percent of gross on is income generated from the Sedona Airport. We do not pay percent on other income. If you show a 200,000.00 profit that is fine. A management fee for other services outside of Sedona Airport no percent paid on that.

Please advise of timeline.

Ann-Maire

Sent from Mail for Windows 10

From: Marc Sterling
Sent: Wednesday, May 31, 2017 6:46 AM
To: eric@sedonaairtours.com; 'Ann-Marie Klein-Brunner'
Subject: questions

Hi!

I'm trying to justify changes to the P&L, and even if I take all of the advertising, aircraft repairs and maintenance, auto expense, insurance, freight, legal & accounting, and penalties & fines off the books, that still leaves a loss of around 522,000.

Question, instead of adjusting all the actual expenses, if we show "other income" at the bottom of the form, such as a management fee, to get the amount of net income to around 200k+, do you pay tax on that to the airport?

Marc



Virus-free. www.avast.com

To: 'Ann-Marie Klein-Brunner'[gohelisedona@outlook.com]
From: Marc Sterling
Sent: Wed 5/31/2017 9:19:22 AM
Subject: RE: questions

Should have things in the next 45 minutes to you.

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Wednesday, May 31, 2017 9:13 AM
To: Marc Sterling <marc@sterlingfinancialaz.com>
Subject: RE: questions

Marc,

We will need completed financials this morning signed by you so we can print and submit with application early this afternoon.

The only income we pay percent of gross on is income generated from the Sedona Airport. We do not pay percent on other income. If you show a 200,000.00 profit that is fine. A management fee for other services outside of Sedona Airport no percent paid on that.

Please advise of timeline.

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Sent: Wednesday, May 31, 2017 6:46 AM
To: eric@sedonaairtours.com; 'Ann-Marie Klein-Brunner'
Subject: questions

Hi!

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Question, instead of adjusting all the actual expenses, if we show "other income" at the bottom of the form, such as a management fee, to get the amount of net income to around 200k+, do you pay tax on that to the airport?

Marc



Virus-free. www.avast.com

EXHIBIT 4

EXHIBIT 4

To: darren.henley@faa.gov[darren.henley@faa.gov]
Cc: World Wide Helicopter Service Inc.[mad_duck@hotmail.com]; Al Rager[Alfred.Rager@faa.gov]
From: Steve Shattuck
Sent: Thur 11/30/2017 8:58:58 AM
Subject: Solid Edge Aviation FAR 135 Basic Day VFR PA31-350 Proficiency Check...

Dear Inspector Henley:

In accordance with direction from the Solid Edge Aviation Director of Operations (Mr. Eric Brunner), we are requesting an initial aircraft proficiency check, basic day, VFR in accordance with FAR 135.293(b), for the following individual:

Steven Shattuck
ATP No. 2693299

We are requesting this check to be conducted on or after December 15, 2017 at a time and location of your discretion.

Thank you, in advance, for your consideration.

Kindest regards,

Steven R. Shattuck
(480) 662-0721 (Mobile)

To: Darren.Henley@faa.gov[Darren.Henley@faa.gov]
Cc: mad_duck@hotmail.com[mad_duck@hotmail.com]
From: Steve Shattuck
Sent: Thur 11/30/2017 1:18:06 PM
Subject: Re: Solid Edge Aviation FAR 135 Basic Day VFR PA31-350 Proficiency Check...

Dear Inspector:

Piper Navajo PA31-350.

Thank you.

Steve Shattuck

Sent from my iPhone

On Nov 30, 2017, at 12:47, <Darren.Henley@faa.gov> <Darren.Henley@faa.gov> wrote:

Mr. Shattuck,

Which aircraft do you plan to use?

Regards,

Darren Henley
Aviation Safety Inspector - Operations
Flight Standards District Office

17777 N. Perimeter Drive, Suite 101

Scottsdale, AZ 85255

Tel: 480 419-0330 ext. 316

Fax: 480 419-0800

Email: darren.henley@faa.gov

<image001.jpg>

From: Steve Shattuck [<mailto:arielair1@aol.com>]
Sent: Thursday, November 30, 2017 8:59 AM
To: Henley, Darren (FAA)
Cc: World Wide Helicopter Service Inc.; Rager, Alfred (FAA)
Subject: Solid Edge Aviation FAR 135 Basic Day VFR PA31-350 Proficiency Check...

Dear Inspector Henley:

In accordance with direction from the Solid Edge Aviation Director of Operations (Mr. Eric Brunner), we are requesting an initial aircraft proficiency check, basic day, VFR in accordance with FAR 135.293(b), for the following individual:

Steven Shattuck
ATP No. 2693299

We are requesting this check to be conducted on or after December 15, 2017 at a time and location of your discretion.

Thank you, in advance, for your consideration.

Kindest regards,

Steven R. Shattuck
(480) 662-0721 (Mobile)

EXHIBIT 5

EXHIBIT 5

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)
Plaintiff,)

vs.)

SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation; AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)

Defendants.)

Yavapai County
Superior Court
No.
V1300CV201780201

BEFORE: THE HONORABLE JOHN D. NAPPER
JUDGE OF THE SUPERIOR COURT
DIVISION 2
YAVAPAI COUNTY COURTHOUSE

PRESCOTT, ARIZONA
TUESDAY, MAY 21, 2019
9:03 A.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Re: Hearing Regarding Pending Scheduling Orders,
Discovery and Disputes

SHAYNA MONTGOMERY, (CA) CSR, RPR, CRR
Certified Reporter
Certificate No. 50913

1 MR. WEECH: I didn't do the math, Your
2 Honor, but that sounds okay.

3 THE COURT: All right. June 4th by 5:00
4 p.m. Good thing I've got a calendar in front of me.

5 MR. WEECH: I have one in my pocket. I
6 didn't pull it out.

7 THE COURT: That's good. Well, we are all
8 lucky that I have one. Okay.

9 MS. DAVIS: Your Honor, we have one request
10 that we think will be very simple.

11 THE COURT: Okay.

12 MS. DAVIS: We had talked about production
13 of the FAA correspondence, and in the last hearing
14 Mr. Weech avowed that they have produced it all. All we
15 need is -- if that's true, all we need is a supplement
16 to the existing discovery that says we have, in fact,
17 produced it all.

18 THE COURT: Mr. Weech, have you, in fact,
19 produced all of the FAA communications?

20 MR. WEECH: As stated in the last hearing
21 and -- are you authorizing me to respond to a motion to
22 reconsider, at least on this point, or you just want to
23 know the answer to that question?

24 THE COURT: I just want to know the answer
25 to that question. We'll have an avowal on the record,

1 and we can put it to bed. I'm trying -- guys, I'm
2 trying to get you out of the morass that you are in and
3 get you into a position you can actually try this case
4 and be done one way or the other.

5 MR. WEECH: As stated before, all of the FAA
6 correspondence that they requested with regard to the
7 issues that are involved in this case has been produced.

8 THE COURT: There you go.

9 MS. DAVIS: Your Honor, I don't think I can
10 introduce that avowal at time of trial. Don't I need a
11 response -- a supplemental response to the NUI?

12 THE COURT: Why wouldn't --

13 MS. DAVIS: Counsel's avowal's not evidence,
14 Your Honor. I can't introduce that. I can't read it
15 into the record.

16 THE COURT: Well, A, he speaks for his
17 client; B, you can read it into the record --

18 MS. DAVIS: Okay.

19 THE COURT: -- and C, if Mr. Weech gets up
20 and says something different at trial than what he
21 avowed on the record, he would have other proceedings
22 that he would be involved in in a rather quick order.

23 MS. DAVIS: Okay. Your Honor, I will give
24 in.

25 THE COURT: All right.

1 MS. DAVIS: I'm not sure what his request is
2 actually, Your Honor.

3 THE COURT: So when I read that from you, I
4 thought I don't even know what Mr. Weech is requesting.
5 So I think I kind of agree to the extent that --

6 MR. WEECH: I don't know.

7 THE COURT: -- it's unclear to me what it is
8 you are seeking that you haven't already received, I
9 guess.

10 MR. WEECH: And I didn't know what that
11 meant either, Your Honor. We put it in quote-for-quote
12 as to what they asked for and had it approved before it
13 was sent in, so I thought we were all done with that
14 here.

15 MS. DAVIS: Your Honor, Dakota has not
16 produced, for instance, any internal e-mail, not a one.
17 We don't know that they have made any effort to
18 preserve --

19 THE COURT: Internal e-mail related to
20 what subject matter?

21 MS. DAVIS: Their operations related to
22 their RFP submission, related to --

23 THE COURT: I think their -- hang on. I
24 think their internal e-mails related to the RFP
25 submission would certainly be relevant, but when you say

1 you want e-mails related to their operations, that's
2 every e-mail that they've ever generated.

3 MS. DAVIS: You're right. Well, then --
4 you're right, Your Honor, but it would be incumbent upon
5 them to cull their e-mail and produce the e-mail that is
6 relevant to the -- under Rule 26.1, that is their duty
7 and that's what we have done.

8 THE COURT: I agree with that. So when you
9 say internal e-mail related to the RFP, I agree. They
10 should go through their e-mails and look through that
11 and anything they have related to the RFP process should
12 be disclosed.

13 All right. But when you say we want you to
14 go through your e-mail and cull out all of the ones that
15 deal with your operations, that's an impossibility and
16 certainly not proportionate to the needs of this case.

17 MS. DAVIS: Your Honor, I would agree --

18 THE COURT: Okay.

19 MS. DAVIS: -- and I perhaps --

20 THE COURT: So the RFP is what you're asking
21 for.

22 MS. DAVIS: Well, if there is an e-mail, for
23 instance, regarding the agreement between Dakota and
24 Solid Edge, that I would like to see as well.

25 THE COURT: Okay.

1 MS. DAVIS: And it's hard for me to tell
2 what e-mail they have or have not produced because we
3 haven't seen any.

4 THE COURT: Okay. So Mr. Weech, seems to me
5 that your client needs to go through the e-mail and find
6 e-mails related to the RFP process and related to the
7 agreement related to the 135 operation between Solid
8 Edge and Dakota. Do you have any disagreement with
9 that?

10 MR. WEECH: None.

11 THE COURT: All right. How long would it
12 take you to get that accomplished? I realize these
13 things can take some time but --

14 MR. WEECH: I don't have a good guesstimate.
15 I would guess it's not going to be two weeks. It's
16 going to be --

17 THE COURT: I think 30 days -- I mean, you
18 can just simply type in search terms and should be able
19 to pull it out pretty quickly.

20 MR. WEECH: Possibly, but Your Honor, it may
21 require hiring someone to come in and do that. I'm not
22 sure -- I would doubt that Dakota's personnel have the
23 ability to do that, but they may. By putting in a
24 search term and just in accumulated e-mails?

25 THE COURT: What I'm going to do is I'll

1 give you 30 days from today's date to search the e-mails
2 and disclose the e-mails that are related to the
3 agreement between Solid Edge and Dakota as to the C-135
4 operations and as to the RFP process. So let me
5 calculate 30 days from today's date would be June 25th.

6 MS. DAVIS: Your Honor, can we broaden that
7 to --

8 THE COURT: Hang on.

9 MR. WEECH: I'm sorry, I need to have --

10 THE COURT: Both of you are asking questions
11 at the same time, so --

12 MR. WEECH: I didn't understand the --
13 before we move on, you said two things. One was the RFP
14 process and the --

15 THE COURT: Agreement between Solid Edge and
16 Dakota as to the 135 operations.

17 MR. WEECH: Got them both circled. Thank
18 you.

19 THE COURT: All right. Counsel.

20 MS. DAVIS: Would that mean memos as well as
21 e-mails? So for instance, if there was a memo or a
22 letter, would your order encompass that?

23 THE COURT: Communications between Dakota
24 and Solid Edge on those two topics will be due to be
25 disclosed by June 25th. If nothing's disclosed by June

1 25th, the assumption will be that they do not exist, and
2 anything disclosed after the 25th will be precluded
3 unless SOCAA wants to use the information.

4 All right. Next.

5 MS. DAVIS: With that clarification, Your
6 Honor, we will abandon our request for a special master
7 and further briefing on that issue.

8 THE COURT: Okay. Settlement. Dakota
9 believes that the parties should attempt settlement as
10 soon as possible so they can be ready by June 28th.
11 Dakota preferred a private mediator. Dakota has
12 requested -- all right. SOCAA's position is they'll be
13 ready for a settlement conference on November 29th.

14 All right. Mr. Weech, as I read the filing,
15 SOCAA doesn't believe their ability -- in a position to
16 negotiate the settlement agreement until you
17 meaningfully disclose the legal and factual basis for
18 your damages. The legal basis, I think, has been
19 articulated multiple times. The factual basis, I
20 suppose that goes back to the financial records that you
21 haven't received?

22 MS. DAVIS: Yes, Your Honor.

23 THE COURT: So if those are due to be --
24 well, we're going to have litigation on that, so it
25 looks like November's going to be our timeline

C E R T I F I C A T E

STATE OF ARIZONA)
) SS.
COUNTY OF YAVAPAI)

I, Shayna Montgomery, a Certified Reporter,
in the State of Arizona, do hereby certify that the
proceedings had in the foregoing entitled matter are
contained fully and accurately in the shorthand record
made by me thereof, and thereafter reduced to print
under my direction; that the foregoing pages constitute
a full, true and correct transcript of the said
proceedings, all done to the best of my skill and
ability.

I further certify that I am in no way
related to any of the parties hereto nor am I in any way
interested in the outcome hereof.

Dated at Prescott, Arizona, this 30th day
of May, 2019.

/s/ Shayna Montgomery
SHAYNA MONTGOMERY, (CA) CSR, RPR, CRR
Certified Reporter
Certificate No. 50913

EXHIBIT 6

EXHIBIT 6

1  **Davis Miles**
2 **McGuire Gardner**
3 40 E. Rio Salado Parkway, Suite 425
4 Tempe, AZ 85281
5 Telephone: (480) 733-6800
6 Fax: (480) 733-3748
7 efile.dockets@davismiles.com
8 **Bradley D. Weech, SBN 011135**
9 *Attorneys for Plaintiff*

10 **STATE OF ARIZONA**
11 **YAVAPAI COUNTY SUPERIOR COURT**

12 **DAKOTA TERRITORY TOURS, A.C.C.,**
13 **an Arizona close corporation,**

14 **Plaintiff,**

15 **vs.**

16 **SEDONA-OAK CREEK AIRPORT**
17 **AUTHORITY, an Arizona corporation,**

18 **Defendant.**

CASE NO. V1300CV201780201

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
NON-UNIFORM
INTERROGATORIES**

**(Assigned to the Honorable
John Napper)**

19 Plaintiff, Dakota Territory Tours, A.C.C., by counsel, responds to
20 Defendant/Counterclaimant Sedona-Oak Creek Airport Authority's ("SOCAA")
21 First Set of Non-Uniform Interrogatories to Plaintiff ("Request")¹.

22 **General Objection: Dakota objects to SOCAA's prefatory definitions and**
23 **instructions as excessive and unnecessary. Dakota further objects to the**
24 **definitions and instructions to the extent they contradict or exceed the**

25 ¹ The interrogatories answered in this response are actually SOCAA's second set of
26 interrogatories—SOCAA served its first set in May 2018. SOCAA has attempted to
27 differentiate these interrogatories as coming from SOCAA as a "Counterclaimant,"
28 as opposed to coming from SOCAA as a "Defendant." But the Rules of Civil
Procedure are clear that the requirements and limitations on interrogatories apply to
"parties," without differentiation as to a party's role as plaintiff, defendant,
counterclaimant, counterdefendant, etc. See Ariz. R. Civ. P. 33(a)(2).

1 requirements of Ariz. R. Civ. P. 33. Dakota further objects to the interrogatories to
2 the extent they exceed, when including all subparts, 40 interrogatories permitted
3 by law. Dakota's answers below are a good faith effort to answer the
4 interrogatories to the extent they are not objectionable and should not be
5 construed as a waiver of these objections.
6

7 **NON-UNIFORM INTERROGATORY NO. 1:** Identify each and every person who
8 assisted in preparing, reviewing, authorizing, and/or submitting Dakota's response
9 to SOCAA's May 2017 Part 135 Request for Proposals ("RFP"); and, for each person
10 so identified, describe the nature and extent of that person's role in preparing and
11 submitting Dakota's RFP response.

12 **ANSWER:**

- 13 • Eric Brunner was the primary source of information regarding the RFP. He
14 dictated and delegated to Steve Shattuck instructions regarding formatting
15 the response.
- 16 • Ann-Marie Brunner: Contacted Marc Sterling to provide financial
17 information needed for the RFP. Verbal communications with Eric Brunner
18 and Steve Shattuck to ensure they were on target with their timelines for
19 the RFP.
- 20 • Steve Shattuck worked directly with Eric Brunner and compiled the
21 necessary information and data to create the format and actual hard copy of
22 the RFP response. Mr. Shattuck had conversations with Eric and Ann-Marie
23 Brunner regarding historical data for Dakota.
- 24 • Marc Sterling: Contacted by Eric and Ann-Marie Brunner to discuss his
25 timeline for production of financials needed for the RFP.
- 26 • Steve Kerr at CSNA to provide current copies on all applicable insurance to
27 submit with the RFP.

- Wells Fargo Bank: Eric Brunner worked with a business banker, Alberto Salas, to obtain a financial statement for Dakota submitted for the RFP.
- Brian Sinnott provided Dakota with general information regarding RFPs, and attended the pre-bid meeting.

NON-UNIFORM INTERROGATORY NO. 2: Identify each and every person who authorized the filing and/or submission of the following matters:

- a. The lawsuit entitled Dakota Territory Tours, ACC v. Sedona Oak Creek Airport Authority, LLC, Case No. V1300CV201780201;
- b. The lawsuit entitled Dakota Territory Tours, ACC v. Sedona Oak Creek Airport Authority, LLC, et al, Case No. 3:17-cv-08162-DWL;
- c. The FAA Part 16 Complaint entitled Dakota Territory Tours, ACC and Solid Edge Aviation v. Yavapai County, Arizona and Sedona Oak Creek Airport Authority, Docket No. 16-17-18;
- d. The FAA Part 13 Complaint submitted by Dakota Territory Tours, A.C.C. against Yavapai County, Arizona, through and with the Sedona-Oak Creek Airport Authority, dated March 8, 2019.
- e. The Notice of Appeal to the Arizona Court of Appeals, No. 1 CA-CV 17-0767.
- f. The Special Action to the Arizona Court of Appeals, No. 1 CA-SA 17-0316.

ANSWER:

Dakota objects to the above interrogatory and each of its subparts as irrelevant. Dakota objects to this interrogatory to the extent it seeks attorney-client or work product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ. P. 26.

Without waiving these objections, Dakota through one or more of its officers or directors would be the authorizing party for all. In addition, the Notice of Claim

1 for the previous litigation between the parties was filed by Larry Brunner in May
2 2014.

3
4 **NON-UNIFORM INTERROGATORY NO. 3:** For each of the matters identified in
5 NUI#2, please list and describe:

6 a. Each and every factual basis that you claim supported initiating and/or
7 maintaining the matter;

8 b. Each and every legal basis that you claim supported initiating and/or
9 maintaining the matter;

10 c. The nature and amount of any and all damages you contend you suffered in
11 connection with each matter.

12 **ANSWER:**

13 Please see Dakota's Amended Complaint and Disclosure Statements for this
14 action; the pleadings and disclosures in the anti-trust action; the relevant filings
15 in the Part 13 and Part 16 Complaint actions; and the briefs in the appeal and
16 special action.

17
18 **NON-UNIFORM INTERROGATORY NO. 4:** From March 1, 2017 to present, list
19 each and every time you or any of your employees, principals, members, owners,
20 agents, or attorneys spoke in person, by telephone, or in writing to any of the
21 following regarding SOCAA, the SOCAA RFP, or any of the matters identified in
22 NUI No. 2:

23 a. Any member of the Yavapai County Board of Supervisors;

24 b. Any Yavapai County employee, representative, or attorney, including but not
25 limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;

26 c. Any Guidance Air Service, LLC employee, agent, representative, or attorney;
27

- 1 d. Any Federal Aviation Administration employee, agent, representative, or
2 attorney;
3 e. Any Westwind Aviation, Inc. employee, representative, or attorney;
4 f. Any past or present SOCAA Board Member, employee, or former employee.

5 **ANSWER:**

6 Dakota objects to this interrogatory as overbroad — both the scope of the request
7 and the range of topics encompassed in the request are unduly burdensome and
8 disproportionate to the needs of this case considering the (lack of) importance of
9 the information requested and the extreme cost and resources required to recreate
10 the information. Dakota objects to this interrogatory to the extent it seeks
11 irrelevant information outside the scope of the claims asserted in the parties'
12 respective pleadings.

13 Without waiving this objection, as to written communications, please see
14 documents produced in response to SOCAA's Requests for Production served
15 concurrently with this response. *See* Ariz. R. Civ. P. 33(d).

16 As to in person or telephone communications:

- 17 a. Eric Brunner spoke with Mike Trepasso (former employee of SOCAA
18 and then Dakota) regarding the information testified to by Mr. Trepasso
19 in the evidentiary hearing in this matter, including Ms. Shankland's
20 statement that she was hired to get rid of Dakota.
21 b. Eric Brunner spoke with Amanda Shankland
22 c. Ann-Marie Brunner spoke with Amada Shankland in the lobby of the
23 terminal building at the Airport when picking up an audio copy of the
24 pre-submittal meeting in April 2017. Ms. Brunner asked Ms. Shankland
25 why the RFP was for a two-year lease only, and that Dakota had had a
26 two-year lease with a two-year renewal, expressing Dakota's desire for a
27 longer lease term. Ms. Shankland explained that because Guidance's

1 current lease was a two-year lease, the RFP had to be the same. She also
2 explained that the RFP was a starting point and that every lease would
3 have to undergo an RFP when it expired so the leases would be valid.
4 She also expressed that she was excited about the RFP and wanted
5 everyone to get along and move forward. The conversation was very
6 friendly and professional, as if it were a formality to be "fair and legal"
7 so the RFP would match Guidance's lease.

- 8 d. Although not specifically responsive to the interrogatory, Ann-Marie
9 spoke with a Yavapai County employee in an effort to get a copy of
10 Guidance's lease with SOCAA, and also called requesting information
11 regarding the Yavapai County Board of Supervisors' meeting schedule
12 and procedures.
- 13 e. Eric Brunner and Randy Garrison (of the Yavapai County Board of
14 Supervisors) conducted a meeting to discuss issues between Dakota and
15 SOCAA in or around March 2017.
- 16 f. Eric Brunner spoke with Josh Boyce in July 2017 regarding the
17 information testified to by Mr. Boyce in the evidentiary hearing in this
18 matter.
- 19 g. Brad Weech, attorney for Dakota spoke with Jack Fields and Tom Stoxen
20 by phone in 2017 regarding the matters set out in their concurrently
21 disclosed emails; spoke with counsel for Guidance, Mr. Donald Zavala,
22 regarding this litigation many times in 2017-18, generally in the presence
23 of SOCAA and/or its counsel; spoke with the principals for Westwind in
24 2017 several times regarding the information testified to in the
25 evidentiary hearing in this matter; and Mr. Weech, or his office, spoke
26 with Mr. Trepasso in preparation for the evidentiary hearing.
27

1 **NON-UNIFORM INTERROGATORY NO. 5:** Identify and describe each and
2 every factual and legal basis for naming Amanda Shankland and her husband Dr.
3 Paul Shankland as defendants in this action, and Amanda Shankland as a defendant
4 in the federal anti-trust action identified in NUI #2(b).

5 **ANSWER:**

6 Dakota objects to this interrogatory as irrelevant to the present dispute. The
7 Shanklands have long been dismissed from this case. The Shanklands are no
8 longer parties, and no longer have any claims asserted by or against them in this
9 dispute.

10 Without waiving this objection, see Amended Complaint generally, including ¶¶
11 160-176.

12
13 **NON-UNIFORM INTERROGATORY NO. 6:** Identify each and every person who
14 authorized Dakota's attorney to contact the Yavapai County Attorneys' office and
15 inform the office of potential litigation against SOCAA if SOCAA refused to extend
16 Dakota's sublease, as set forth in Dakota's Amended Complaint ¶ 130.

17 **ANSWER:**

18 Dakota objects to this interrogatory as misstating the facts set out in Dakota's
19 Amended Complaint ¶ 130; the Amended Complaint states that Dakota
20 investigated means of resolving this dispute short of litigation (which Dakota
21 had already determined was necessary due to SOCAA's breach of the parties'
22 Settlement Agreement); ¶ 130 does not state that Dakota threatened litigation
23 only if SOCAA refused to extend Dakota's sublease. Dakota objects to this
24 interrogatory to the extent it seeks attorney-client or work product privileged
25 information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ.
26 P. 26. Dakota objects to this interrogatory as irrelevant.

1 Without waiving this objection, Dakota through one or more of its officers or
2 directors.

3
4 NON-UNIFORM INTERROGATORY NO. 7: Identify each and every person who
5 authorized Dakota's attorney to contact Yavapai County and accuse SOCAA of
6 contempt of court and of violating the Court's temporary restraining order.

7 ANSWER:

8 Dakota objects to this interrogatory as argumentative to the extent the word
9 "accuse" implies anything other than what actually occurred: that Dakota
10 reasonably concluded based on the Court's injunction barring SOCAA from
11 "taking any action to evict Dakota from its leased premises" or from otherwise
12 "interfer[ing] with Dakota's business operations..." that SOCAA's action in
13 executing a lease with Guidance for Dakota's business premises violated that
14 injunction. Dakota further objects to this interrogatory as vague as to the date,
15 time and circumstances surrounding the alleged occurrence. Dakota objects to
16 this interrogatory to the extent it seeks attorney-client or work product privileged
17 information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ.
18 P. 26. Dakota objects to this interrogatory as irrelevant.

19 Without waiving this objection, Dakota does not specifically recall the specific
20 occurrence and cannot answer the interrogatory without further information.

21
22 NON-UNIFORM INTERROGATORY NO. 8: Identify each and every person who
23 authorized the filing of a Motion for Contempt of Court against SOCAA for
24 allegedly violating the Temporary Restraining Order, and each and every person
25 who authorized Dakota's refusal to withdraw that Motion until January 16, 2018.

26 ANSWER:

1 Dakota objects to this interrogatory as irrelevant under Rule 26(b). Dakota further
2 objects to this interrogatory as misstating the record: Dakota filed the motion; the
3 Court then clarified that he did not view SOCAA's action in signing a lease with
4 Guidance for Dakota's business premises as violative of the preliminary
5 injunction; SOCAA then responded to the motion stating that it had *requested*
6 Dakota withdraw the motion; the parties included the motion on a joint filing
7 regarding pending matters to the Court, in which Dakota indicated there was no
8 reason to file a reply or have oral argument on the motion; and then at the January
9 16, 2018 hearing, SOCAA noted that the motion was "technically" still pending,
10 and that "as a matter of housekeeping," the Court should deny the motion;
11 Dakota agreed, indicated it thought it had already indicated the motion was moot,
12 and ensured the record at the hearing was clear that the motion was withdrawn as
13 moot. Dakota objects to this interrogatory to the extent it seeks attorney-client or
14 work product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid.
15 502 and/or Ariz. R. Civ. P. 26.
16 Without waiving this objection, Dakota through one or more of its officers or
17 directors authorized the filing.

18
19 NON-UNIFORM INTERROGATORY NO. 9: Identify each and every person who
20 authorized: (a) The Rule 45 subpoena to Guidance Air Service, LLC, (b) the threat of
21 a Motion to Compel against Guidance, and (c) that the potential for additional
22 litigation with "additional parties" would be forthcoming.

23 ANSWER:

24 Dakota objects to this interrogatory as vague and ambiguous — Dakota is not
25 certain as to the "threat of a Motion to Compel" and the threat of "litigation with
26 'additional parties'" to which this interrogatory refers. Moreover there were two
27 subpoenas issued to Guidance in this matter. Dakota objects to this interrogatory

1 to the extent it seeks attorney-client or work product privileged information as
2 defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ. P. 26. Dakota
3 objects to this interrogatory as irrelevant.

4 Without waiving these objections, Dakota through one or more of its officers or
5 directors authorized the subpoena. To the extent Dakota is correct in its
6 assumptions regarding the subpoena and the communications to which SOCAA
7 refers, Dakota through one or more of its officers or directors authorized the
8 communication to Guidance just prior to the filing of the anti-trust case.

9
10 NON-UNIFORM INTERROGATORY NO. 10: Identify each and every person
11 who authorized: (a) the Rule 45 subpoena for documents to Westwind Aviation,
12 Inc.; and (b) the trial subpoena to a Westwind Aviation, Inc. representative to testify
13 at the preliminary injunction hearing.

14 ANSWER:

15 Dakota objects to this interrogatory to the extent it seeks attorney-client or work
16 product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502
17 and/or Ariz. R. Civ. P. 26. Dakota objects to this interrogatory as irrelevant.
18 Without waiving these objections, Dakota through one or more of its officers or
19 directors.

20
21 NON-UNIFORM INTERROGATORY NO. 11: Identify the source and describe
22 the factual basis of your contention in the Amended Complaint, ¶¶ 105 & 106, that
23 Nelson Durkee stated that "he advised the others that Guidance's bid was
24 financially substantially lower than Dakota's bid and expressed his concern about
25 the SAA's intent to award the bid to Guidance given Dakota's financial superior
26 bid" and that "it would force Dakota out of business and Guidance would get 'all of
27 Dakota's customers.'"

1 **ANSWER:**

2 **Dakota objects to this interrogatory to the extent it seeks work product**
3 **information.**

4 **Without waiving this objection, the source was Albert Comello, and the factual**
5 **basis is set out in the transcript of Preliminary Injunction proceedings from**
6 **August 18, 2017 at pp. 107-115.**

7
8 **NON-UNIFORM INTERROGATORY NO. 12:** Identify any and all private
9 investigators, contractors, consultants, or other personnel you have contacted or
10 retained to research or investigate SOCAA, Amanda Shankland and/or any other
11 past or present SOCAA Board Member, employee, or representative.

12 **ANSWER:**

13 **Dakota objects to this interrogatory as attempting to invade the work product**
14 **privilege set out in Ariz. R. Civ. P. 26(b)(3); SOCAA may not discover information**
15 **that a party or its representative prepared in anticipation of litigation or for trial.**
16 **This interrogatory likewise violates the privileges and limitations on divulging**
17 **information specific to private investigators under Arizona law. *See* A.R.S. § 32-**
18 **2455. Dakota further objects to this interrogatory as seeking irrelevant**
19 **information under Ariz. R. Civ. P. 26(b).**

20
21 **NON-UNIFORM INTERROGATORY NO. 13:** Identify every legal and factual
22 basis for your contention that Dakota is or was authorized by the FAA or applicable
23 FAA regulations either as a Part 135 operator or as part of a Part 135 operation.

24 **ANSWER:**

25 **Dakota objects to this interrogatory as it is outside the scope of discovery under**
26 **Ariz. R. Civ. P. 26(b)(1); Dakota's status as a Part 135 operator is not relevant to the**
27 **claims or defenses in this case.**

1 Without waiving this objection, see Eric Brunner's testimony at the Preliminary
2 Injunction hearing in this matter; see also Dakota's response to SOCAA's motion
3 for summary judgment in this matter.

4
5
6 RESPECTFULLY SUBMITTED this 28th day of June, 2019.

7 DAVIS MILES MCGUIRE GARDNER, PLLC

8
9 /s/ Bradley D. Weech
10 Bradley D. Weech
Marshall R. Hunt
Attorneys for Plaintiff

11 ORIGINAL of the foregoing e-mailed
12 and mailed this 28th day of June, 2019, to:

13 Tony S. Cullum
14 Law Office of Tony S. Cullum, PLLC
15 14 E. Dale Avenue
Flagstaff, AZ 85001
Attorneys for Defendant SOCAA

16 J. Daniel Campbell
17 Ellen B. Davis
O'Connor & Campbell, P.C.
7955 South Priest Drive
Tempe, AZ 85284
18 *Attorneys for Defendants SOCAA and*
Shanklands

19 Kiersten Murphy
20 Henze Cook Murphy, PLLC
722 East Osborn Road, Suite 120
Phoenix, AZ 85014
21 *Attorneys for Defendant SOCAA*

22
23 /s/ Ashley Barnard
24
25
26
27

EXHIBIT 7

EXHIBIT 7

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
From: Steve Shattuck
Sent: Mon 5/22/2017 12:08:20 PM
Subject: Re: RFP Sedona

Ann Marie,

Received all.

Thanks.

Steve

Sent from Steve's iPad.

On May 22, 2017, at 11:50, Ann-Marie Klein-Brunner <gohelisedona@outlook.com> wrote:

Steve & Lynne.

Please find RFT packet form SAA website. Let me know logistically if I need to assist if you will be flying Steve.

Eric and I will handle all financial requirements. Remember, not willing to divulge "trade secrets/marketing strategies).

Thanks in advance to both of you for your help!

Ann-Marie

<RFP-Pre-Submittal-Meeting-5.16.2017.pdf>

<RFP SAA 2017.pdf>

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com];
lynne@sedonaairtours.com[lynne@sedonaairtours.com]
From: Steve Shattuck
Sent: Wed 5/24/2017 7:46:25 PM
Subject: Re: RFP Working Session Hangar 5/25 morning

Greetings all,

I'm still at the hangar formatting the package, etc. 0900 works as I have just a few questions. Tomorrow will be spent mostly compiling the "text", etc., as enumerated in your notes (Ann Marie) and some of the history / bio that Lynn has created.

I think it's time to call it a day. Food sounds good right about now.

See you all tomorrow.

Steve

On May 24, 2017, at 19:43, Ann-Marie Klein-Brunner <gohelisedona@outlook.com> wrote:

Steve & Lynne,

We will need to meet at the hangar tomorrow, 5/25/17 to compile what we have for the RFP. I will be in by 9am and may need to leave at 11- and then head back.

See you tomorrow.

Thanks!

Ann-Marie

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
From: lynne@sedonaairtours.com
Sent: Tue 5/23/2017 10:06:22 AM
Subject: RFP

I note in the pre-submittal info it says that the dates are subject to change and to look at the website for changed dates.

I wouldn't put it past them to get the RFP from Guidance and change the dates to knock us out.

Do you know where these dates are listed on the website?

Lynne Brownd
Sedona Air Tours
lynne@sedonaairtours.com
admin office 928-204-1717
Sedona Airport 928-204-5939

EXHIBIT 8

EXHIBIT 8

1  Davis Miles

2 McGuire Gardner

3 40 E. Rio Salado Parkway, Suite 425

4 Tempe, AZ 85281

5 Telephone: (480) 733-6800

6 Fax: (480) 733-3748

7 efile.dockets@davismiles.com

8 Bradley D. Weech, SBN 011135

9 Marshall R. Hunt, SBN 031060

10 *Attorneys for Plaintiff*

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STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT

DAKOTA TERRITORY TOURS, A.C.C.,
an Arizona close corporation,

Plaintiff,

vs.

SEDONA-OAK CREEK AIRPORT
AUTHORITY, an Arizona corporation,

Defendant.

CASE NO. V1300CV201780201

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST
FOR PRODUCTION
OF DOCUMENTS

(Assigned to the Honorable
John Napper)

Plaintiff, Dakota Territory Tours, A.C.C., by counsel, responds to Defendant's First Request for Production of Documents to Plaintiff ("Request").

General Objection: Dakota objects to SOCAA's prefatory definitions and instructions as excessive and unnecessary. Dakota further objects to the definitions and instructions to the extent they contradict or exceed the requirements of Ariz. R. Civ. P. 34. Dakota further objects to the Requests as they exceed the 10 requests permitted by Ariz. R. Civ. P. 34 when considered in conjunction with the Requests served by SOCAA's co-counsel.¹ Dakota's answers

¹ Ariz. R. Civ. P. 34(b)(1) is clear that the presumptive limits on discovery apply to "parties"—the Rules make no differentiate between requests supposedly served in furtherance of a party's defenses, as opposed to requests served in furtherance of a party's counterclaims.

1 below are a good faith effort to answer the interrogatories to the extent they are
2 not objectionable and should not be construed as a waiver of these objections.

3
4 REQUEST FOR PRODUCTION NO. 1 Any and all Documents or
5 Communications (including, but not limited to, emails, notes, voicemails, and
6 recordings) between Dakota or any of its employees, principals, members, owners,
7 agents, or attorneys, and any of the following:

- 8 a. Any member of the Yavapai County Board of Supervisors;
- 9 b. Any Yavapai County employee, representative, or attorney, including but not
10 limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;
- 11 c. Any member of the Sedona City Council;
- 12 d. Any City of Sedona employee, representative, or attorney;
- 13 e. Any Guidance Air Service, LLC employee, agent, representative, or attorney;
- 14 f. Any Federal Aviation Administration employee, agent, representative, or
15 attorney.
- 16 g. Any Westwind Aviation, Inc. employee, representative, or attorney.
- 17 h. Any past or present SOCAA Board Member, employee, or former employee.

18
19 RESPONSE:

20 Dakota objects to this request as seeking irrelevant information—every
21 “communication” (especially in light of the broad definition given that term)
22 with all the people listed is not relevant to the specific claims and counterclaims
23 at issue in this case. This request is further overbroad, unduly cumulative, and
24 disproportionate to the needs of this case, given the time and expense that would
25 be required to produce the requested documents as compared to the minimal
26 benefit of some or all of the requested documents.

1 Without waiving these objections, see the documents disclosed with this
2 response. Due to the overbreadth of the request, Dakota is continuing to search
3 its records, and will supplement this response as it discovers further
4 communications.

5
6 REQUEST FOR PRODUCTION NO. 2: Any and all Communications or
7 Documents related to the SOCAA May 2017 Part 135 Request for Proposals ("RFP"),
8 and Dakota's response thereto, including internal, non-privileged emails, notes,
9 voicemails, and recordings.

10
11 RESPONSE:

12 Dakota notes that the Request seeks "non-privileged" communications, and
13 therefore understands the request not to seek attorney-client, work product or
14 other privileged documents. To the extent this understanding is inaccurate, to
15 avoid waiver, Dakota objects to this Request to the extent it seeks such privileged
16 information. Dakota further objects to this Request as overbroad and unduly
17 cumulative. Dakota further objects to any request for communications directed at
18 SOCAA or SOCAA's own agents/attorneys, as these documents can be obtained
19 more easily from another source—namely SOCAA itself.

20 Without waiving these objections, see documents already disclosed in this matter.
21 See also the documents disclosed with this response. Due to the overbreadth of
22 the request, Dakota is continuing to search its records, and will supplement this
23 response as it discovers further communications.

24
25 REQUEST FOR PRODUCTION NO. 3: Any and all Communications or Documents
26 related to or concerning Guidance Air Service, LLC, Westwind Aviation, Inc., Eddie

1 Ochoa, Yavapai County, the City of Sedona, and/or Amanda Shankland, including
2 internal, non-privileged emails, notes, voicemails, and recordings.

3 **RESPONSE:**

4 Dakota notes that the Request seeks "non-privileged" communications, and
5 therefore understands the request not to seek attorney-client, work product or
6 other privileged documents. To the extent this understanding is inaccurate, to
7 avoid waiver, Dakota objects to this Request to the extent it seeks such privileged
8 information. Dakota further objects to this Request as overbroad and unduly
9 cumulative. Dakota further objects to any request for communications directed at
10 SOCAA or SOCAA's own agents/attorneys, as these documents can be obtained
11 more easily from another source – namely SOCAA itself.

12 Without waiving these objections, see documents already disclosed in this matter.
13 See also responsive documents disclosed in response to Request #1 above. See
14 also all other documents disclosed with this response. Due to the overbreadth of
15 the request, Dakota is continuing to search its records, and will supplement this
16 response as it discovers further communications.

17
18 **REQUEST FOR PRODUCTION NO. 4:**Any Document used in preparing your
19 answers to Counterclaimant's First Set of Non-Uniform Interrogatories, dated April
20 4, 2019.

21 **RESPONSE:**

22 Dakota objects to this Request as vague as to its reference to "preparing."
23 Without waiving this objection, see the documents referenced in the Non-
24 Uniform Interrogatories, which are either part of the Court record (such as the
25 transcript of the Preliminary Injunction) or are being produced in response to
26 other Requests in this Request for Production.

1 **REQUEST FOR PRODUCTION NO. 5:**Any and all Communications or Documents
2 related to or concerning your retention of any private investigator, contractor of
3 other personnel hired to research or investigate Amanda Shankland and/or any
4 other SOCAA Board Member, employee, former employee, or representative.

5 **RESPONSE:**

6 Dakota objects to this interrogatory as attempting to invade the work product
7 privilege set out in Ariz. R. Civ. P. 26(b)(3); SOCAA may not discover information
8 that a party or its representative prepared in anticipation of litigation or for trial.
9 This interrogatory likewise violates the privileges and limitations on divulging
10 information specific to private investigators under Arizona law. *See* A.R.S. § 32-
11 2455. Dakota further objects to this interrogatory as seeking irrelevant
12 information under Ariz. R. Civ. P. 26(b).

13
14 **REQUEST FOR PRODUCTION NO. 6:**Any and all Communications or Documents
15 with the City of Cottonwood, or any of its Council members, employees,
16 representatives, or attorneys regarding Dakota's operations at the Cottonwood
17 Airport.

18 **RESPONSE:**

19 Dakota objects to this Request as irrelevant to this case—there are no claims or
20 counterclaims in this matter that relate to the City of Cottonwood generally, or
21 Dakota's operations at the Cottonwood Airport. Dakota further objects to this
22 Request as overbroad, unduly cumulative and burdensome, and disproportionate
23 to the needs of this case in light of the considerations set out in Ariz. R. Civ. P.
24 26(b).

1 RESPECTFULLY SUBMITTED this 28th day of June, 2019.

2

3

DAVIS MILES MCGUIRE GARDNER, PLLC

4

5

By: /s/ Bradley D. Weech

6

Bradley D. Weech

Marshall R. Hunt

Attorneys for Plaintiff

7

ORIGINAL of the foregoing e-mailed
and mailed this 28th day of June, 2019, to:

8

Tony S. Cullum

9

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10

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14

Phoenix, AZ 85014

Attorneys for Defendant SOCAA

15

16

/s/ Ashley Barnard

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28

EXHIBIT 9

EXHIBIT 9

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Pkwy., Ste. 425
Tempe, AZ 85281
Telephone: (480) 733-6800
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Bradley D. Weech, SBN: 011135
Marshall R. Hunt, SBN: 031060
Attorneys for Plaintiff

STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT

Dakota Territory Tours, ACC

Plaintiff,

vs.

Sedona-Oak Creek Airport Authority,
Inc., an Arizona non-profit corporation;
Amanda Shankland and John Doe
Shankland, husband and wife,

Defendants.

CASE NO. V1300CV201780201

RESPONSES TO NON-UNIFORM
INTERROGATORIES

Assigned to: Hon. John Napper
Presiding Judge: Hon. Robert Mackey

Plaintiff, Dakota Territory Tours, ACC ("Dakota") submits the following as its
Response to Defendant Sedona-Oak Creek Airport Authority's Non-Uniform
Interrogatories.

General Objection: Dakota objects to SOCAA's prefatory definitions and
instructions as excessive and unnecessary. Dakota further objects to the definitions
and instructions to the extent they contradict or exceed the requirements of Ariz. R.
Civ. P. 33. Dakota further objects to the interrogatories to the extent they exceed,
when including all subparts, 40 interrogatories permitted by law. Dakota's answers
below are a good faith effort to answer the interrogatories to the extent they are not
objectionable and should not be construed as a waiver of these objections.

JUN 14 2018

1 NUI #1: If your response to Requests for Admission ##1-3 served concurrently
2 herewith is anything other than an unqualified admission, then please disclose all
3 facts which support your denial and identify the specific item(s) of evidence which
4 support your non-admission, including the identity of all witnesses who will testify
5 in the exhibits in support of the non-admission, and identify all documents that your
6 believe support your position.

7 **Response:**

8 **See qualifications included with responses to Requests for Admissions.**

9
10 NUI #2: If the Answer to Request for Admission No. 4 served concurrently herewith
11 is anything other than an unqualified admission, list any and all flights operated by
12 Solid Edge Aviation, LLC that originated from or landed at the Sedona Airport from
13 January 1, 2012 to present, including the date of each such flight and the aircraft
14 used.

15 **Response:**

16 **Dakota objects to this interrogatory as the request to list every single flight that**
17 **Solid Edge Aviation, LLC originated or landed at the Sedona Airport from January 1,**
18 **2012 to present is disproportionate to the needs of this case. Dakota further objects to**
19 **the interrogatory as Solid Edge Aviation, LLC's operational activity is not relevant to**
20 **any party's claim or defense. Solid Edge is not a party to this litigation; Solid Edge's**
21 **activities bear no relation to Dakota's claims relating to the parties' Settlement**
22 **Agreement and the RFP, nor does it relate to SOCAA's counterclaims regarding**
23 **Dakota's status as a Part 135 operator. To the extent any of this information was**
24 **relevant, the scope of request is objectionable as the information requested is of**
25 **little to no importance in resolving the issues, and the burden of the request**
26 **outweighs its likely benefit. This information is further irrelevant as the FAA has**
27 **already determined SOCAA's complaints with regard to Dakota lack merit. See**

1 OCHOA SDT 63-66. Dakota further objects as this request is overbroad and overly
2 burdensome; there is no basis to seek information back to 2012.

3
4 NUI #3: Do you contend that every pilot, flight, and aircraft that that Dakota caused
5 to originate from Sedona airport for the period between April 27, 2012 and April 26,
6 2017 complied with the requirements of 14 C.F.R. part 135 in all material respects?

7 Response:

8 Dakota has no reason to believe that the answer to this interrogatory should be
9 anything but "Yes", however, the interrogatory is extremely overbroad and would
10 require thorough review of every "pilot, flight, and aircraft" for compliance over a
11 5 year period. Dakota objects to this interrogatory as vague with respect to the
12 "material respects" of 14 C.F.R. part 135 to which the interrogatory refers. Dakota
13 further objects to this interrogatory as the request to review Dakota's compliance
14 with 14 C.F.R. part 135 in "all material respects" between April 27, 2012 and April 26,
15 2017 such that Dakota could fully respond to this interrogatory is disproportionate to
16 the needs of this case. Dakota's employees' compliance with federal regulations is
17 not relevant to any party's claim or defense; this interrogatory has no relevance to
18 Dakota's claims relating to the parties' Settlement Agreement and the RFP, nor do
19 specific instances of compliance relate to SOCAA's counterclaims regarding
20 Dakota's overall status as a Part 135 operator. To the extent any of this information
21 may be shown by SOCAA to be relevant, the scope of request is objectionable as the
22 information requested is of little to no importance in resolving the issues, and the
23 burden of the request far outweighs its likely benefit. This information is further
24 irrelevant as the FAA has already determined SOCAA's complaints with regard to
25 Dakota lack merit. See OCHOA SDT 63-66. Dakota further objects as this request is
26 overbroad and overly burdensome; there is no basis to seek information back to
27 2012. Dakota finally objects to this interrogatory as vague/confusing as not all of

1 Dakota's flights from the Sedona airport are subject to the requirements of 14 C.F.R.
2 part 135.

3
4 NUI #4: If your answer to NUI#3 directly above is NO, identify the instances of non-
5 compliance, the way(s) in which there was non-compliance, and the reason for the non-
6 compliance.

7 **Response:**

8 **See above objection to NUI #3.**

9
10 NUI #5: If your answer to NUI #3 above is YES, identify:

11 a) Whether that Dakota was assisted in that compliance by personnel or assets of
12 Solid Edge or by any other separately incorporated entity, and if so, the persons and
13 entities that provided that assistance, and the form that assistance took;

14 b) All of the aircraft used in those flights, the make, model and tail number,
15 owner(s), and lessee(s) of the craft (if appropriate); and

16 c) All of the pilots used in those operations and the name of their employer or
17 entity compensating them for that work.

18 **Response:**

19 **See above objection to NUI #3.**

20
21 NUI #6: Provide a list of every flight conducted by Dakota originating from the
22 Sedona Airport for the last 30 days, identifying the aircraft used, the entity or entities
23 responsible for each such flight, and the nature of each entity or entities involvement
24 if multiple entities were involved, the flight destination, the name of the pilot, the
25 number of passengers, and the gross revenue generated by each such flight.

1 Response:

2 Dakota objects to this interrogatory as vague; Dakota cannot properly respond to the
3 interrogatory as it is unclear to what 30 day period the interrogatory refers (e.g. 30
4 days from the time of service of the interrogatories, from the time of receipt, from the
5 time of answering, or some other period). Dakota further objects to this interrogatory
6 as the specifics of Dakota's flight operations and destinations are not relevant to any
7 party's claim or defense; this interrogatory has no relevance to Dakota's claims
8 relating to the parties' Settlement Agreement and the RFP, nor do specifics flight
9 destinations and pilot names relate to SOCAA's counterclaims regarding Dakota's
10 overall status as a Part 135 operator. Dakota further objects as this request is
11 disproportionate to the needs of this case; the information requested is of little to no
12 importance in resolving the issues, and the burden of the request far outweighs its
13 likely benefit. To the extent this interrogatory is propounded in reference to 14
14 C.F.R. part 135.61(D), the interrogatory is further irrelevant as no relevant flights
15 have been conducted out of the Sedona airport.

16
17 NUI #7: Identify all of the shareholders, members, or other beneficial owners of Solid
18 Edge and their percentage of interest, and all of the managers of Solid Edge, and the
19 time periods in which each person held that role or interest, from January 2012 to
20 present.

21 Response:

22 Dakota objects to this interrogatory as disproportional to the needs of this case; there
23 is no basis for seeking information back to January, 2012.

24 Without waiving this objection:

- 25 • Managers: Eric Brunner
- 26 • Members: Mildred Brunner, Eric Brunner, Ann Marie Brunner

27

1 NUI #8: Identify all of the shareholders, officers, directors, and/or all other
2 managers or beneficial owners of Dakota, and their percentage of interest, and the
3 time periods in which each person held that interest or role, from January 2012 to
4 present.

5 **Response:**

6 Dakota objects to this interrogatory as disproportional to the needs of this case; there
7 is no basis for seeking information back to January, 2012.

8 Without waiving this objection:

- 9 • Directors: Eric Brunner, Mildred Brunner
- 10 • Shareholders: Mildred Brunner
- 11 • President/CEO: Eric Brunner
- 12 • Secretary: Mildred Brunner

13
14 NUI #9: Identify the payor(s) and the nature of the services or value provided by
15 Dakota that generated the management fee that Dakota reported as "Other Income" on
16 page 1 of the Profit & Loss statement dated 5/31/2017 included as Exhibit D3 in
17 Dakota's RFP submission to SOCAA.

18 **Response:**

19 Dakota objects to this interrogatory as the identified claimed "management fee" is
20 not relevant to any party's claim or defense; this interrogatory has no relevance to
21 Dakota's claims relating to the parties' Settlement Agreement and the RFP, nor does
22 this interrogatory relate to SOCAA's counterclaims regarding Dakota's overall status
23 as a Part 135 operator. SOCAA is not permitted to seek discovery that may be
24 relevant to other litigation between these parties in the present suit.

25
26 NUI #10: For each and every aircraft that Dakota or Solid Edge has landed at the
27 Sedona Airport from January 1, 2012 to present, identify for each aircraft:

1 (1) The owner of the aircraft;
2 (2) Any entity or individual who leases or otherwise contracts for use of the craft,
3 and the date that agreement went into effect;
4 (3) Tail or license number
5 (4) The serial number
6 (5) Any insurance policies providing coverage for the aircraft or its operations;
7 (6) The dates of inspection under FAA Part 135 regulations, from January 1, 2012
8 to present.

9 **Response:**

10 Dakota objects to this interrogatory as vague as to the "aircraft" to which the
11 interrogatory refers. Dakota further objects to this interrogatory as duplicative of
12 prior interrogatories. Dakota further objects as the specifics of any aircraft operated
13 by Dakota and/or Solid Edge's are not relevant to any party's claim or defense; this
14 interrogatory has no relevance to Dakota's claims relating to the parties' Settlement
15 Agreement and the RFP, nor do specifics regarding airplane serial numbers, FAA
16 inspections, etc. relate to SOCAA's counterclaims regarding Dakota's overall status
17 as being authorized to participate in Part 135 operations. Dakota further objects as
18 this request is disproportionate to the needs of this case; the information requested
19 is of little to no importance in resolving the issues, and the burden of the request far
20 outweighs its likely benefit. This information is further irrelevant as the FAA has
21 already determined SOCAA's complaints with regard to Dakota lack merit. See
22 OCHOA SDT 63-66. Dakota further objects as this request is overbroad and overly
23 burdensome; there is no basis to seek information back to 2012.

24
25 NUI #11: List each and every alleged act giving rise to Dakota's claim that SOCAA
26 breached the April 27, 2017 Settlement Agreement between Dakota and SOCAA.

1 **Response:**

2 See Dakota's First Amended Complaint, administrative appeal of SOCAA's
3 purported award of the RFP, application for preliminary injunction, the
4 transcripts of and exhibits presented in the preliminary injunction hearing, and
5 Dakota's initial disclosure statement.

6
7 NUI#12: List each and every alleged act giving rise to Dakota's claim that SOCAA
8 breached the duty of good faith and fair dealing.

9 **Response:**

10 See Dakota's First Amended Complaint, administrative appeal of SOCAA's
11 purported award of the RFP, application for preliminary injunction, the
12 transcripts of and exhibits presented in the preliminary injunction hearing, and
13 Dakota's initial disclosure statement.

14
15 RESPECTFULLY SUBMITTED June 11, 2018.

16 DAVIS MILES MCGUIRE GARDNER, PLLC

17 /s/ Bradley D. Weech

18 Bradley D. Weech

19 Marshall R. Hunt

Attorneys for Plaintiff

20 ORIGINAL mailed this 11th day
21 of June, 2017 to:

22 J. Daniel Campbell

23 Ellen B. Davis

24 O'Connor & Campbell, P.C.

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EXHIBIT 10

EXHIBIT 10

In The Matter Of:
Dakota Territory Tours vs.
Sedona-Oak Creek Airport

Ann-Marie Brunner
September 12, 2018

Griffin & Associates Court Reporters, LLC
2398 E. Camelback Road
Suite 260
Phoenix, AZ 85016

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF YAVAPAI DAKOTA TERRITORY TOURS, ACC,) Plaintiff,) vs.) No. CV201780201 SEDONA-OAK CREEK AIRPORT) AUTHORITY, INC., an Arizona) non-profit corporation, AMANDA) SHANKLAND and JOHN DOE SHANKLAND,) husband and wife,) Defendants.) DEPOSITION OF ANN-MARIE BRUNNER Phoenix, Arizona September 12, 2018 10:19 a.m. REPORTED BY: CHRISTINE A. LANDERS, RPR Certified Reporter Certificate No. 50924 PREPARED FOR: THE COURT (Original)	Page 3 1] INDEX 2] WITNESS PAGE 3] ANN-MARIE BRUNNER 4] Examination by Ms. Davis 4 5] Examination by Mr. Hunt 80 6] 7] 8] EXHIBITS 9] NUMBER DESCRIPTION PAGE 10] 1 Arrest Information on Anne Marie Brunner (1 page) 10 11] 2 Public Access to Court Information, Case No. P-1300-CV-201100089 (1 page) 10 12] 3 Public Access to Court Information, Case No. V-1300-CV-201080666 (1 page) 11 13] 4 Case Information, Case No. V-1300-CV-201480466 (1 page) 13 14] 5 Exhibit D3, Dakota Territory Tours, A.C.C., V. Financial Data, Bates stamped DAKOTA 001028-001031 (4 pages) 77 15] 16] 17] 18] 19] 20] 21] 22] 23] 24] 25]
Page 2 1] THE DEPOSITION OF ANN-MARIE BRUNNER, was taken on 2] September 12, 2018, commencing at 10:19 a.m., at the offices 3] of O'CONNOR & CAMPBELL, P.C., 7955 South Priest Drive, Tempe, 4] Arizona 85284, before CHRISTINE A. LANDERS, a Certified 5] Reporter in and for the State of Arizona, County of Maricopa, 6] pursuant to the Rules of Civil Procedure. 7] 8] COUNSEL APPEARING: 9] For the Plaintiff: 10] DAVIS MILES MCGUIRE GARDNER 11] By: Mr. Marshall R. Hunt 12] 40 East Rio Salado Parkway 13] Suite 425 14] Tempe, Arizona 85281 15] 16] For the Defendant Sedona-Oak Creek Airport Authority, Inc.: 17] O'CONNOR & CAMPBELL, P.C. 18] By: Ms. Ellen B. Davis 19] 7955 South Priest Drive 20] Tempe, Arizona 85284 21] 22] Also Present: 23] Eric Brunner 24] 25]	Page 4 1] PROCEEDINGS 2] 3] ANN-MARIE BRUNNER, 4] a witness herein, having been first duly sworn to speak the 5] truth and nothing but the truth, was examined and testified 6] as follows: 7] 8] EXAMINATION 9] BY MS. DAVIS: 10] Q. Okay. Can you state your full name again slowly? 11] A. Ann-Marie Brunner. 12] Q. How do you spell that? 13] A. A-n-n hyphen Marie. 14] Q. Oh, okay. 15] A. M-a-r-i-e, Brunner, B-r-u-n-n-e-r. 16] Q. Because I've seen it spelled, like, three different 17] ways. 18] A. I know. 19] Q. And I wasn't sure how to spell your name. 20] A. It's all good. 21] Q. What other names have you been known by? 22] A. Ann-Marie Klein, K-I-e-i-n. 23] Q. Any other? 24] A. (Shakes head negatively.) 25] Q. What year did you get married?

Page 37 1] BY MS. DAVIS: 2] Q. Does anyone do work that Solid Edge pays it money 3] for? Pays that person money for? 4] A. (No audible response.) 5] Q. Does anyone provide services to Solid Edge for 6] which Solid Edge provides compensation? 7] A. No. 8] Q. Have you ever assisted in preparing or prepared a 9] Profit and Loss Statement for Dakota? 10] A. Other than handing over bank statements to a 11] bookkeeper or an accounting firm, that's the only assistance 12] I would have provided. 13] Q. Does Dakota employ a bookkeeper other than you? 14] A. They have an accounting firm. Correct. Yes. I 15] don't do the books. I do payroll. I don't do Dakota's 16] books. I do payroll. 17] Q. Who is it that does Dakota's books? 18] A. Sterling Financial. 19] Q. Do they prepare Solid Edge's Profit and Loss 20] Statements or do you know? 21] A. Dakota's or Solid Edge? 22] Q. Let's talk about Dakota. 23] A. So do they -- 24] Q. Do you know if Sterling Financial has prepared 25] Profit and Loss Statements for Dakota?	Page 39 1] A. I don't know for sure. I want to say around 5 of 2] '17. But I'm not sure if that's the exact date or time. 3] Around there. Somewhere around there, I believe. I don't 4] remember when she went out on her own. 5] Q. Have you ever prepared a balance sheet for Dakota? 6] A. No. 7] Q. Have you ever assisted in the preparation of a 8] balance sheet for Dakota? 9] A. No. 10] Q. If someone prepared a current balance sheet for 11] Dakota, who would be doing that work? 12] A. It would either probably be Logan or Sterling 13] Financial, one of the two. 14] Q. Who prepares tax returns? 15] A. Sterling Financial. 16] Q. Let's talk about Solid Edge for a minute. Who 17] keeps the books for Solid Edge? 18] A. I do. 19] Q. Do you do journal entries? 20] A. No. I apologize. 21] Q. Do you do accounts payable for Solid Edge? 22] A. Yes. 23] Q. What are the typical accounts that you pay for 24] Solid Edge? 25] A. It's predominately, you know, office supplies,
Page 38 1] A. They have. 2] Q. Did you assist in that work? 3] A. No. 4] Q. Who at Sterling Financial would have done that, if 5] you know? 6] A. God only knows. They have so many different 7] employees. There's been such a high turnover that I couldn't 8] tell you who. And the business has been sold, too. So -- 9] Q. Who currently provides accounting services for 10] Dakota? 11] A. There is a bookkeeper that worked with Sterling 12] that went out on her own. Her name is Logan. I don't know 13] how to spell her last name. And she works in conjunction 14] with the second corporation of Sterling that broke out on its 15] own. She works with them and provides them with monthly 16] Dakota bookkeeping. 17] Q. Okay. What is Logan's last name phonetically? 18] A. I don't -- Acciavatti or something like that. I 19] don't know how you spell it. I'm so sorry. It's really, 20] really weird. 21] Q. And what company does she work with? 22] A. She's, like, self -- she's a self-employed 23] bookkeeper. 24] Q. When did Logan start providing bookkeeping services 25] for Dakota as a sole person?	Page 40 1] different supplies for vehicles, fuel. Not a lot of 2] advertising, but some. And then just, you know, just 3] incidental office expenses running a home office. 4] Q. What offices does Solid Edge have? 5] A. I predominantly work out of my house. So -- 6] Q. What other offices does Solid Edge have besides 7] your home office? 8] A. Solid Edge doesn't have a lease for an office 9] anywhere. It's a home office. 10] Q. Does anyone provide services for Solid Edge besides 11] yourself? 12] A. Eric, my husband. 13] Q. What does Eric do for Solid Edge? 14] A. He oversees all compliance with all FAA 15] regulations, which would fall under the umbrella of the whole 16] 135 side of Solid Edge. He works in conjunction with 17] providing support if I need it with any questions of things 18] that I have going on, and then he also works directly with 19] Dakota. 20] Q. What are the things that he would provide support 21] for you for? 22] A. I mean, if there's different equipment or supplies 23] or just delivering of different items. 24] Q. What equipment does Solid Edge have? 25] A. I would be talking about if he was taking

Page 53 1] A. Not necessarily. 2] Q. Who else might perform it? 3] A. Flight Trails Helicopters. 4] Q. Is that an outside service that -- 5] A. Yes. 6] Q. -- Dakota employs to work on the helicopter? 7] A. Correct. 8] Q. If a fixed wing airplane needed maintenance, would 9] that be worked on by employees of Dakota? 10] A. Correct. 11] Q. And also by this outside service? 12] A. If needed. 13] Q. Does Dakota generate revenue for the Cottonwood 14] Airport? 15] A. Yes. 16] Q. Does Solid Edge transfer operational control to 17] Dakota of the flights of the helicopters from the Sedona 18] Airport? 19] A. I'm not sure how that works. That's an aviation 20] question. 21] Q. I think I asked you this before, but I'm going to 22] ask it again. 23] A. Sure. 24] Q. Who provides services for Solid Edge for which they 25] are given compensation?	Page 55 1] Q. Does Solid Edge own any of the aircraft that it 2] uses? 3] A. No. 4] Q. Do you know whether Solid Edge operates any 5] flights? 6] A. I don't know. 7] Q. Do you know if Solid Edge leases any aircraft? 8] A. No. 9] Q. Does Solid Edge conduct commercial operations from 10] the Sedona Airport? 11] A. I don't know. 12] Q. How does Dakota operate through Solid Edge? 13] A. I don't know. 14] Q. Is Solid Edge physically present at the Sedona 15] Airport? 16] A. I don't know. 17] Q. Does Solid Edge need access to a building at the 18] Sedona Airport? 19] A. I'm not sure. 20] Q. Do you know whether Dakota has been issued an 21] operating certificate in Federal Aviation Administration 22] operation specification in accordance with Title 4914 CFR 23] Part 135? 24] A. I do not know. 25] Q. Does Eric Brunner receive compensation from
Page 54 1] MR. HUNT: Form. 2] THE WITNESS: I'm not understanding. 3] BY MS. DAVIS: 4] Q. Who does work for Solid Edge? 5] A. You mean what I do? 6] Q. Any kind of work for Solid Edge. Any work at all. 7] A. That would be Eric and I. 8] Q. What does Eric do for Solid Edge? 9] A. He is in communication with the FAA. He deals with 10] the 135 and the compliance -- any and all compliance issues 11] that would be in reference to dealing with the air carrier 12] certificate and the direct communications that would be 13] necessary between Dakota Territory Tours and Solid Edge. And 14] then, he also, as we've discussed prior to just now, 15] assisting me with picking up supplies as needed, bringing me 16] things. 17] Q. Does anyone else provide services for Solid Edge 18] besides you and Eric? 19] A. No. 20] Q. Does Solid Edge operate helicopter flights out of 21] Sedona Airport? 22] A. I don't know. 23] Q. When a helicopter lands at Sedona Airport, is it 24] under the operational control of Solid Edge? 25] A. I don't know.	Page 56 1] Solid Edge? 2] A. No. Yeah, he gets me. 3] Q. For which he can never repay. 4] A. Sorry. I couldn't resist. 5] Q. Did you assist in preparing the Requests For 6] Proposal submission that Dakota submitted to Sedona Airport? 7] A. No. 8] Q. Do you know if you provided any information that 9] was used in that submission? 10] A. No. 11] Q. Did you review the submission before it was given 12] to Sedona Airport? 13] A. I glanced through it. 14] Q. What was the purpose of your glancing through it? 15] A. Just to make sure it looked pretty. I mean, just 16] if anything stood out. 17] Q. What were you looking for? 18] A. Just, basically, looking through the checklist to 19] make sure that everything that they had requested was 20] provided within it. 21] Q. Anything else? 22] A. No. 23] Q. Do you know who prepared that Request for Proposal 24] submission? 25] A. Yeah. Eric Brunner worked in conjunction with a

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1] former employee, Steve Shattuck.
2] Q. C-h-a-d-d-i-c-k?
3] A. S-h-a-t-t-u-c-k, I believe, is how you spell his
4] last name.
5] Q. And what was his job?
6] A. He was a pilot.
7] Q. Do you know if anyone else worked on that?
8] A. (Shakes head negatively.)
9] Q. No, you don't know, or do you think it was only
10] those two?
11] A. I'm not sure if there was anyone else that worked
12] in conjunction with them.
13] Q. What right does Dakota have to continue to occupy
14] space at Sedona Airport?
15] MR. HUNT: Form.
16] THE WITNESS: I don't think I can answer that
17] question. I don't think any of us can.
18] BY MS. DAVIS:
19] Q. Does Solid Edge have any insurance policies?
20] A. I don't know.
21] Q. If Solid Edge was paying for an insurance policy,
22] would that be noted on the QuickBooks that you keep?
23] A. Yes.
24] Q. Have you ever seen an invoice from an insurance
25] company to Solid Edge?

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1] A. Not that I re -- well, no.
2] Q. If Solid Edge had paid an insurance premium, would
3] you be able to perform a search in your QuickBooks and find
4] out how much had been paid?
5] A. Yes.
6] Q. Can QuickBooks generate a chart of expenses that
7] Solid Edge pays on a monthly basis?
8] A. No. Oh. No.
9] Q. If Solid Edge has an expense, would it be reflected
10] in the QuickBooks?
11] A. Yes.
12] Q. Would it be fair to say that all of Solid Edge's
13] expenses would be reflected in its QuickBooks file?
14] A. Yes.
15] Q. Would all income for Solid Edge be reflected in its
16] QuickBooks file?
17] A. Yes.
18] Q. If Solid Edge had an insurance policy, a physical
19] hard copy document, where would it be maintained?
20] A. The home office.
21] Q. At your house?
22] A. It should be.
23] Q. Would you be the person responsible for putting
24] that document in a file?
25] A. Yeah.

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1] Q. Do you recall ever seeing an insurance policy for
2] Solid Edge?
3] A. No.
4] Q. Do you recall ever seeing an application for
5] insurance by Solid Edge?
6] A. No.
7] Q. Do you know whether anyone from Dakota ever
8] informed anyone from Sedona Airport that Dakota was operating
9] through Solid Edge's Part 135 certificate?
10] A. Yes.
11] Q. And what would be the basis of that knowledge?
12] A. Correspondence between Larry Brunner and SOCAA and
13] their prior counsel.
14] Q. Do you know if that's been produced in this
15] litigation?
16] A. Yes. Several times over to everyone involved.
17] Q. Do you know if there's other correspondence that
18] hasn't been produced in this litigation that you believe
19] reflects SOCAA's awareness that Dakota was operating through
20] Solid Edge's certificate?
21] A. I wouldn't know.
22] Q. Did you yourself ever look through Dakota or
23] Solid Edge's records to find such correspondence?
24] A. No.
25] Q. When did Dakota start operating through Solid

Page 60

1] Edge's certificate?
2] A. I'm not sure.
3] Q. Is Dakota operating through Solid Edge today; Solid
4] Edge's certificate today?
5] A. Yes.
6] Q. How is it doing that?
7] A. I don't know.
8] Q. If I ask you to describe how Dakota is operating
9] through Solid Edge's certificate, could you give me your best
10] description, please --
11] MR. HUNT: Form.
12] BY MS. DAVIS:
13] Q. -- of how that's occurring?
14] MR. HUNT: Form.
15] MS. DAVIS: Strike the question.
16] BY MS. DAVIS:
17] Q. Please explain to me, as best you can, how Dakota
18] is operating through Solid Edge's certificate.
19] MR. HUNT: Same objection.
20] THE WITNESS: I wouldn't begin to know how to
21] explain it. It's an aviation related question.
22] BY MS. DAVIS:
23] Q. Were you involved in the decision to file the
24] lawsuit by Dakota against Sedona Airport in 2017, in July of
25] 2017? This lawsuit.

Page 77 11 Q. Does Solid Edge have any business other than 21 working in conjunction with Dakota? 31 A. No. 41 Q. If I show you -- 51 Let's mark this Exhibit 5. 61 (Deposition Exhibit No. 5 was marked for 71 identification.) 81 BY MS. DAVIS: 91 Q. And this is pages from the RFP submission. And I 101 just want you to look at what -- if you look at the bottom of 111 that, you see page 16, and then you see page 17, page 18, 19. 121 A. Yeah. 131 Q. Have you seen those before? 141 A. Only as part of the RFP. 151 Q. Were you involved in preparing those in any way? 161 A. No. Nope. Not at all. 171 Q. Did you travel out of the country in late July -- 181 in July or August? 191 A. Yes. 201 Q. Where did you go? 211 A. Mexico. 221 Q. When did you go to Mexico? 231 A. I don't remember the exact dates. 241 Q. How long were you in Mexico? 251 A. About a week.	Page 79 11 other than the trip to Mexico? 21 A. No. 31 Q. Did Eric travel out of the country in July or 41 August other than the trip to Mexico? 51 A. I don't believe so. I'm not sure. He did go out 61 of town a few times. I don't remember every place that he 71 went to. 81 Q. You mentioned that you use a laptop for Solid Edge 91 work. Do you use more than one computer? 101 A. Yes. 111 Q. What computers do you use? 121 A. There's one up at the Cottonwood Airport that I'll 131 go on up there as well. 141 Q. Any others? 151 A. No. 161 Q. If I was looking for Solid Edge's books and 171 records, where would I look? 181 A. At 5950 East La Privada. 191 Q. Anywhere else? 201 A. No. 211 Q. If I was looking for Dakota's books and records, 221 where would I look? 231 A. 1001 West Mingus Avenue or at Sterling. 241 Q. Cottonwood? 251 A. Uh-huh. Or with Sterling or Logan.
Page 78 11 Q. Was that a vacation? 21 A. Yes. 31 Q. Did your whole family go? 41 A. No. 51 Q. Who went? 61 A. My husband, myself, and our -- two of our children. 71 Q. Was that in July or in August? 81 A. July. 91 Q. Was it 4th of July weekend? 101 A. No. 111 Q. Where did you stay? 121 A. We stayed at a friend's house. 131 Q. Approximately what dates? 141 A. The end of July. We were trying to get a trip in 151 with the kids before they started school in August. 161 Q. When did they start school? 171 A. I believe it was the 6th or the 7th. 181 Q. So it was before August 6th? 191 A. The 6th or the 7th. I don't remember the exact 201 date. 211 Q. So the trip would have been the week prior or two 221 weeks prior? 231 A. No. We, like, literally got back, and a few days 241 later, they went to school. So no. 251 Q. Did you travel out of the country in July or August	Page 80 11 Q. Anywhere else? 21 A. No. 31 MS. DAVIS: I have no further questions. 41 MR. HUNT: Actually, I have just a quick 51 clarification here. 61 E X A M I N A T I O N 71 BY MR. HUNT: 81 Q. Ann-Marie, you recall that at the beginning, there 91 were some questions about whether you had ever been a 101 defendant in a lawsuit. Do you remember that? 111 A. Uh-huh. 121 Q. And you initially answered, "No"? 131 A. Uh-huh. 141 Q. But I think later, you indicated you maybe didn't 151 fully understand the question? 161 A. Right. 171 Q. Can you just clarify that situation for me? 181 A. Yeah. That was in reference to Chase. And we were 191 working on a modification for our home loan, and we were in 201 the process, and they were reviewing everything. 211 The note had gotten sold from the one lender 221 to Chase. And I was working on everything, giving them 231 everything, and then they just put a notice on our house that 241 they were foreclosing. So we didn't get to defend ourselves. 251 We didn't show up in court or anything like that. They

1] foreclosed on our house.
2] So that's why I was confused with being a
3] defendant in a case because we were trying to get a
4] modification, and that's what happened.
5] Q. But you haven't personally been a defendant in any
6] Dakota-related litigation?
7] A. No. Not at all.
8] MR. HUNT: I have nothing else.
9] MS. DAVIS: I'm not going to ask any follow-up
10] questions. We're done. Thank you for your time.
11] THE WITNESS: Sure.
12] (The deposition was concluded at 12:36 p.m.)
13] * * * * *
14]
15]
16] _____
17] ANN-MARIE BRUNNER
18]
19]
20]
21]
22]
23]
24]
25]

1] STATE OF ARIZONA)
2] COUNTY OF MARICOPA) ss.
3]
4] BE IT KNOWN that the foregoing proceedings were
5] taken before me; that the witness before testifying was duly
6] sworn by me to testify to the whole truth; that the foregoing
7] pages are a full, true, and accurate record of the
8] proceedings, all done to the best of my skill and ability;
9] that the proceedings were taken down by me in shorthand and
10] thereafter reduced to print under my direction.
11] I CERTIFY that I am in no way related to any of the
12] parties hereto, nor am I in any way interested in the outcome
13] hereof.
14] [X] Review and signature was requested.
15] [] Review and signature was waived.
16] [] Review and signature not required.
17]
18] I CERTIFY that I have complied with the ethical
19] obligations set forth in ACJA 7-206(F) (3) and ACJA 7-206
20] J(1)(g) (1) and (2).
21] Dated at Phoenix, Arizona, this 25th day of
22] September, 2018.
23]
24] _____
25] CHRISTINE A. LANDERS, RPR
 Certified Reporter
 Certificate No. 50924
 * * * * *
 I CERTIFY that GRIFFIN & ASSOCIATES, LLC, has
 complied with the ethical obligations set forth in ACJA
 7-206(J) (1)(g) (1) through (6).

 GRIFFIN & ASSOCIATES, LLC
 Registered Reporting Firm
 Arizona RRF No. R1005

EXHIBIT 11

EXHIBIT 11

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)
)
Plaintiff,)
)
vs.) No. V1300CV201780201
)
SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation, AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)
)
Defendants.)

THE DEPOSITION OF ANN-MARIE BRUNNER
(30(b)(6) for Dakota related to damages and financials)

Phoenix, Arizona
October 4, 2019
2:37 p.m.

(COPY)
PREPARED FOR:

ATTORNEY

REPORTED BY:
HERDER & ASSOCIATES, LLC
HALEY DAWN WESTRA, RPR
Certified Court Reporter
AZ-CR No. 50762

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EXHIBITS Marked:

No. 14 Dakota Payments to Solid Edge 38
1/01/16 to 12/31/18

No. 15 Expense Account - Outside Services 44

* * * * *

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I N D E X

Examination By: Page:
MS. DAVIS 5
MR. HUNT 56

EXHIBITS Referred:

No. 1 Notice of 30(b)(6) Deposition of Plaintiff Dakota Territory Tours, ACC 6
No. 2 Plaintiff's Second Supplemental Disclosure Statement 7
No. 3 2016 List of Employees 24
No. 4 Loan Amortization Schedule 31
No. 5 Dakota Territory Tours Vendor Report 2016 22
No. 6 Sedona Gross Sales Trend Historical June 2010 to Dec 2018 - Incorrect March 2018 at \$52,304.39 9
No. 7 SEDONA Specific Sales versus Company Wide Sales as a whole 22
No. 8 Dakota Territory Tours 770 Sunshine Lane, Sedona, Arizona 86336 9
No. 9 Employee Training Rubric 24
No. 10 Profit & Loss April 2016 through March 2017 43
No. 11 Submittal Acknowledgement of Receipt for SOCAA RFP, dated May 31, 2017 42
No. 13 Motor Vehicle Division - Bill of Sale and check 24

(continued)

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THE DEPOSITION OF ANN-MARIE BRUNNER, taken at 2:37 p.m., on October 4, 2019, at the Law Offices of PERRY, CHILDERS, HANLON & HUDSON, PLC, 722 East Osborn Road, Suite 100, Phoenix, Arizona, before HALEY DAWN WESTRA, a Certified Reporter in the State of Arizona.

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For the Defendants:

PERRY, CHILDERS, HANLON & HUDSON, PLC
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1 Q. It's turned -- right.
 2 A. **Yeah, it's number 7.**
 3 Q. 7.
 4 A. **Yeah.**
 5 Q. Were you involved in the creation of number 7
 6 at all?
 7 A. **Logan created these.**
 8 Q. So the answer would be no?
 9 A. **No.**
 10 Q. Were you involved in inputting the numbers in
 11 QuickBooks that are reflected on Exhibit 7?
 12 A. **No.**
 13 Q. Who would have inputted those numbers in the
 14 QuickBooks file?
 15 A. **That would be Logan or Sterling Sedona.**
 16 Q. In March of 2018, would that have been Logan?
 17 A. **Yes.**
 18 Q. In April and May of 2017, is --
 19 A. **Sterling Sedona.**
 20 Q. That would have been --
 21 A. **Pick a number, unfortunately. I hate to say**
 22 **that.**
 23 Q. Okay. And who was keeping your QuickBooks in
 24 March, April, May of 2017?
 25 A. **Sterling Sedona.**

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1 Q. Okay. Was anybody from Dakota involved in
 2 putting numbers in the QuickBooks file during that time
 3 period?
 4 A. **No.**
 5 Q. Let's go to the RFP proposal.
 6 A. **Okay.**
 7 Q. Which has been previously marked as
 8 Exhibit 11.
 9 A. **Okay.**
 10 Q. Let's look at that. I'll get my copy. Here
 11 it is. Let's look at page 17.
 12 A. **Bates 17 or number 17?**
 13 Q. On page 17 of the document.
 14 A. **Sure.**
 15 Q. Bates --
 16 A. **Yep, got it.**
 17 Q. -- SOCAA_DS000363.
 18 A. **Mm-hmm.**
 19 Q. Okay. What role did you have, if any, in
 20 creating this document?
 21 A. **None.**
 22 Q. And how about the subsequent pages?
 23 A. **None.**
 24 Q. And that would be page 363, 364, and 365;
 25 pages 17, 18, 19, and 20?

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1 A. **The only role I would have ever had, if it**
 2 **contributed to this, Ellen, would be me making sure**
 3 **that credit card and/or bank statements or anything**
 4 **that Sterling Sedona would have requested from me to do**
 5 **our monthly books would have been me getting it to**
 6 **them.**
 7 Q. And they would have put those numbers --
 8 A. **Correct.**
 9 Q. -- into QuickBooks?
 10 A. **Yes.**
 11 Q. Were you ever responsible for putting numbers
 12 in QuickBooks?
 13 A. **Never.**
 14 Q. Anybody who is employed by Dakota?
 15 A. **Never. No.**
 16 Q. Anyone other than the bookkeeping company ever
 17 put numbers in QuickBooks --
 18 A. **No. Nope.**
 19 Q. -- for Dakota?
 20 A. **No.**
 21 Q. Okay.
 22 A. **No one employees of Dakota have ever done**
 23 **that.**
 24 Q. Let's look at what's been previously marked as
 25 Exhibit 10.

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1 A. **Okay.**
 2 Q. And Exhibit 10 is comparing the numbers from
 3 the QuickBooks file that Dakota gave to SOCAA in this
 4 litigation with the numbers that appeared in
 5 Exhibit 11, which is the RFP financial.
 6 A. **Right.**
 7 Q. And you can see from looking at Exhibit 10
 8 that those numbers are different?
 9 A. **Right.**
 10 Q. Do you have any explanation as to why those
 11 numbers are different?
 12 A. **No. That would be -- Sterling Sedona would**
 13 **have to -- it would have to come from them.**
 14 Q. Who at Dakota would have been in -- you know
 15 what? Let's stop that right there, and we'll reserve
 16 that to when we get to the second 30(b)(6) deposition.
 17 A. **Okay.**
 18 Q. Okay. Let's stop that discussion.
 19 A. **Okay.**
 20 MS. DAVIS: Let me go back to -- did we mark
 21 this?
 22 (Deposition Exhibit No. 15 was marked for
 23 identification by the reporter.)
 24 BY MS. DAVIS:
 25 Q. And I'm going to give you what has been

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1 this should not take more than, like, half an hour or
2 40 minutes, max.

3 THE WITNESS: I'm fine if you are.

4 MS. DAVIS: Let's take a quick break.

5 (3:42 p.m.)

6

7

8

(Waived.)

9

ANN-MARIE BRUNNER

10

11

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1 STATE OF ARIZONA)

2) ss.
COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing proceedings were
4 taken before me; that the witness before testifying was
5 duly sworn by me to testify to the whole truth; that
6 the foregoing pages are a full, true and accurate
7 record of the proceedings, all done to the best of my
8 skill and ability; that the proceedings were taken down
9 by me in shorthand and thereafter reduced to print
10 under my direction.

11 I CERTIFY that I am in no way related to any of
12 the parties hereto nor am I in any way interested in
13 the outcome hereof.

14 ☐ Review and signature was requested.
15 ☒ Review and signature was waived/not requested.
16 ☐ Review and signature not required.

17 I CERTIFY that I have complied with the ethical
18 obligations set forth in ACJA 7-206(F)(3) and ACJA
19 7-206 J(1)(g)(1) and (2). Dated at Phoenix, Arizona,
20 this 14th day of October, 2019.



21 -----
22 HALEY DAWN WESTRA, RPR, CRR
23 Arizona Certified Reporter No. 50762

24 I CERTIFY that HERDER & ASSOCIATES, LLC, has
25 complied with the ethical obligations set forth in ACJA
7-206 (J)(1)(g)(1) through (6).

21

22

23

24

25 -----
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EXHIBIT 12

EXHIBIT 12

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)
Plaintiff,)
vs.) No. V1300CV201780201
SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation, AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)
Defendants.)

THE DEPOSITION OF ANN-MARIE BRUNNER
(30(b)(6) for Dakota related to preparation of Exhibit A)

Phoenix, Arizona
October 4, 2019
3:52 p.m.

(COPY)
PREPARED FOR:

ATTORNEY

REPORTED BY:
HERDER & ASSOCIATES, LLC
HALEY DAWN WESTRA, RPR
Certified Court Reporter
AZ-CR No. 50762

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3
1 THE DEPOSITION OF ANN-MARIE BRUNNER, taken at
2 3:52 p.m., on October 4, 2019, at the Law Offices of
3 PERRY, CHILDERS, HANLON & HUDSON, PLC, 722 East Osborn
4 Road, Suite 100, Phoenix, Arizona, before HALEY DAWN
5 WESTRA, a Certified Reporter in the State of Arizona.
6

7 **COUNSEL APPEARING:**

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12 For the Defendants:

13 PERRY, CHILDERS, HANLON & HUDSON, PLC
14 BY: Ms. Ellen B. Davis, Esq.
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ebdavis@pchhlaw.com, 602-254-1444

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2 **I N D E X**

1 Examination By: Page:
2 MS. DAVIS 4
3 MR. HUNT 22
4 MS. DAVIS 23
5
6

8 **EXHIBITS Referred:**

9 No. 10 Profit & Loss April 2016 through 10
March 2017
10
11

12 **EXHIBITS Marked:**

13 No. 16 Notice of 30(b)(6) Deposition of 4
14 Plaintiff Dakota Territory Tours,
ACC
15 No. 17 Declaration of Marc S. Sterling 17
16
17
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* * * * *

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4

Phoenix, Arizona
October 4, 2019
11:12 a.m.

(Deposition Exhibit No. 16 was marked for
identification by the reporter.)

7 **P R O C E E D I N G S**

9 ANN-MARIE BRUNNER,
10 a witness herein, having been first duly sworn by the
11 Certified Reporter to speak the truth and nothing but
12 the truth, was examined and testified as follows:
13

14 **EXAMINATION**

15 BY MS. DAVIS:

16 Q. Let's go look at what's been premarked as
17 Exhibit 1 [sic].

18 And the categories in there are the amounts,
19 method, and computation and the factual basis for
20 Dakota's damages set forth in its disclosure
21 statement -- oh, you know what? We're on the wrong
22 one.

23 A. Yeah, you're reading the other one.

24 Q. I'm reading the other one.

25 A. Do you want me to just give it to you?

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5 1 Q. Yeah. 2 "The person(s) responsible for the preparation 3 of Exhibit A (the 3 pages of financial statements) 4 included in Dakota's RFP." 5 And I think we've marked that as Exhibit 11 6 [sic] to this deposition. 7 And "the person(s) responsible for the 8 inclusion of those pages." 9 Are you going to be talking about both of 10 those topics? 11 A. Yes. 12 Q. So what did you do to prepare for today's 13 deposition on those topics? 14 A. Nothing. Just I know because I know. 15 I didn't have to prepare anything. 16 Q. Tell me what you know. 17 A. Based on prior conversations. 18 Q. With whom? 19 A. Eric and Marc Sterling. 20 Q. Anyone else? 21 A. No. Milly might have been present, but not a 22 conversation; where we were just all together. 23 Q. When did this conversation take place? 24 A. I couldn't give you an exact date. It would 25 have been after the allegations that you guys are... © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com	7 1 A. Right. 2 Q. And that would have been in the summer of 3 2017? 4 A. Yes. 5 Q. What, if anything, did you do to correct your 6 RFP submission after Logan came to you and told you 7 that? 8 A. It was after the RFP; so that's a moot point. 9 Q. So it was after the RFP had already been 10 submitted? 11 A. Correct. 12 Q. So you didn't do anything to tell SOCAA, 13 "Wait, a minute. Maybe we made a mistake"? 14 A. It was after the RFP, so no. 15 Q. Let's go back to this conversation that you 16 had about the creation of this document. 17 A. Okay. 18 Q. I think you said it was after June of 2019. 19 Do you have any other way to nail the time 20 frame down? 21 A. No. It would have been after -- I couldn't 22 even tell you the date. It's based on whenever you -- 23 I don't remember when you guys are making these 24 allegations. Whenever that timeline was, it would have 25 been after that. © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com
6 1 Q. Would it have been after June of this year, 2 2019? 3 A. I... 4 Q. Would it have been after SOCAA first raised 5 the issue of questioning -- 6 A. Yes -- 7 Q. -- the stamp on this document? 8 A. -- it would have been after that. Yes. 9 Q. So that would have been June of 2019? 10 A. Right. That would have been -- right, it 11 would have been after that. Absolutely. 12 Q. Did you have a conversation with anyone before 13 June of '19 about whether or not this three pages 14 included in the RFP might be inaccurate in any way? 15 A. Not until you guys brought it to our 16 attention. It was not discussed, no. 17 Q. You were here for Logan's deposition; correct? 18 A. Correct. 19 Q. She testified that she realized that there was 20 a journal error -- 21 A. Yes. 22 Q. -- in Dakota's books. 23 A. Right. 24 Q. And that she brought it to your attention soon 25 after she became bookkeeper for you folks. © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com	8 1 Q. Okay. And you said you talked to Eric and 2 Marc Sterling? 3 A. Yes. 4 Q. And no one else? 5 A. Nuh-uh, no. 6 Q. What was the substance of the conversation you 7 had with Eric? 8 A. I asked him if he noticed the discrepancy, and 9 he said it didn't catch his eye; he wasn't paying 10 attention to the signatures or the name or anything. 11 He never noticed that there was a discrepancy; 12 so nothing stood out to him. 13 Q. When you say "the discrepancy," what do you 14 mean? 15 A. The misspelling of Marc Sterling's name on 16 those three pages. 17 Q. Is Marc Sterling a CPA? 18 A. No, he is not. I wouldn't have known that. 19 I only know this because of post conversations since 20 this was brought to light. 21 Q. At that time, was Marc Sterling a part of 22 Sterling Financial Services, LLC? 23 A. Yes. 24 Q. In April of 2017? 25 A. Yes -- oh, I -- yes. © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com

9 1 Q. That's your testimony? 2 A. Yes. 3 Q. Did Eric tell you how this document came to be 4 stamped with the name -- or printed -- let's agree on 5 the wording here. 6 Do you want to call it "stamped" or "printed"; 7 or do you even care? 8 A. Whatever you -- I don't have a preference. 9 Q. Let's call it stamped. 10 What is your understanding of how this 11 document came to be stamped with "Mark S. Stearling, 12 Certified Public Accountant, Stearling Financial 13 Services LLC"? 14 A. I have no understanding of how it happened. 15 Q. You have no idea how it happened? 16 A. Nope, I do not. 17 Q. Did Eric have any idea of how it happened? 18 A. No, Eric does not know how it happened. 19 Q. Does Marc Sterling know how it happened? 20 A. No, he does not. 21 Q. So is there anyone you would talk to at Dakota 22 who might know how this happened? 23 A. No. 24 Q. Who is responsible for taking the physical 25 pages and putting them in the binder for the RFP that © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com	11 1 A. Yes. 2 Q. -- on the very bottom of the sheet. 3 A. Yes. 4 Q. Is it your understanding that that 5 \$1,396,725.31 was put on this sheet as a result of a 6 journal error? 7 A. I am not sure. 8 Q. As you sit here today, do you know how that 9 number got on that piece of paper? 10 A. No, I do not. 11 Q. Let's look in this document on page -- 12 A. Still on the RFP? 13 Q. Yeah, we're still on the same document. 14 A. Sure. You got it. 15 Q. 3, signature page. Oh, no. Really? 16 A. Okay. We've got a blank one between 3 and 4. 17 Q. Sorry. 18 A. Yes. 19 Q. It says "I certify that, to the best of my 20 knowledge and belief, the information contained in this 21 proposal is accurate, complete, and current as of the 22 date below." 23 Is the information contained in this proposal 24 accurate and complete as of May 30, 2017? 25 A. I don't know. I didn't prepare this. © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com
10 1 was submitted to SOCAA? 2 A. Steve Shattuck. 3 Q. Did you look at the pages that were assembled 4 in that binder before they were presented -- 5 A. No, I did not. 6 Q. -- to SOCAA? 7 A. No, I did not. 8 Q. Did Eric look at them? 9 A. I am not sure if he did. 10 Q. Did you ask him if he looked at them? 11 A. No, I did not. 12 Q. Logan has testified that the -- let's look at 13 page 17 of Exhibit 10 or 11, which is the RFP 14 submission. 15 A. What page do you want? 16 Q. Page 17 of the document. 17 A. Okay. 18 Q. And I understand this is tiny print. 19 A. Mm-hmm. 20 Q. But look at "Other Income/Expense," which is 21 next to the bottom. Do you see that? 22 "Other Income/Expense," "Other Income," 23 "Management Fee Income [sic]," "Total Other Income," 24 "Other Expense," "Depreciation" at the very -- the last 25 numbers -- © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com	12 1 I didn't sign this. 2 Q. Is the million 396 the result of a journal 3 error? 4 A. On the RFP -- 5 Q. You answered that question. Yes. 6 A. On the RFP submission -- 7 Q. Yes. 8 A. -- I do not know. 9 Q. You do not know? 10 A. I do not know. 11 Q. So can you say that the information submitted 12 in this proposal is accurate and complete as of the 13 date it was signed? 14 A. Are you asking me to speak for Eric? 15 Q. For Dakota. You are the representative of 16 Dakota. 17 A. To the best of -- Eric signed this. And to 18 the best of his knowledge and belief he signed. 19 Q. As the representative of Dakota sitting here 20 today, do you believe that this document is accurate 21 and complete as of the date it was signed? 22 A. Could you repeat the question? 23 MS. DAVIS: Can you read it back for me. 24 THE REPORTER: Sure. 25 (The requested portion was read by the © Herder & Associates, LLC (480)481-0649 www.CourtReportersAZ.com

17

1 I may be done -- oh, I've got, I'm sorry, a couple more
2 questions.
3 THE WITNESS: Sure.
4 BY MS. DAVIS:
5 Q. Do you know whether anyone at Dakota compared
6 the financial statement that's included in the RFP to
7 Dakota's QuickBooks at the time?
8 A. No.
9 Q. Do you know whether or not this financial
10 statement was generated using the QuickBooks file?
11 A. I wouldn't know.
12 Q. Do you have any idea how this paper was
13 generated?
14 A. Sterling Sedona created the financial
15 documents for the RFP. They were created by Sterling
16 Sedona staff.
17 Q. These pages were created by Sterling Sedona
18 staff?
19 A. The financial -- the financial reporting and
20 all of that stuff was created by Sterling Sedona.
21 Q. Okay.
22 MS. DAVIS: Well, let's mark the declaration
23 of Marc Sterling as Exhibit 17.
24 (Deposition Exhibit No. 17 was marked for
25 identification by the reporter.)
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18

1 BY MS. DAVIS:
2 Q. Let's look at -- just start with paragraph 11.
3 MS. DAVIS: And I am sorry, Marshall, but all
4 the docs I gave you, I think, were on that drive.
5 MR. HUNT: That's fine.
6 MS. DAVIS: So if you saved it, it's in there
7 too.
8 MR. HUNT: I'll look over it.
9 MS. DAVIS: Sure.
10 BY MS. DAVIS:
11 Q. So we're just going to paragraph 11. And tell
12 me when you're done reading to paragraph 13. Take your
13 time.
14 A. I'm finished.
15 Q. Okay. Let's look at on page 3 of this
16 document, at line 2, "I did not sign the subsequent
17 pages, and the information typed next to my signature
18 is incorrect. The typed information is not correct in
19 that my first and last name are spelled wrong, as is
20 the name of the company."
21 A. Right.
22 Q. Reading that declaration signed by
23 Mr. Sterling, do you believe that he prepared these
24 pages?
25 A. Yes. Him or his staff.
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19

1 Q. Did you or Eric talk to anyone at Sterling
2 Financial Services before submitting the RFP to Sedona
3 Airport, to SOCAA?
4 A. Only to Marc Sterling, letting him know that
5 we needed to provide whatever financial documents that
6 were required for the RFP so that him and/or his team
7 could compile the data that we needed, since they're
8 the ones who manage our books and prepare our taxes so
9 that we would have the proper documentation for the
10 RFP.
11 Q. Did Marc Sterling make a journal error of
12 \$1,396,725.31 when he prepared -- if he prepared this
13 document?
14 A. I do not know if it came from him or one of
15 his staff. I'm not sure exactly who.
16 Q. And we don't know how that journal error
17 happened?
18 A. Nuh-uh, no, unfortunately. Trust me, I wish
19 we knew.
20 Q. And we don't know how this signature got on
21 this document?
22 A. No. But what I do know is Eric and I did not
23 do it. I don't have the computer abilities to know how
24 to do something like that nor does Eric.
25 Q. Someone from Dakota compiled the pages and put
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20

1 them in the binder that --
2 A. Yes.
3 Q. -- went to Sedona Airport?
4 A. Correct.
5 Q. Who did that?
6 A. I already answered that question, but it was
7 Steve Shattuck.
8 Q. Let's look back at page 3.
9 A. Okay.
10 Q. Is that Steve Shattuck's signature on page 3?
11 I'm sorry of the --
12 A. RFP?
13 Q. Yes. Sorry about that.
14 A. This?
15 Q. Yeah.
16 A. No.
17 Q. Whose signature appears on that page?
18 A. Eric Brunner's.
19 Q. Who's attesting that the information in that
20 package is accurate and complete to the best of his
21 knowledge?
22 A. Eric Brunner.
23 Q. Not Steve Shattuck?
24 A. Correct.
25 Q. So what you're saying is when Eric signed
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(4:16 p.m.)

(Waived.)

ANN-MARIE BRUNNER

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1 STATE OF ARIZONA)

2) ss.
3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing proceedings were
5 taken before me; that the witness before testifying was
6 duly sworn by me to testify to the whole truth; that
7 the foregoing pages are a full, true and accurate
8 record of the proceedings, all done to the best of my
9 skill and ability; that the proceedings were taken down
10 by me in shorthand and thereafter reduced to print
11 under my direction.

12 I CERTIFY that I am in no way related to any of
13 the parties hereto nor am I in any way interested in
14 the outcome hereof.

15 ☐ Review and signature was requested.
16 ☒ Review and signature was waived/not requested.
17 ☐ Review and signature not required.

18 I CERTIFY that I have complied with the ethical
19 obligations set forth in ACJA 7-206(F)(3) and ACJA
20 7-206 J(1)(g)(1) and (2). Dated at Phoenix, Arizona,
21 this 14th day of October, 2019.



22 -----
23 HALEY DAWN WESTRA, RPR, CRR
24 Arizona Certified Reporter No. 50762

25 I CERTIFY that HERDER & ASSOCIATES, LLC, has
26 complied with the ethical obligations set forth in ACJA
27 7-206 (J)(1)(g)(1) through (6).

28 -----
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30 AZ Registered Reporting Firm No. R1145
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EXHIBIT 13

EXHIBIT 13

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)
Plaintiff,)
vs.) No. V1300CV201780201
SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation, AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)
Defendants.)

THE DEPOSITION OF LOGAN ACCIAVATTI
(30(b)(6) for Dakota related to damages)

Phoenix, Arizona
October 4, 2019
11:12 a.m.

(COPY)
PREPARED FOR:

ATTORNEY

REPORTED BY:
HERDER & ASSOCIATES, LLC
HALEY DAWN WESTRA, RPR
Certified Court Reporter
AZ-CR No. 50762

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No. 12 Verde Valley Bookkeeping letter 68
dated April 12, 2019

No. 13 Motor Vehicle Division - Bill of 75
Sale and check

* * * * *

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I N D E X

Examination By: Page:
MS. DAVIS 5
MR. HUNT 93

E X H I B I T S Marked:

No. 1 Notice of 30(b)(6) Deposition of 9
Plaintiff Dakota Territory Tours,
ACC
No. 2 Plaintiff's Second Supplemental 11
Disclosure Statement
No. 3 2016 List of Employees 14
No. 4 Loan Amortization Schedule 24
No. 5 Dakota Territory Tours Vendor Report 31
2016
No. 6 Sedona Gross Sales Trend Historical 32
June 2010 to Dec 2018 - Incorrect
March 2018 at \$52,304.39
No. 7 SEDONA Specific Sales versus Company 34
Wide Sales as a whole
No. 8 Dakota Territory Tours 770 Sunshine 46
Lane, Sedona, Arizona 86336
No. 9 Employee Training Rubric 53
No. 10 Profit & Loss April 2016 through 59
March 2017
No. 11 Submittal Acknowledgement of Receipt 59
for SOCAA RFP, dated May 31, 2017

(continued)

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THE DEPOSITION OF LOGAN ACCIAVATTI, taken at
11:12 a.m., on October 4, 2019, at the Law Offices of
PERRY, CHILDERS, HANLON & HUDSON, PLC, 722 East Osborn
Road, Suite 100, Phoenix, Arizona, before HALEY DAWN
WESTRA, a Certified Reporter in the State of Arizona.

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For the Defendants:

PERRY, CHILDERS, HANLON & HUDSON, PLC
BY: Ms. Ellen B. Davis, Esq.
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014
ebdavis@pchhlaw.com, 602-254-1444

Also Present: Ms. Ann-Marie Brunner

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1 A. **The income.**
 2 Q. How about the expense numbers?
 3 A. **Any of them that aren't written by check.**
 4 Q. Where do you get that information?
 5 A. **From bank statements.**
 6 Q. Do you enter information into the Dakota
 7 QuickBooks from any source other than bank statements?
 8 A. **No.**
 9 Q. Do you know whether all of Dakota's expenses
 10 go through its bank accounts?
 11 A. **If they -- I don't know. I can't answer that.**
 12 Q. Do you know whether or not Dakota's QuickBooks
 13 is an accurate representation of Dakota's income
 14 expenses?
 15 A. **Yeah. Everything goes through the bank**
 16 **account.**
 17 Q. So your answer to my question is you do or
 18 don't know?
 19 A. **It is an accurate account. Everything goes**
 20 **through their bank accounts, as far as I know.**
 21 Q. So the QuickBooks file would reflect what's in
 22 Dakota's bank accounts only?
 23 A. **As well as credit card -- their credit card**
 24 **statement.**
 25 Q. Are there any other sources that you would use
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1 to enter numbers in Dakota's QuickBooks?
 2 A. **No.**
 3 Q. Do you have any reason to believe that
 4 Dakota's QuickBooks is not an accurate representation
 5 of the income and expenses at Dakota?
 6 A. **I believe it is correct.**
 7 Q. It is an accurate representation?
 8 A. **It is accurate.**
 9 Q. Let's look at the first column on Exhibit 10.
 10 And I will represent to you that this was
 11 generated by the QuickBooks file that Dakota gave us
 12 through this litigation; and in a way as to match the
 13 categories that were in Exhibit 11, which is the RFP --
 14 A. **Okay.**
 15 Q. -- and those numbers don't match.
 16 A. **Correct.**
 17 **There was a journal entry in question that**
 18 **I had found was mislabeled. It's the 1,396,725.31**
 19 **under "Other Income" in column 3.**
 20 Q. What does that mean "mislabeled"?
 21 A. **Mislabeled or incorrect. I wasn't sure what**
 22 **exactly what it was. I had asked Ann-Marie and Eric**
 23 **what it would be.**
 24 **I think it was labeled "Management Fee." Is**
 25 **that what it was on here? Yeah, a management fee on**
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1 **the RFP; however, I could not find any supporting**
 2 **documentation to show that it was a management fee.**
 3 **It was a journal entry that was in there prior**
 4 **to me being a bookkeeper. So that journal entry was**
 5 **removed from Dakota's QuickBooks file; therefore, it**
 6 **would not be on this, in the column one.**
 7 Q. Let me ask you a question so this will be more
 8 understandable to a jury.
 9 So when you say "it's a journal entry that
 10 shouldn't have been in there," in lay terms, what does
 11 that mean?
 12 A. **It was inaccurate.**
 13 Q. Meaning that the number should not have been
 14 reflected on the RFP?
 15 A. **I don't know. It's something that is still**
 16 **being discussed, as far as I know, with the**
 17 **accountant/the tax preparer.**
 18 Q. So is it your understanding that there was
 19 income reflected on Dakota's RFP that was not reflected
 20 in its QuickBooks file --
 21 MR. HUNT: Objection.
 22 BY MS. DAVIS:
 23 Q. -- or should not have been reflected in its
 24 QuickBooks file?
 25 MR. HUNT: Same objection.
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1 THE WITNESS: I don't know right now. I can't
 2 answer that question.
 3 BY MS. DAVIS:
 4 Q. When you say there was a journal entry that
 5 shouldn't have been there, what do you mean?
 6 A. **I did not see any supporting documentation for**
 7 **the journal entry to be in there.**
 8 **And neither Ann-Marie nor Eric could recollect**
 9 **what it would have been for either.**
 10 Q. Does that mean that there was an income entry
 11 added into the QuickBooks file that should not have
 12 been added in there because there was no supporting
 13 documentation to justify the addition?
 14 A. **It's possible.**
 15 Q. What else would you need to do to find out
 16 whether or not that 1,396,725.31 should have been
 17 included in the QuickBooks file?
 18 A. **Find supporting documentation.**
 19 Q. And you've never seen any?
 20 A. **I have not.**
 21 Q. Okay. Let's look at some of the numbers on
 22 Exhibit 10 in the first column to the second column.
 23 And you'll see that some of the numbers match,
 24 and some of the numbers don't match as far as expenses;
 25 for example, let's look at advertising.
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1 BY MS. DAVIS:

2 Q. When a deposit is made, a bank deposit is made
3 for Dakota, do you ever see any supporting
4 documentation that goes with that deposit?

5 A. **No. I look at -- I see the bank statement.**

6 Q. Does Dakota keep a journal or some sort of
7 written record that you know of that allocates deposits
8 between Sedona income and other income?

9 A. **I don't know.**

10 MS. DAVIS: Give me two seconds. I think I'm
11 done.

12 MR. HUNT: Okay.

13 BY MS. DAVIS:

14 Q. Have you ever talked to a guy named
15 Marc Sterling --

16 A. **Yes.**

17 Q. -- about Dakota's profit and loss statements
18 submitted to Sedona Airport as part of the RFP?

19 A. **I haven't spoken to him specifically about
20 that, no.**

21 Q. That has been previously marked as Exhibit...

22 A. **10, 11, 12ish.**

23 Q. 10, 11, 12ish, right.

24 Did you ever discuss the numbers that appear
25 on Exhibits 10, 11, or 12 with Marc Sterling?

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1 A. **I asked him about the journal entry in
2 question, the -- I think it was the management fee of
3 the 1.1 million 396,000 of some sort.**

4 **I asked him if he knew anything about that
5 number. And at that time when I asked him, he said he
6 wasn't sure.**

7 Q. Do you know when this conversation took place?

8 A. **It's been -- it's been a while. I don't know.
9 A year or so ago.**

10 Q. There's a letter from you which is one of the
11 exhibits from Valley Verde [sic] Bookkeeping, and
12 that's dated in April of 2019?

13 A. **Yes.**

14 Q. Right.

15 Would your conversation with Marc have been
16 about the same time?

17 A. **It would have been before that, actually.
18 Because I had noticed that journal entry a lot sooner
19 than that.**

20 Q. When did you notice the journal entry?

21 A. **When I took over doing the bookkeeping.**

22 Q. When was that?

23 A. **It was June or July of 2017.**

24 Q. So it would have been -- if the RFP was
25 submitted in May 31 of 2017 -- so you took over fairly

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1 quickly after that.

2 And when you noticed the journal entry, who
3 did you talk to?

4 A. **I asked Ann-Marie about it first. I was,
5 like, "Hey" -- because it was a corresponding journal
6 entry with sale of assets.**

7 **I'm, like, "What did you sell? Because
8 I don't see any income coming in for this. And this
9 management fee, I don't see money going out for this,
10 I don't see any supporting documentation."**

11 **And then she said she would talk to Eric about
12 it. And after neither one of them knew what was going
13 on, I had talked to Marc, because he was the tax
14 preparer; and also he had owned Sterling Financial
15 Services at that time, which is -- I believe you guys
16 call Sterling Sedona. I mean...**

17 Q. We'll take your word for it.

18 A. **Well, I think that's how it's been referred
19 to, maybe, in the past.**

20 **And he had owned -- been a partner in that; so
21 I asked him if he knew anything about why those journal
22 entries were in there. And at that time he said he
23 wasn't 100 percent sure.**

24 Q. The letter you wrote indicates that the
25 numbers were changed before Dakota filed its tax

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1 return.

2 Do you know when Dakota filed its tax return
3 in 2017?

4 A. **I'm not sure.**

5 Q. If I gave you that tax return, would that
6 refresh your recollection?

7 A. **I'm sure there'll be a date on it, but I don't
8 prepare tax returns.**

9 Q. Do you know whether Dakota is on a fiscal year
10 or a calendar year?

11 A. **I believe they're on a calendar year.**

12 Q. So if there's a change in the tax return
13 that's different than the RFP financial, would you have
14 been involved in making any -- making that change?

15 A. **If there was a change --**

16 Q. You would have made the change in the
17 QuickBooks?

18 A. **Right.**

19 Q. Would you have had any role in creating the
20 tax return?

21 A. **No.**

22 Q. That would have been only Marc Sterling?

23 A. **Correct.**

24 Q. Okay. I'm not going to ask you about it.

25 A. **Yeah, I don't -- I stay out of taxes.**

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1 MS. DAVIS: I don't have any further
2 questions. Thank you for your time today.
3 THE WITNESS: Thank you.
4 MR. HUNT: I just have one or two clarifying
5 questions, if you don't mind.
6 THE WITNESS: Sure.
7
8 EXAMINATION
9 BY MR. HUNT:
10 Q. Marshall Hunt, attorney for Dakota.
11 If you look at Exhibit 8 -- thank you -- that
12 entry that we discussed from 2018.
13 A. **I believe it's right here.**
14 Q. Perfect.
15 And so you testified, obviously, that
16 \$3,807.61 is not 2.5 percent of 52,000?
17 A. **Correct.**
18 Q. Looking at the document here, it looks like
19 there is a 1 sort of jammed before the 5 there. Do you
20 see that?
21 A. **Yeah, it could be.**
22 Q. Okay.
23 A. **I mean, it could be a 1, or it almost looks**
24 **like a dollar sign.**
25 Q. Right.

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1 A. **Or it's a scribble; so I don't really know.**
2 Q. So, as you look at that, do you believe that
3 it's possible that there was some confusion about
4 whether that says 52,304.39 or 152,304.39?
5 A. **Yes.**
6 Q. That's all for that one.
7 And then looking at Exhibit 10, this is a
8 comparison of the QuickBooks files as they were
9 produced to SOCAA in 2019 in the course of this
10 litigation versus the profit-and-loss produced in the
11 course of Dakota responding to SOCAA's request for
12 proposals back in roughly May of 2017; is that right?
13 A. **Yes.**
14 Q. And in your experience, is it possible that
15 expenses and income that are attributable to the period
16 represented in this document, April 2016 through
17 March 2017, were added to the QuickBooks files after
18 the profit-and-loss was created in roughly May of 2017
19 that would have then showed up when the QuickBooks were
20 later produced in July of 2019 and, therefore, account
21 for some of these differences? I know that's a long
22 question.
23 A. **Yes. I mean, obviously it looks like things**
24 **were added in afterwards. The only thing I can think**
25 **of is perhaps a credit card statement wasn't reconciled**

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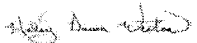
95

1 **or a bank account wasn't reconciled 100 percent, but**
2 **I don't know.**
3 MR. HUNT: Okay. I have nothing else.
4 MS. DAVIS: I have no further questions.
5 (1:38 p.m.)
6
7
8
9 (Waived.)
10
11 LOGAN ACCIAVATTI
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5 BE IT KNOWN that the foregoing proceedings were
6 taken before me; that the witness before testifying was
7 duly sworn by me to testify to the whole truth; that
8 the foregoing pages are a full, true and accurate
9 record of the proceedings, all done to the best of my
10 skill and ability; that the proceedings were taken down
11 by me in shorthand and thereafter reduced to print
12 under my direction.
13
14 I CERTIFY that I am in no way related to any of
15 the parties hereto nor am I in any way interested in
16 the outcome hereof.
17
18 [] Review and signature was requested.
19 [X] Review and signature was waived/not requested.
20 [] Review and signature not required.
21
22 I CERTIFY that I have complied with the ethical
23 obligations set forth in ACJA 7-206(F)(3) and ACJA
24 7-206 J(1)(g)(1) and (2). Dated at Phoenix, Arizona,
25 this 14th day of October, 2019.



HALEY DAWN WESTRA, RPR, CRR
Arizona Certified Reporter No. 50762

I CERTIFY that HERDER & ASSOCIATES, LLC, has
complied with the ethical obligations set forth in ACJA
7-206 J(1)(g)(1) through (6).

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AZ Registered Reporting Firm No. R1145
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EXHIBIT 14

EXHIBIT 14

VERDE VALLEY BOOKKEEPING

April 12, 2019

In response to Dakota Territory's management fee question on the RFP of April 2017;

I, Logan Acciavatti, found two Journal Entries within Dakota's books the beginning of July 2017

Dated 1/31/17 \$1,181,832.60 for "Sale of assets"
Dated 3/1/17 \$1,396,725.31 for "Management fee"

After auditing all books, tax returns, miscellaneous files and speaking to Eric and Ann-Marie we concluded that both of these Journal Entries were erroneous, thus they were deleted from Dakota's quickbooks prior to filing 2017 Federal and Arizona tax returns.

There was no way to find out how the Journal Entries were mistakenly entered into Dakota's Quickbooks. Bookkeeping and Accounting work was initially done by Sterling Financial Services(SFS). SFS employed many bookkeepers and accountants who all shared the same server with the same user login for each and every single one of the thousands of clients. Therefor an audit trail was unable to turn up any leads to who may have accidentally entered the Journal Entries in the wrong client's quickbooks file. There was also an exceptionally high employee turnover due to SFS selling their firm to Four Peaks Wealth Management the beginning of 2017, Four Peaks Wealth Management then sold the firm the end of 2017 to H&R Block dba SFS. H&R Block recently vacated the office leaving behind files of clients who no longer used their services. I did go up to the old office in hopes of finding more information that may have supported the Journal Entries, and sifted through files and was unable to find any Dakota files that were left behind.

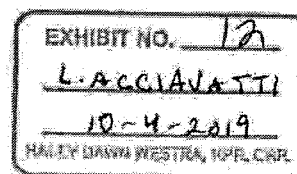


EXHIBIT 15

EXHIBIT 15

1
2
3  **Davis Miles**
McGuire Gardner

4 40 E. Rio Salado Pkwy., Ste. 425

5 Tempe, AZ 85281

6 Telephone: (480) 733-6800

7 Fax: (480) 733-3748

8 efile.dockets@davismiles.com

9 Bradley D. Weech, SBN: 011135

10 Marshall R. Hunt, SBN: 031060

11 *Attorneys for Plaintiff*

12 **STATE OF ARIZONA**

13 **YAVAPAI COUNTY SUPERIOR COURT**

14 Dakota Territory Tours, ACC

15 Plaintiff,

16 vs.

17 Sedona-Oak Creek Airport Authority,
18 Inc., an Arizona non-profit corporation;
19 Amanda Shankland and John Doe
20 Shankland, husband and wife,

21 Defendants.

CASE NO. V1300CV201780201

**RESPONSE TO REQUESTS FOR
PRODUCTION**

Assigned to: Hon. John Napper
Presiding Judge: Hon. Robert Mackey

22 Plaintiff, Dakota Territory Tours, ACC ("Dakota") submits the following as its
23 Response to Defendant Sedona-Oak Creek Airport Authority, Inc.'s ("SOCAA")
24 Requests for Production.

25 **General Objection:** Dakota objects to SOCAA's prefatory definitions and
26 instructions as excessive and unnecessary. Dakota further objects to the definitions
27 and instructions to the extent they contradict or exceed the requirements of Ariz. R.
Civ. P. 34. Dakota further objects to the interrogatories to the extent they exceed,
when including all subparts, 10 requests as permitted by the Rules. Dakota's
responses below are a good faith effort to respond to the requests to the extent they
are not objectionable and should not be construed as a waiver of these objections.

JUN 14 2018

1 REQUEST #1

2 Any and all Communications, Data, Documents, Electronic Records or
3 Media identified in, referred to or used to draft Your Answers to the Non-
4 Uniform Interrogatories served simultaneously herewith.

5 **Response:**

6 **See responses to Non-Uniform Interrogatories.**

7
8 REQUEST #2

9 A copy of the manual required by 14 C.F.R part 135.21 that sets forth the policies and
10 procedures applicable to the flight, ground and maintenance personnel used in
11 conducting Dakota's operations at the Sedona Airport.

12 **Response:**

13 Dakota objects to this interrogatory as the specifics of Dakota's compliance with 14
14 C.F.R. part 135, including the requested manual, are not relevant to any party's claim
15 or defense; this request has no relevance to Dakota's claims relating to the parties'
16 Settlement Agreement and the RFP, nor does the requested manual relate to
17 SOCAA's counterclaims regarding Dakota's overall status as a Part 135 operator.

18 This information is further irrelevant as the FAA has already determined SOCAA's
19 complaints with regard to Dakota lack merit. See OCHOA SDT 63-66. If they were
20 relevant, any documents responsive to this request would be confidential under the
21 parties' stipulated protective order.

22
23 REQUEST #3

24 A copy of the records maintained by Dakota to comply with 14 C.F.R. part 135.63 from
25 January 2012 to present, including but not limited to the:

- 26 a. The certificate holders operations specifications; and
27

- 1 b. a current list of the aircraft available for use in operations and the
2 operations for which each is equipped; and
3 c. the information regarding the pilots required by 135.63(a)(4).

4 **Response:**

5 Dakota objects to this interrogatory as the specifics of Dakota's aircraft and pilots are
6 not relevant to any party's claim or defense; this request has no relevance to Dakota's
7 claims relating to the parties' Settlement Agreement and the RFP, nor do specifics
8 flight destinations and pilot names relate to SOCAA's counterclaims regarding
9 Dakota's overall status as a Part 135 operator. Dakota further objects as this request
10 is disproportionate to the needs of this case; the information requested is of little to
11 no importance in resolving the issues, and the burden of the request far outweighs
12 its likely benefit. This information is further irrelevant as the FAA has already
13 determined SOCAA's complaints with regard to Dakota lack merit. See OCHOA
14 SDT 63-66. Dakota further objects as this request is overbroad and overly
15 burdensome; there is no basis to seek documents back to 2012. If they were relevant,
16 any documents responsive to this request would be confidential under the parties'
17 stipulated protective order.

18
19 **REQUEST#4**

20 A copy of the records showing compliance by Dakota with 14 C.F.R. part 135 drug
21 testing, and pilot competence, testing, and training from January 2012 to present,
22 including but not limited to

- 23 a. Compliance with part 135.63,
24 b. Compliance with part 135.267;
25 c. Compliance with part 135.293; and
26 d. Compliance with part 135.297.

1 Response:

2 Dakota objects to this interrogatory as the specifics of Dakota's pilot drug testing
3 and training are not relevant to any party's claim or defense; this request has no
4 relevance to Dakota's claims relating to the parties' Settlement Agreement and the
5 RFP, nor do the requested documents relate to SOCAA's counterclaims regarding
6 Dakota's overall status as a Part 135 operator and/or its ability to perform Part 135
7 operations under a relevant part 135 certificate. Dakota further objects as this request
8 is disproportionate to the needs of this case; the information requested is of little to
9 no importance in resolving the issues, and the burden of the request far outweighs
10 its likely benefit. This information is further irrelevant as the FAA has already
11 determined SOCAA's complaints with regard to Dakota lack merit. See OCHOA
12 SDT 63-66; SOCAA has not claimed that this determination is wrong, nor made any
13 relevant allegations to that effect in its counterclaims or proposed amended answer.
14 Dakota further objects as this request is overbroad and overly burdensome; there is
15 no basis to seek documents back to 2012. If they were relevant, any documents
16 responsive to this request would be confidential under the parties' stipulated
17 protective order.

18
19 REQUEST#5

20 A copy of the records showing compliance with 14 C.R.F. part 135 for each multi-
21 engine aircraft that Dakota or Solid Edge caused to take off from the Sedona Airport
22 from 2012 to present, including but not limited to aircraft flight time meter readings,
23 aircraft logs, operations, maintenance and inspection logs, and any related
24 documents generated by or given to the FAA.

25 Response:

26 Dakota objects to this interrogatory as the specifics of Dakota's flight operations are
27 not relevant to any party's claim or defense; this request has no relevance to Dakota's

1 claims relating to the parties' Settlement Agreement and the RFP, nor do specifics
2 flight destinations and pilot names relate to SOCAA's counterclaims regarding
3 Dakota's overall status as a Part 135 operator. Dakota further objects as this request
4 is disproportionate to the needs of this case; the information requested is of little to
5 no importance in resolving the issues, and the burden of the request far outweighs
6 its likely benefit. This information is further irrelevant as the FAA has already
7 determined SOCAA's complaints with regard to Dakota lack merit. *See* OCHOA
8 SDT 63-66. Dakota further objects as this request is overbroad and overly
9 burdensome; there is no basis to seek documents back to 2012. If they were relevant,
10 any documents responsive to this request would be confidential under the parties'
11 stipulated protective order.

12 REQUEST#6

13 Any correspondence, reports, communications, or documents exchanged between the
14 FAA and Dakota, Solid Edge, or any person or entity representing Dakota or Solid
15 Edge or any associated trade name or dba, between January 2012 and the present.

16 **Response:**

17 Dakota objects to this interrogatory as the vast majority of Dakota/Solid Edge's
18 communications with the FAA are not relevant to any party's claim or defense; these
19 communications are not relevant to Dakota's claims relating to the parties'
20 Settlement Agreement and the RFP, nor do the vast majority of the communications
21 relate to SOCAA's counterclaims regarding Dakota's overall status as a Part 135
22 operator. Dakota further objects as this request is disproportionate to the needs of
23 this case; the information requested is of little to no importance in resolving the
24 issues, and the burden of the request far outweighs its likely benefit. Dakota further
25 objects as this request is overbroad and overly burdensome; there is no basis to seek
26 documents back to 2012.

27 Without waiving these objections, please see DAKOTA 001080-001122

1
2 REQUEST#7

3 Complete copies of all insurance policies (including declaration pages, provisions,
4 endorsements, notices, addendum, amendments, deletions, and exclusions) of any type
5 that name SOCAA or Yavapai County as an additional insured purchased by or on
6 behalf of either Dakota or Solid Edge for the time period between January 2012 and the
7 present.

8 **Response:**

9 Dakota objects to this interrogatory as the requested insurance policies are not
10 relevant to any party's claim or defense; this request has no relevance to Dakota's
11 claims relating to the parties' Settlement Agreement and the RFP, nor do the
12 requested insurance policies relate to SOCAA's counterclaims regarding Dakota's
13 overall status as a Part 135 operator; there is no allegation, for instance, that Dakota
14 breached the requirement in its lease to hold insurance. Dakota further objects as
15 this request is overbroad and overly burdensome; there is no basis to seek
16 documents back to 2012. If they were relevant, any documents responsive to this
17 request would be confidential under the parties' stipulated protective order.

18
19 RESPECTFULLY SUBMITTED June 11, 2017.

20 DAVIS MILES MCGUIRE GARDNER, PLLC

21 /s/ Bradley D. Weech

22 Bradley D. Weech

23 Marshall R. Hunt

24 *Attorneys for Plaintiff*
25
26
27

1 ORIGINAL mailed this 11th day of
June, 2017 to:

2 J. Daniel Campbell
3 Ellen B. Davis
4 O'Connor & Campbell, P.C.
7955 South Priest Drive,
Tempe, AZ 85284
Attorneys for Defendant SOCAA

6 COPY to:

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8 Law Office of Tony S. Cullum, PLLC
14 E. Dale Avenue
Flagstaff, AZ 85001
Attorneys for Defendant SOCAA

10 Kiersten Murphy
11 Henze Cook Murphy, PLLC
4645 N. 32nd Street, Ste. 150
Phoenix, AZ 85018
Attorneys for Defendant SOCA

14 /s/ Cheryl L. Riggle

15 \\PROLAW\ProLawFiles\ProLawDocuments\40471\40471-001\3743107.docx

EXHIBIT 16

EXHIBIT 16

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF YAVAPAI

3 DAKOTA TERRITORY TOURS, ACC, }
4 Plaintiff, } Yavapai County
5 vs. } Superior Court
6 SEDONA-OAK CREEK AIRPORT }
7 AUTHORITY, INC., an Arizona } No. V1300CV201780201
8 non-profit corporation, }
9 AMANDA SHANKLAND and JOHN DOE }
10 SHANKLAND, husband and wife, }
11 Defendants. }

10 - - - - -
11 BEFORE THE HONORABLE JOHN NAPPER
12 JUDGE OF THE SUPERIOR COURT
13 DIVISION 2
14 YAVAPAI COUNTY COURTHOUSE

15 PRESCOTT, ARIZONA
16 February 12, 2019

17 TRANSCRIPT OF MOTIONS HEARING

18
19
20
21
22
23
24
25 LISA A. STEINMEYER, CRR, RPR, CSR
 Certificate No. 50942

1 pleadings are in this case. So that's the
2 insurance.

3 We have provided FAA communications to them
4 within the scope of what they asked for and to our
5 knowledge, there is none other. They are searching
6 for something because they refuse to understand or
7 do not understand how the FAA continues to approve,
8 continues to approve the operations of Dakota and
9 Solid Edge.

10 THE COURT: Disclosed all the information,
11 all the communications you have?

12 MR. WEECH: All that we're aware of that
13 fit within that category. And, Your Honor,
14 throughout the complaint, even though after the rule
15 changed on July 1 to specifically tell all of the
16 attorneys in this state that they were no longer
17 allowed to say that documents speak for themselves,
18 there's 44 places in that answer that says --

19 THE COURT: That was all -- all this was
20 filed before the change in the rules?

21 MR. WEECH: No, sir, it was not. It was
22 filed a month and a week after, and we brought it up
23 in our filings back when they wanted to amend, and
24 we raised that issue of Rule 8 and they still 44
25 places -- my point is this --

C E R T I F I C A T E

STATE OF ARIZONA }
COUNTY OF YAVAPAI } ss.

I, Lisa A. Steinmeyer, a Certified Reporter in the State of Arizona, do hereby certify that the foregoing 39 pages contain a true and correct transcript of the proceedings held in connection with the aforementioned action; that my stenograph notes were thereafter transcribed and reduced to typewritten form under my supervision, as the same appears herein.

I further certify that I am not attorney for or relative to any of said parties, or otherwise interested in the event of said action.

WITNESS MY HAND this 19th day of February, 2019.

/s/ Lisa A. Steinmeyer

LISA A. STEINMEYER, CRR, RPR, CSR, CR
Certified Reporter
Certificate No. 50942

EXHIBIT 17

EXHIBIT 17

1
2
3 **WILLIAMS|MESTAZ, LLP**
4 6225 NORTH 24TH STREET, SUITE 125
5 PHOENIX, ARIZONA 85016
6 TELEPHONE (602) 256-9400
7 Daryl M. Williams (004631)
8 dwilliams@williamsmestaz.com
9 Daniel B. Mestaz (024477)
10 dmestaz@williamsmestaz.com
11 Attorneys for plaintiff

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

13 IN AND FOR THE COUNTY OF YAVAPAI

14 Dakota Territory Tours, ACC,
15 Plaintiff,

16 vs.

17 Sedona-Oak Creek Airport Authority, Inc.,
18 Defendants.

19 } No. V-1300-CV-201780201

20 } **Plaintiff's Seventh Supplemental**
21 } **Disclosure Statement**

22 } (Assigned to the Honorable John Napper)

23 **VIII. TANGIBLE EVIDENCE AND RELEVANT DOCUMENTS**
24 **THAT MAY BE USED AT TRIAL**

25 Plaintiff is herewith producing copies of the following bates numbered documents:
26 CL000172-CL000773.

27 **Note:** CL000768 is an audio recording of Eric Brunner/Nelson Durkee conversation on May
28 31, 2017

29 No specific determination has yet been made as to which of the attached documents will be
30 used or if these are all of the documents that could be relevant to any of the issues in this case.
31 Documents designated and withheld as privileged are listed and identified on the privilege log
32 attached hereto as exhibit A. Plaintiff intends to use scanned images of documents at depositions
33 and at trial.

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Dated this 31st day of August, 2020.



Daniel B. Mestaz
Williams|Mestaz, LLP
6225 North 24th Street, Suite 125
Phoenix, Arizona 85016
Attorneys for plaintiff

Original emailed this
31st day of August, 2020, to;
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Attorneys for Defendant

/s/ Diana L. Clark

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VERIFICATION

I, Eric Brunner, declare under penalty of perjury:

1. I am the president of plaintiff Dakota Territory Tours A.C.C. and as such am authorized to make this verification on its behalf.

2. I have read the plaintiff's seventh supplemental disclosure statement and know the contents therein to be true and correct, both in substance and fact, to the best of my present information and knowledge.

DATED this 5th day of October, 2020.


Eric Brunner

EXHIBIT B

(Dakota's Response to
Motion for Sanctions)

1
2
3 **WILLIAMS|MESTAZ, LLP**
4 6225 NORTH 24TH STREET, SUITE 125
5 PHOENIX, ARIZONA 85016
6 TELEPHONE (602) 256-9400
7 Daniel B. Mestaz (024477)
8 dmestaz@williamsmestaz.com
9 Attorneys for plaintiff

10
11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF YAVAPAI

13 Dakota Territory Tours, ACC,
14 Plaintiff,

15 vs.

16 Sedona-Oak Creek Airport Authority, Inc., an
17 Arizona non-profit corporation; Amanda
18 Shankland and John Doe Shankland, husband
19 and wife,

20 Defendants.

) No. V-1300-CV-201780201

) **Response to Motion for Sanctions**

) (Assigned to the Honorable John D.
Napper)

21
22 **I. INTRODUCTION**

23 Dakota indeed failed to produce (until recently) all emails regarding its request for proposal
24 (“RFP”) and all emails with the FAA. Prior counsel, however, is solely responsible for those
25 discovery violations. But there is no smoking gun. While some emails may be relevant, they do not
26 come close to establishing the fraud scheme baselessly peddled by SOCAA, nor do they remotely
27 suggest that Dakota’s RFP proposal overstated its income. And when new counsel learned of those
28 discovery failures, Dakota promptly and thoroughly searched for and produced what prior counsel
did not. SOCAA’s proposed sanctions, however, are severe, disproportionate, and unnecessary. The
appropriate remedy is to let SOCAA retake those depositions that the late produced emails could
have materially benefitted. But under Arizona law, any sanctions, such as fee shifting, should be
imposed solely against prior counsel, not Dakota.

II. FACTS AND PROCEDURAL HISTORY

A. The Relevant Discovery, Disputes, and Orders

1. *The part 135 issue and the FAA emails*

SOCOA issued an RFP for “commercial 135 operations”—*i.e.*, commercial, non-scheduled aircraft operations, such as charters or helicopter tours. SOCAA filed an early summary judgment motion on the grounds that Dakota did not have a part 135 certificate and, therefore, was not a qualified bidder for the RFP.¹ But the RFP did not require a certificate. It specified the performance of part 135 operations, which Dakota could provide under the certificate of its affiliate, Solid Edge Aviation.² Besides, SOCAA knew about that structure for years.

The court denied SOCAA’s summary judgment on the grounds identified by Dakota:³

There is ample evidence in the record that SOCAA knew Dakota was operating under the license issued to Solid Edge. . . . [¶¶] . . .

First, the RFP does not require the bidder to actually hold the Part 135 Certificate. It asks for a company to lease space for “Commercial 135 Operations.” . . . Second, Dakota overtly disclosed its relationship with Solid Edge in its response to the RFP. . . . The record is clear that SOCAA knew that certificate #E0GA155J actually belonged to Solid Edge and was used by Dakota. In 2015, SOCAA wrote a letter to Dakota in which it stated it knew Dakota was operating under the E0GA155J which belonged to Solid Edge. A finder of fact could also decide SOCAA, armed with the knowledge of who owned the E0GA155J license, did not consider the omission of Solid Edge in Dakota’s proposal a material based on SOCAA’s decision to score the proposal.

In June 2018, Dakota agreed to produce FAA emails in response to SOCAA’s rule 34 document request.⁴ In February 2019, and again in May 2019, prior counsel avowed to the court that

¹ 6/22/18 SOCAA motion for summary judgment.

² 7/23/18 Dakota response to motion for summary judgment.

³ 12/24/18 order denying motion for summary judgment.

⁴ 6/11/18 response to requests for production, no. 6. [Ex. 15 to motion]. Although prior counsel objected on relevance and overbreadth grounds, he responded that, without waiving objections, Dakota was producing documents. But he did not identify any materials being withheld on the basis of his objections, as required by ARIZ. R. CIV. P. 34(b)(3)(C).

1 Dakota had produced all FAA emails requested by SOCAA.⁵ SOCAA propounded another
2 document request, in April 2019, for FAA emails, in response to which Dakota again agreed to
3 produce responsive documents.⁶ As set forth below, Dakota did not, in fact, produce all FAA emails.

4 **2. *The June 2019 financial discovery dispute—and ensuing discovery—proved that***
5 ***the \$1.3 million management fee is not false income***

6 The RFP required a “current, complete financial statement,” which must have the “signature
7 of the party preparing the statement.”⁷ Dakota’s accountant, Marc Sterling, prepared and signed the
8 financial statements submitted with Dakota’s RFP proposal.⁸ The P&L included a \$1.396 million
9 “management fee,” under “other income,” that was separate from the top line income number.

10 In June 2019, SOCAA sought Dakota’s entire QuickBooks file, arguing that the \$1.3 million
11 management fee seemed fabricated, and thus Dakota may have overstated its income, because
12 Dakota’s accountants offered conflicting explanations about the management fee and Sterling’s
13 signature appeared forged.⁹ But there was no fraud or contradiction, as Dakota explained in the
14 discovery dispute briefing and at the hearing.¹⁰ Rather, Logan Acciavatti, its post-Sterling
15 bookkeeper, saw no support for separating out a management fee, and thus deemed it a journal error
16 that she corrected for the tax returns¹¹—which did not change Dakota’s income or tax liability
17 because the management fee *is* income. When SOCAA started screaming fraud over the Sterling
18

19 ⁵ 2/12/19 transcript, at 27 [Ex. 3, hereto]; 5/21/19 transcript, at 29-30 [Ex. 4, hereto].

20 ⁶ 6/28/19 Dakota responses to request no. 1 [Ex. 8 to motion]; 7/30/19 Dakota supplemental
21 response to request no. 1 [Ex. 5, hereto]. Dakota’s counsel again raised objections, but did not
22 identify whether any documents would be withheld on those grounds.

23 ⁷ 5/1/17 SOCAA request for proposal, at DAKOTA000044 [Ex. 6, hereto].

24 ⁸ 5/31/17 Dakota P&L [Ex. 2 to motion].

25 ⁹ 6/12/19 joint statement of discovery dispute.

26 ¹⁰ *Id.*, at 9, 15-16; 6/13/19 transcript, at 21-23 [Ex. 7, hereto].

27 ¹¹ 4/12/19 Logan Acciavatti letter [Ex. 14 to motion].

1 signature block, prior counsel contacted Sterling, who submitted an affidavit explaining that he had
2 merely segregated Sedona income from non-Sedona income, while ensuring overall accuracy:¹²

3 I discussed the content of an interim financial report approximately
4 April of 2017 with Ann-Marie Brunner prior to the report being
5 generated. We specifically discussed that if income from Dakota's
6 Sedona Airport operations, only, was listed separately at the top of a
7 Profit & Loss Statement, and then ALL expenses of the company were
8 listed (due to the difficulty in separating them in the short amount of
9 time available), that the negative number would not be representative
10 of the company's profit either at the Sedona Airport or overall, and
11 would, in fact, show as a loss. We discussed and decided that the
12 company's income from other operations should be included in order
13 to show the company's overall profit. That additional other income is
14 what is labeled as "Management Fee." The label should more
15 appropriately have been something such as "Income for Other
16 Operation."¹³

11 Sterling also confirmed that he signed at least one page of the P&L, while acknowledging
12 that he did not prepare the typed information at the signature block, which misspelled his name and
13 the name of his company and falsely identified him as a CPA.¹⁴ Dakota explained that its disgruntled
14 former employee and pilot, Steve Shattuck, was the only one who could have altered the Sterling
15 signature block, which was done without the Brunners' knowledge.

16 The court resolved the dispute by ordering Dakota to produce the QuickBooks files relating
17 to the P&L, and that SOCAA was free to raise any dispute over that production with the court.¹⁵
18 Dakota produced the QuickBooks files. But SOCAA never brought a QuickBooks dispute to the
19 court's attention.

20 SOCAA used the QuickBooks data for the October 2019 deposition of Dakota's 30(b)(6)
21 witness on damages, Logan Acciavatti. SOCAA criticizes her testimony, consistent with her initial
22 finding, that the \$1.3 million management fee was a journal error that she corrected. But SOCAA
23

24 ¹² Dakota also agreed to Sterling's deposition, which SOCAA later declined to take.

25 ¹³ 6/10/19 Mark Sterling declaration, ¶ 10 [Ex. 8, hereto].

26 ¹⁴ *Id.*, at ¶ 11.

27 ¹⁵ 6/13/19 transcript, pp. 36-40 [Ex. 7, hereto]; 6/13/19 minute entry.

1 did not even cross-examine her about paragraph 10 of the Sterling declaration—which would have
2 enlightened her about the Sterling management fee entry. Nor does her testimony suggest, as
3 SOCAA laughably asserts, that Dakota has “two sets of books” or that Dakota defrauded SOCAA
4 with inflated income. Again, Sterling simply backed out non-Sedona income and called it
5 management fee income. No change in income. Acciavatti merely recombined the Sedona income
6 with the non-Sedona income.

7 SOCAA proved it was a non-issue when it cross-examined Acciavatti with a P&L that
8 SOCAA “generated by the QuickBooks file that Dakota” provided (the “Depo P&L”).¹⁶ The Depo
9 P&L compares the numbers from Dakota’s QuickBooks file with Dakota’s RFP P&L—containing
10 the \$1.396 million other income/management fee.¹⁷ The Depo P&L shows *total* income of \$2.6
11 million, which is \$1.4 million more than the top line *Sedona* income in the RFP P&L. Thus, the
12 P&Ls are consistent because the total income of the RFP P&L is also about \$2.6 million—*i.e.*, by
13 combining the \$1.172 million in Sedona income with the \$1.396 million management fee/non-
14 Sedona income. There is one set of books. There is no fraud.¹⁸

15 3. *The RFP emails*

16 At the front end of its discovery dispute over Dakota’s financial records, SOCAA also raised
17 Dakota’s emails regarding the RFP process, which was one of SOCAA’s recent rule 34 document
18
19
20

21 ¹⁶ Acciavatti depo., 62 [Ex. 9, hereto]; Depo P&L (Ex. 10 to Acciavatti depo.) [Ex. 10,
22 hereto].

23 ¹⁷ *Compare* Depo P&L [Ex. 10, hereto] *with* Dakota’s RFP P&L [Ex. 2 to motion].

24 ¹⁸ Ann-Marie Brunner, Dakota’s 30(b)(6) witness on the RFP P&L, did not recall how the
25 \$1.3 million management fee came to be. She could have been better prepared, *e.g.*, by reviewing
26 Sterling’s June 2019 declaration explaining the management fee or searching for her May 2017
27 emails with Sterling. But as with Acciavatti, SOCAA declined to to cross-examine her with
28 Sterling’s written explanation of the management fee. That was its prerogative, but it smacks of the
strategic decision to lock a 30(b)(6) witness into “I don’t recall” testimony. That is not sanctionable.

1 requests¹⁹ to which Dakota's responses were not yet due. The court ordered Dakota to produce all
2 emails relating to the RFP process, under rule 26.1.²⁰ Dakota's counsel agreed. Later, in its June 28
3 and July 30, 2019, discovery responses, Dakota agreed to produce the RFP emails, some of which
4 it attached.²¹ But prior counsel did not produce all of the RFP emails.

5 **B. Counsel Promptly Found and Produced the RFP and FAA Emails That Prior Counsel**
6 **Failed to Produce.**

7 Dakota fired prior counsel and engaged the undersigned in June 2020. In reviewing the
8 transferred file to prepare for the July 9, 2020, deposition of Steve Shattuck, counsel found a June
9 28, 2019, email from Ann-Marie Brunner to prior counsel entitled "RFP Steve Shattuck emails,"²²
10 which attached twelve emails regarding Dakota's preparation of its RFP proposal. Because the
11 emails appeared subject matter relevant under rule 26.1, and because counsel could not determine
12 whether they had been produced, counsel (with client approval) promptly produced them to
13 SOCAA.²³ Counsel also produced a May 31, 2017, email, that Ms. Brunner had just found, from
14 Marc Sterling to the Brunners, attaching a P&L and balance sheet that Sterling signed on each page,

18 ¹⁹ 4/24/19 Counterclaimant SOCAA's first set of requests for production, no. 2 [Ex. 11,
19 hereto].

20 ²⁰ 5/21/19 transcript, at 45-48 [Ex. 4, hereto]. Although the court was not explicit about rule
21 26.1, that was the only basis for its order because Dakota's response to SOCAA's rule 34 request
22 for the RFP emails was not yet due.

23 ²¹ 6/28/19 responses to requests for production [Ex. 8 to motion]; 7/30/19 supplemental
24 responses to requests for production [Ex. 5, hereto]. Dakota raised objections, but agreed to produce
25 responsive documents and did not identify whether any would be withheld on the basis of any
objections.

26 ²² 6/28/19, 5:26 pm Ann-Marie Brunner email to Ashley Barnard, of Davis, Miles. [Ex. 12,
27 hereto, at DM000231].

28 ²³ 7/9/20 letter from Daniel Mestaz to Ellen Davis. [Ex. 13, hereto].

1 which Dakota submitted with its RFP proposal.²⁴ When SOCAA told counsel that it never received
2 the RFP emails, the parties postponed the Shattuck deposition for a day to allow SOCAA time to
3 review them.

4 SOCAA is wrong that counsel produced 722 pages of emails on July 9, the eve of Shattuck's
5 deposition. Rather, counsel produced 161 pages, including the unproduced RFP emails, because it
6 was required under the rules—not because it was advantageous, as SOCAA baselessly and cynically
7 asserts. Over the next two weeks, the parties met and conferred regarding SOCAA's intention to file
8 a sanctions motion.²⁵ Counsel got back to SOCAA with a proposal on July 28, 2020, in which
9 Dakota agreed, *inter alia*, that:²⁶

- 10 • Counsel would run searches for RFP emails within the native email accounts
11 for the Brunners, review all May 2017 emails (when the RFP proposal was
12 being prepared), and produce all RFP related emails (or any other emails that
13 fell within rule 26.1).
- 14 • Ann-Marie Brunner would sit for her continued Zoom 30(b)(6) deposition
15 regarding the RFP financial statement issue, so that SOCAA could cross-
16 examine her regarding the RFP emails it did not have the first time.
- 17 • Counsel's agreement on the above was without prejudice to any other
18 discovery or sanctions motion that SOCAA might want to file later.

19 Counsel thoroughly and carefully searched his clients' native email accounts for any
20 additional RFP emails. In doing so, counsel also found two Dakota-FAA emails that appeared
21 responsive to SOCAA discovery requests (and were arguably 26.1 relevant). Counsel produced
22 those RFP emails, and the two Dakota-FAA emails, on August 31, 2020.²⁷

23 ²⁴ 5/31/17, Marc Sterling email to the Brunners, with attached signed financial statements,
24 at CL000162-165 [Ex. 14, hereto]. *Compare id.* (signed financial statements), with Dakota P&L
25 submitted with the RFP [Ex. 2 to motion].

26 ²⁵ 7/9-7/22/20, email string among counsel [Ex. 15, hereto]. The parties met and conferred
27 over the telephone on July 24, 2020.

28 ²⁶ 7/28/20 Daniel Mestaz email to Ellen Davis, et al. [Ex. 16, hereto].

²⁷ 8/31/20 Daniel Mestaz letter to Ellen Davis, Dan Campbell [Ex. 17, hereto]; 8/31/20 7th
Supplemental Disclosure (attaching documents CL000172-773) [Ex. 17 to motion].

1 But Dakota's production of the (until then) undisclosed FAA emails led SOCAA to demand
2 a search for *all* Dakota-FAA emails that, according to prior counsel's avowals to the court, had been
3 produced.²⁸ Counsel agreed to do another search, across his clients' native email accounts, for all
4 faa.gov emails. After searching through eight years of emails, counsel produced all Dakota and Solid
5 Edge emails with the FAA, from 2012 through June 2019, as well as a privilege log for anything
6 withheld.²⁹

7 **C. Prior Counsel is Responsible for Dakota's Discovery Violations**

8 The court ordered Dakota to produce its RFP related emails:³⁰

9 Court: So when you say internal e-mail related to the RFP, I agree.
10 They should go through their e-mails and look through that and
11 anything they have related to the RFP process should be disclosed.
12 . . . So the RFP is what you're asking for.

13 Ellen Davis: Well, if there is an e-mail, for instance, regarding the
14 agreement between Dakota and Solid Edge, that I would like to see as
15 well.

16 Court: Okay. . . . Okay. So Mr. Weech, seems to me that your client
17 needs to go through the e-mail and find e-mails related to the RFP
18 process and related to the agreement related to the 135 operations
19 between Solid Edge and Dakota. Do you have any disagreement with
20 that?

21 Brad Weech: None.

22 Court: What I'm going to do is I'll give you 30 days from today's date
23 to search the e-mails and disclose the e-mails that are related to the
24 agreement between Solid Edge and Dakota as to the C-135 operations
25 and as to the RFP process. . . . Communications between Dakota and
26 Solid Edge on those two topics will be due to be disclosed by June 25th.

27 ²⁸ 9/17/20, Dan Campbell and Ellen Davis letter to Daniel Mestaz [Ex. 18, hereto]. Counsel
28 for the parties met and conferred over the telephone on October 2, 2020.

29 ²⁹ 11/2/20, Daniel Mestaz letter to Dan Campbell, Ellen Davis [Ex. 19, hereto]; 8th
30 supplemental disclosure statement, attaching CL000774-002187 [Ex. 20, hereto]. Counsel has also
agreed to search through additional Dakota "info" and employee email accounts, but does not expect
to find much, if anything, beyond what was in the Brunners' email accounts.

³⁰ 5/21/19 transcript, pp. 46-48 [Ex. 4, hereto].

1 Initially, prior counsel told the client to produce “internal communications” regarding the
2 RFP process.³¹ But the Brunners had questions about what, exactly, they were expected to search
3 for and produce, particularly in light of the many outstanding discovery requests.³² Ann-Marie
4 Brunner, before any search began, did not believe that Dakota had anything because she recalled that
5 Eric Brunner and Steve Shattuck did the bulk of the work outside of emails,³³ but she asked for
6 specific instructions so she and Eric Brunner could do the required search.³⁴ Nevertheless, recalling
7 that Shattuck worked on the RFP, Ms. Brunner began searching for emails with Shattuck regarding
8 the RFP.³⁵

9 On June 27, 2019, Brad Weech misinformed the Brunners about the scope of the court’s
10 order, claiming it was limited to emails *between Dakota and Solid Edge*:

11 Ellen Davis just sent the email at the bottom of this email. We did not
12 send her anything because we did not receive anything from you and we
13 do not believe any exist. However, so that I can respond to her, please
14 confirm that you searched and that there are no Emails, Memos or
15 Letters, etc. BETWEEN DAKOTA and SOLID EDGE regarding the
16 following two items (and, yes, it is asinine to expect that you sent
17 yourselves, emails, memos or letters regarding: 1. The agreement

18 ³¹ 5/31/19 Brad Weech email to client, at DM000369-373 (emphasis in original) [Ex. 21,
19 hereto]. Dakota is waiving attorney-client privilege with regard to communications with its prior
20 counsel, regarding the RFP or FAA email production, since the court’s May 21, 2019, order.
21 Counsel will produce those emails to SOCAA, some of which are filed in support of this response,
22 with redactions of information that do not relate to those issues. The unredacted emails will be
available to the court for any in camera review.

23 ³² 6/18/19, Ann-Marie Brunner/prior counsel email string, at DM000037-38 [Ex. 22, hereto];
24 Ann-Marie Brunner declaration (“A. Brunner decl.”), ¶ 2 [Ex. 1, hereto].

25 ³³ A. Brunner decl., ¶ 2 [Ex. 1, hereto].

26 ³⁴ 6/25/19, Ann-Marie Brunner, Ashley Barnard email string, at DM000099-100 [Ex. 23,
27 hereto].

28 ³⁵ A. Brunner decl., ¶ 4 [Ex. 1, hereto].

1 between Solid Edge and Dakota as to the C-135 operations; and 2. As
2 to the RFP process.³⁶

3 The Brunners, finally receiving specific direction on what, exactly, they were looking for,
4 responded that there were no emails between Dakota and Solid Edge:

5 Eric Brunner: Brad, I searched my email for any correspondence
6 between Solid Edge and Dakota . . . I searched using words such as
7 “RFP” . . . “SolidEdge RFP” . . . “Dakota RFP” . . . “RFP Sedona”
8 . . . Nothing came up . . . We did not email Between Dakota & Solid
9 Edge . . .³⁷

10 Ann-Marie Brunner: Ashley, After fully reading Brad’s email
11 yesterday, THERE ARE NO letters, emails or written communication
12 between Solid Edge Aviation and Dakota in reference to the 135
13 Certificate and the RFP process.³⁸

14 Ms. Barnard, prior counsel’s paralegal, then told Ms. Brunner to nevertheless send any
15 documents that she had already gathered.³⁹ So Ms. Brunner emailed Ms. Barnard the twelve
16 Shattuck RFP emails that she had initially gathered before Brad Weech told her to limit her search
17 to emails between Dakota and Solid Edge.⁴⁰ With the exception of one email, however, prior counsel
18 never produced those RFP emails to SOCAA. Rather, on June 28, 2019, Ms. Barnard emailed the

19 ³⁶ 6/27/19 Brad Weech email to the Brunners, at DM000134-137 [Ex. 24, hereto]. Although
20 some of the court’s language, in isolation, could be construed that way, the order, in context, does
21 not seem limited to emails between Dakota and Solid Edge.

22 ³⁷ 6/27/19 Eric Brunner email to Brad Weech, at DM000454-457 [Ex. 25, hereto].

23 ³⁸ 6/28/19, Ann-Marie Brunner email to Ashley Barnard, at DM000223-224 [Ex. 26, hereto].
24 As Ms. Brunner explained earlier that day, she was ill, but scheduled a meeting with Dakota’s IT
25 person and Eric Brunner to gather RFP emails—until she read Mr. Weech’s email that limited the
26 search to emails between Dakota and Solid Edge. *Id.*; A. Brunner decl., ¶ 4 [Ex. 1, hereto].

27 ³⁹ 6/28/19, Ann-Marie Brunner/Ashley Barnard email strings, at DM000225-230 [Ex. 27,
28 hereto].

⁴⁰ 6/28/19 Ann-Marie Brunner email to Ashley Barnard, attaching “RFP Steve Shattuck
emails,” at DM000231 [Ex. 12, hereto].

1 Brunners a copy of Dakota’s responses to SOCAA’s document requests (including to request no.
2 2 for the RFP emails), conceding that the Shattuck RFP emails were not included:

3 Hi, guys. Thanks so much for scrambling on this. I know you sent some
4 emails that are not included here, but we will supplement the ones we
5 did not object to, and hold onto the ones we did object to for now in
6 case we’re court-ordered later to produce them.⁴¹

7 A similar problem explains the undisclosed FAA emails. SOCAA’s first request for FAA
8 communications came in a May 2018 rule 34 document request, in response to which SOCAA
9 produced 82 pages of FAA communications.⁴² In providing those emails to prior counsel, the
10 Brunners, as was their practice, followed their counsel’s instructions, including as to what to look
11 for, what search terms to use, and the time period.⁴³ Although they cannot recall the precise 2018
12 instructions regarding the FAA emails, prior counsel never asked them to search for all emails with
13 the FAA, nor to search using the term “faa.gov.”⁴⁴

14 SOCAA again requested FAA communications in April 2019 document requests, in response
15 to which Dakota produced more FAA emails. Prior counsel, however, instructed the Brunners that
16 any FAA emails must “relate to the case” and they need not produce “general communications” with
17 the FAA.⁴⁵

18
19
20 ⁴¹ 6/28/19, Ashley Barnard email to the Brunners, cc to Brad Weech, Marshall Hunt, Yvonne
21 Salatas, at DM000346 [Ex. 28, hereto].

22 ⁴² June 11, 2018, Dakota responses to SOCAA request for production no. 6 [Ex. 29, hereto].
23 The response references Dakota001080-1122, but that is a typo, because the FAA communications
24 begin at Dakota001040.

25 ⁴³ Eric Brunner declaration (“E. Brunner decl.”), ¶¶ 2-4 [Ex. 2, hereto].

26 ⁴⁴ *Id.*

27 ⁴⁵ June 20, 2019, Ann-Marie Brunner email to Eric Brunner, attaching notes of conversation
28 with prior counsel Marshall Hunt regarding documents to produce, at DM000095-96 [Ex. 30,
 hereto]; E. Brunner decl., ¶ 4 [Ex. 2, hereto]; A. Brunner decl., ¶ 3 [Ex. 1, hereto].

Moreover, Brad Weech avowed to the court at the February 12 and May 21, 2019 hearings that Dakota had produced all FAA emails, while boasting to Dakota that, at the May 21 hearing, SOCAA “did not get . . . [a]ny more FAA correspondence, assuming all related to Part 135 operations has been produced, which I avowed to again, based on Eric’s information to me.”⁴⁶ Of course, SOCAA asked for all FAA communications, and Mr. Weech did not qualify his avowal to the court with “. . . relating to Part 135 operations.” Nor did he ever ask Dakota or the Brunners for all FAA emails.

III. THE LATE PRODUCED EMAILS ARE CONSISTENT WITH, AND DO NOT UNDERMINE, DAKOTA’S LONG-HELD POSITION

A. The 5/31/17 Brunner-Sterling Emails Do Not Hurt, and Even Help, Dakota.

SOCAA mischaracterizes the May 31, 2017, emails between Ann-Marie Brunner and Mark Sterling, as some kind of smoking gun. But they merely discussed Sterling’s changes to the P&L by showing non-Sedona income as a “management fee”⁴⁷—which Dakota clearly explained in the June 2019 discovery dispute supported by Sterling’s declaration.⁴⁸

Other recently produced May 31, 2017, emails prove that, as Dakota explained in June 2019, Steve Shattuck altered (without Dakota’s knowledge) the already-signed Sterling financial

⁴⁶ 5/31/19, Brad Weech email to Eric Brunner, at DM000371 [Ex. 21, hereto].

⁴⁷ May 31, 2017, Mark Sterling, Ann-Marie Brunner email string, at CL000317-320 [Ex. 3 to motion].

⁴⁸ Sterling decl., ¶ 10 [Ex. 8, hereto]. Sterling’s declaration is also consistent with Dakota’s interrogatory responses about Ms. Brunner’s role in the RFP process. 6/28/19, Dakota responses to SOCAA’s non-uniform interrogatories, no. 1 [Ex. 6 to motion] (“Ann-Marie Brunner: Contacted Marc Sterling to provide financial information needed for the RFP. Verbal communications with Eric Brunner and Steve Shattuck to ensure they were on target with their timelines for the RFP.”) SOCAA speciously argues that other, garden variety discovery responses are somehow abusive and sanctionable. For example, they identify Dakota’s response to interrogatory no. 9, regarding the basis for the management fee, but Dakota objected to that interrogatory and SOCAA never obtained relief from the court to compel a further response. SOCAA simply failed to avail itself of its discovery remedy. *See* 6/11/18 Dakota response to interrogatory no. 9 [Ex. 9 to motion]. That hardly justifies sanctions or proves a fraud scheme.

1 statements by adding a phony signature block misidentifying Sterling as a CPA, while using the
2 identical signature for each page rather than leaving the signatures as is. Indeed, Sterling emailed
3 the signed P&L to the Brunners at 10:01 am.⁴⁹ An hour later, Eric Brunner forwarded the identical,
4 signed, unaltered Sterling financials to Steve Shattuck to drop into the RFP proposal he was
5 preparing⁵⁰—three hours before they delivered it to SOCAA.⁵¹

6 Although counsel did not have the Eric Brunner email for Steve Shattuck's deposition,
7 Shattuck's testimony, together with that email, proves that Shattuck altered the signature block.⁵²

- 8 • Shattuck, working on the RFP proposal for Dakota, used his Mac and
9 Photoshop for Macintosh to drop the Sterling P&L into the RFP proposal word
document. Shattuck depo., 129-132 [Ex. 33, hereto].
- 10 • The metadata from the P&L pdf showed that Sterling created the financial
11 statements, printed them, signed them, scanned them to a Fujitsu scanner, and
12 emailed them to the Brunners. *Id.*, at 138-39.
- 13 • Shattuck did not recall how the Brunners got the Sterling financial statements
14 to him, but Shattuck would have dropped the image file of the Sterling
15 financial statements into the RFP proposal that he prepared. *Id.*, at 140-142.
- 16 • Between 10 am and 2:20 pm, the financial statements changed with regard to
17 the Sterling signatures and signature block. *Id.*, at 146.⁵³
- 18 • The metadata from the P&L pdf shows that Adobe Photoshop CS6 Macintosh
19 was used—which Shattuck also used to drop the image file into the RFP

19 ⁴⁹ 5/31/17, 10:01 am Marc Sterling email to the Brunners, attaching "signed financials," at
20 CL000162-165 [Ex. 14, hereto].

21 ⁵⁰ 5/31/17, 11:11 am Eric Brunner email to Steve Shattuck (arielair1@aol.com), forwarding
22 Sterling "signed financials" [Ex. 31, hereto, at CL000732-735]; E. Brunner decl., ¶ 5 [Ex. 2, hereto];
23 A. Brunner decl., ¶¶ 6-7 [Ex. 1, hereto].

24 ⁵¹ 5/31/17 Shattuck email to Eric Brunner, attaching SOCAA acknowledgement of receipt,
25 time stamped 2:20 pm, at CL000122-123 [Ex. 32, hereto].

26 ⁵² Dakota's late disclosure of extremely helpful emails also shows that it was not intentional.

27 ⁵³ In fact, we now know that the alteration occurred between 11:10 am, when Eric Brunner
28 forwarded the unaltered signed Sterling financial statements to Shattuck, and 2pm, when they would
have left for the delivery to SOCAA.

1 proposal⁵⁴ —and it was “possible” that he inserted the phony signature block
2 into the financial statement submitted with the Dakota RFP proposal. *Id.*, at
3 150-52.

4 SOCAA is also wrong that the late produced RFP emails prove that Ann-Marie Brunner lied
5 about the RFP in her deposition. SOCAA claims that Ms. Brunner misled it about her involvement
6 in the preparation of the financial statements and RFP proposal. In fact, it is true that she merely
7 discussed the financial statement with Sterling, provided him with necessary financial information,
8 and did not prepare the RFP merely because she was on some emails about it. Her testimony that
9 Eric Brunner and Steve Shattuck prepared the RFP proposal is true, despite her on-the-spot omission
10 of bit players Lynn Brownd and Brian Sinnott.⁵⁵ Similarly, Ms. Brunner originally did not know how
11 the altered Sterling signature block got onto the P&L. It took meaningful investigation.

12 **B. The FAA Emails Are Marginally Relevant**

13 The recently produced FAA emails consist almost entirely of irrelevant, general
14 communications, or check ride emails, rather than anything meaningful regarding Dakota’s right to
15 perform part 135 operations. The FAA emails raised by Dakota, for example, simply show that Solid
16 Edge has operational control, which is what Dakota has alleged all along, *i.e.*, that: (i) Dakota has
17 the lease with SOCAA; (ii) Dakota conducts part 135 operations under the Solid Edge certificate;
18 and (iii) Solid Edge, as the certificate holder, maintains operational control of flights under its
19 certificate.

20 **IV. SOCAA’S REMEDY SHOULD BE LIMITED TO RETAKING THOSE**
21 **DEPOSITIONS THAT COULD HAVE MEANINGFULLY BENEFITTED FROM THE**
22 **LATE PRODUCED EMAILS—BUT NOT AT DAKOTA’S EXPENSE**

23 Arizona disfavors severe sanctions because cases should be decided on the merits:

24 Our state long has had a preference for disposing of actions based on
25 their merits. [citations omitted]. Drastic sanctions running counter to
26 that policy therefore are disfavored and must be based on a

27 ⁵⁴ The Brunners, on the other hand, do not even use Macs. E. Brunner decl., ¶ 5 [Ex. 2,
28 hereto]; A. Brunner decl., ¶ 7 [Ex. 1, hereto].

⁵⁵ Even Shattuck, for example, agrees that Brownd merely provided historical background
information but did not work on the RFP itself. Shattuck depo., at 37:9-10 [Ex. 33, hereto].

1 determination of willfulness or bad faith by the party being sanctioned.
2 [citations omitted]⁵⁶

3 Thus, if an attorney is responsible for discovery violations, that attorney, not the client,
4 should be sanctioned.⁵⁷ In *Golleher*, the plaintiff violated a court order to produce bank account
5 passbooks and related records. The court reversed the trial court's dismissal of the complaint,
6 holding that sanctions, even monetary sanctions, should be imposed only against the attorney who
7 was responsible for the discovery violations, not the client:

8 We believe the record reflects a deliberate effort on behalf of
9 appellant's counsel to subvert the purposes of the discovery rules and
10 make the litigation a game of surprise, delay and chance. . . . [¶] . . . As
11 was said by the court in *Szilvassy v. United States*, *supra*: "Since it is
12 not clear to what extent, if any, plaintiff was at fault, and since it is
13 abundantly clear to what extent plaintiff's counsel is at fault (as
14 described above), the Court declines to dismiss the action, but **will**
15 **require plaintiff's counsel (and not plaintiff) to pay . . . reasonable**
16 **expenses . . . , including attorney's fees.**" 71 F.R.D. at 594. . . . [¶]
17 After the hearing [regarding the expenses and fees incurred as a result
18 of the violations] the trial court shall enter an appropriate order
19 assessing such expenses and attorneys fees against the attorney for
20 appellant, and not against appellant, including therein such provisions
21 as are deemed necessary to **insure that the appellant herself,**
22 **regardless of the final outcome of this litigation, is not required to**
23 **bear such expenses and attorneys fees.**⁵⁸

24 Similarly, where, as here, the discovery abuses are counsel's fault, the court should not use
25 non-monetary sanctions to damage the party's case, whether through oppressive jury instructions,
26 *in limine* orders, or otherwise.⁵⁹ In *Zimmerman*, the court reversed the trial court's *in limine* order,

21 ⁵⁶ *Estate of Lewis v. Lewis*, 229 Ariz. 316, 323-24 (App. 2012).

22 ⁵⁷ *Golleher v. Horton*, 119 Ariz. 604 (App. 1978).

23 ⁵⁸ *Id.*, at 607 (emphasis added). *Accord*, *Wayne Cook Enterprises, Inc. v. Fain Properties Ltd.*
24 *P'ship*, 196 Ariz. 146, 149 (App. 1999); *Cleminshaw Co. v. Norwich*, 93 F.R.D. 338, 344-351 (D.
25 Conn. 1981).

26 ⁵⁹ *Zimmerman v. Shakman*, 204 Ariz. 231, 237 (App. 2003). *Accord*, *In re TMI Litig. Cases*
27 *Consol. II*, 922 F. Supp. 997, 1007, 1008 (M.D. Pa. 1996) ("The court has fashioned sanctions
28 pursuant to Rule 37(b) and (c) which account for counsels' unacceptable conduct without unduly
punishing Plaintiffs' for the transgressions of counsel. . . . 'By controlling an attorney's conduct, the

1 which would have effectively dismissed the case, because the court did not have an evidentiary
2 hearing to determine whether the plaintiff or the attorney was at fault.

3 Prior counsel, not Dakota, is responsible for failing to produce the RFP and FAA emails that
4 counsel agreed to produce, including by: (i) misrepresenting the court's orders to the client; and (ii)
5 failing to instruct the client what should be produced. That is the attorney's role, after all, and clients
6 are entitled to rely on their attorney to tell them what to search for and what to turn over. Thus, the
7 court should not give jury instructions that Dakota violated court orders and failed to comply with
8 its disclosure and discovery obligations, because that would prejudicially malign Dakota for the sins
9 of prior counsel, in contravention of Arizona law. And any monetary sanctions—such as SOCAA's
10 fees in filing its motion or retaking depositions—should be imposed against prior counsel, rather
11 than re-victimizing Dakota.

12 Further, rule 37(c) already governs the preclusive impact of late disclosures. Dakota would
13 have to obtain relief from the court to use late disclosed documents—notwithstanding its boilerplate
14 statement in its recent disclosures that it may use those documents at trial. But there is an important
15 exception. SOCAA should not be allowed to mislead the jury—and thereby perpetrate a fraud on
16 the court—with testimony or argument that the late disclosed documents contradict or disprove.

17 There are sound reasons for this. The point of rule 26 is to prevent litigation by ambush and
18 maximize the likelihood of a decision on the merits.⁶⁰ And any rule or statute is construed
19 consistently with the common law,⁶¹ which does not permit litigants to mislead the court or the jury.
20 In fact, the construction of any rule is to secure a “just” determination.⁶² Trials, meanwhile, have a
21 truth seeking function. Hence, the late disclosure of documents is not license to mislead the jury

22 _____
23 court fulfills the duty it owes to its own preservation, to members of the general public, and to those
24 members of the profession who do cooperate and are in sympathy with proper administration of the
25 law.’”) (citations omitted).

26 ⁶⁰ *Allstate Ins. Co. v. O'Toole*, 182 Ariz. 284, 287 (1995).

27 ⁶¹ *Pleak v. Entrada Prop. Owners' Ass'n*, 207 Ariz. 418, 422 (2004).

28 ⁶² ARIZ. R. CIV. P. 1.

1 with facts that known evidence contradicts. So if SOCAA opens the door with facts or testimony
2 that the late disclosed documents contradict, Dakota should be allowed to impeach or rebut that
3 evidence with those documents.

4 Finally, there is no reason to completely reopen discovery. Dakota, due to its prior counsel's
5 failures, produced the RFP and FAA emails after SOCAA completed depositions. If those emails
6 would have materially benefitted SOCAA in those depositions, it can retake those depositions. But
7 the court should look to prior counsel, not Dakota, for any fee shifting.⁶³

8 V. CONCLUSION

9 Yes, Dakota should have produced the RFP and FAA emails last year. But prior counsel is
10 solely responsible for those discovery violations. Thus, under Arizona law, only the attorney, not
11 the client, can be sanctioned. Sanctions against Dakota are particularly inappropriate because,
12 immediately upon discovering those failures, Dakota and its new counsel disclosed everything and
13 continues to cooperate in rectifying any harm. It has agreed to search its computers, scour former
14 employee email accounts, and permit the retaking of depositions that could have materially
15 benefitted from the undisclosed emails. But SOCAA overreaches. The emails are not smoking guns.
16 There is no fraud scheme. And certainly there is no basis to knee-cap Dakota's case with draconian
17 evidentiary sanctions or prejudicial jury instructions. The sober evaluation of the facts and evidence,
18 and proportionality, should rule the day—not scattershot demands for punishment and retribution.

19 Dated this 13th day of November 2020.

20 /s/ Daniel B. Mestaz
21 Daniel B. Mestaz
22 Williams|Mestaz, LLP
23 6225 North 24th Street, Suite 125
24 Phoenix, Arizona 85016
25 Attorneys for plaintiff

26
27 ⁶³ If discovery is reopened, Dakota intends to take a 30(b)(6) deposition of SOCAA,
28 regarding its efforts in complying with *its* rule 26.1 obligations, given the disturbing lack of internal
SOCAA emails regarding the RFP process.

1 Original eFiled with the Clerk's ECF
2 filing system this 13th day of November, 2020

3 Copy emailed via the Clerk's ECF filing
4 system this same day to:

5 The Honorable John D. Napper
6 Yavapai County Superior Court, Division 2
7 120 South Cortez
8 Prescott, AZ 86303

9 Copy served email this same day to:

10 J. Daniel Campbell
11 Ellen B. Davis
12 Koeller, Nebeker, Carlson & Haluck, LLP
13 One East Washington St., Suite 400
14 Phoenix, AZ 85004
15 dan.campbell@knchlaw.com
16 ellen.davis@knchlaw.com
17 Attorneys for Defendant

18 Kiersten Murphy
19 Henze Cook Murphy, PLLC
20 722 East Osborn Road, Suite 120
21 Phoenix, AZ 85018
22 kiersten@henzecoockmurphy.com
23 Attorneys for Defendant

24
25
26
27
28
/s/ Diana L. Clark

Exhibit 1

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1 the RFP proposal. It did not appear. But when I tried the same search on my phone, the email did
2 appear, which I forwarded to my counsel. I have since provided the Outlook credentials for myself
3 and Eric Brunner, to our counsel, so that he can run any necessary email searches through the
4 Outlook web application.

5 7. Neither myself, Eric Brunner, Dakota, nor Solid Edge uses Macintosh computers. We
6 use Microsoft PCs only. I did not in any way alter the profit and loss statement, received from Marc
7 Sterling, that was inserted into Dakota's RFP proposal.

8 Executed this 13th day of November, 2020, in Cottonwood, Arizona.

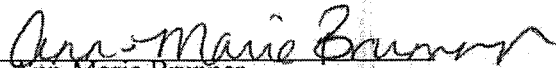
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10 Ann-Marie Brunner
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Exhibit 2

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Exhibit 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC, }
Plaintiff, } Yavapai County
vs. } Superior Court
No. V1300CV201780201
SEDONA-OAK CREEK AIRPORT }
AUTHORITY, INC., an Arizona }
non-profit corporation, }
AMANDA SHANKLAND and JOHN DOE }
SHANKLAND, husband and wife, }
Defendants. }

BEFORE THE HONORABLE JOHN NAPPER
JUDGE OF THE SUPERIOR COURT
DIVISION 2
YAVAPAI COUNTY COURTHOUSE

PRESCOTT, ARIZONA
February 12, 2019

TRANSCRIPT OF MOTIONS HEARING

LISA A. STEINMEYER, CRR, RPR, CSR
Certificate No. 50942

1 pleadings are in this case. So that's the
2 insurance.

3 We have provided FAA communications to them
4 within the scope of what they asked for and to our
5 knowledge, there is none other. They are searching
6 for something because they refuse to understand or
7 do not understand how the FAA continues to approve,
8 continues to approve the operations of Dakota and
9 Solid Edge.

10 THE COURT: Disclosed all the information,
11 all the communications you have?

12 MR. WEECH: All that we're aware of that
13 fit within that category. And, Your Honor,
14 throughout the complaint, even though after the rule
15 changed on July 1 to specifically tell all of the
16 attorneys in this state that they were no longer
17 allowed to say that documents speak for themselves,
18 there's 44 places in that answer that says --

19 THE COURT: That was all -- all this was
20 filed before the change in the rules?

21 MR. WEECH: No, sir, it was not. It was
22 filed a month and a week after, and we brought it up
23 in our filings back when they wanted to amend, and
24 we raised that issue of Rule 8 and they still 44
25 places -- my point is this --

Exhibit 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)

Plaintiff,)

vs.)

SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation; AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)

Defendants.)

Yavapai County
Superior Court
No.
V1300CV201780201

BEFORE: THE HONORABLE JOHN D. NAPPER
JUDGE OF THE SUPERIOR COURT
DIVISION 2
YAVAPAI COUNTY COURTHOUSE

PRESCOTT, ARIZONA
TUESDAY, MAY 21, 2019
9:03 A.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Re: Hearing Regarding Pending Scheduling Orders,
Discovery and Disputes

SHAYNA MONTGOMERY, (CA) CSR, RPR, CRR
Certified Reporter
Certificate No. 50913

1 MR. WEECH: I didn't do the math, Your
2 Honor, but that sounds okay.

3 THE COURT: All right. June 4th by 5:00
4 p.m. Good thing I've got a calendar in front of me.

5 MR. WEECH: I have one in my pocket. I
6 didn't pull it out.

7 THE COURT: That's good. Well, we are all
8 lucky that I have one. Okay.

9 MS. DAVIS: Your Honor, we have one request
10 that we think will be very simple.

11 THE COURT: Okay.

12 MS. DAVIS: We had talked about production
13 of the FAA correspondence, and in the last hearing
14 Mr. Weech avowed that they have produced it all. All we
15 need is -- if that's true, all we need is a supplement
16 to the existing discovery that says we have, in fact,
17 produced it all.

18 THE COURT: Mr. Weech, have you, in fact,
19 produced all of the FAA communications?

20 MR. WEECH: As stated in the last hearing
21 and -- are you authorizing me to respond to a motion to
22 reconsider, at least on this point, or you just want to
23 know the answer to that question?

24 THE COURT: I just want to know the answer
25 to that question. We'll have an avowal on the record,

1 and we can put it to bed. I'm trying -- guys, I'm
2 trying to get you out of the morass that you are in and
3 get you into a position you can actually try this case
4 and be done one way or the other.

5 MR. WEECH: As stated before, all of the FAA
6 correspondence that they requested with regard to the
7 issues that are involved in this case has been produced.

8 THE COURT: There you go.

9 MS. DAVIS: Your Honor, I don't think I can
10 introduce that avowal at time of trial. Don't I need a
11 response -- a supplemental response to the NUI?

12 THE COURT: Why wouldn't --

13 MS. DAVIS: Counsel's avowal's not evidence,
14 Your Honor. I can't introduce that. I can't read it
15 into the record.

16 THE COURT: Well, A, he speaks for his
17 client; B, you can read it into the record --

18 MS. DAVIS: Okay.

19 THE COURT: -- and C, if Mr. Weech gets up
20 and says something different at trial than what he
21 avowed on the record, he would have other proceedings
22 that he would be involved in in a rather quick order.

23 MS. DAVIS: Okay. Your Honor, I will give
24 in.

25 THE COURT: All right.

1 MS. DAVIS: I'm not sure what his request is
2 actually, Your Honor.

3 THE COURT: So when I read that from you, I
4 thought I don't even know what Mr. Weech is requesting.
5 So I think I kind of agree to the extent that --

6 MR. WEECH: I don't know.

7 THE COURT: -- it's unclear to me what it is
8 you are seeking that you haven't already received, I
9 guess.

10 MR. WEECH: And I didn't know what that
11 meant either, Your Honor. We put it in quote-for-quote
12 as to what they asked for and had it approved before it
13 was sent in, so I thought we were all done with that
14 here.

15 MS. DAVIS: Your Honor, Dakota has not
16 produced, for instance, any internal e-mail, not a one.
17 We don't know that they have made any effort to
18 preserve --

19 THE COURT: Internal e-mail related to
20 what subject matter?

21 MS. DAVIS: Their operations related to
22 their RFP submission, related to --

23 THE COURT: I think their -- hang on. I
24 think their internal e-mails related to the RFP
25 submission would certainly be relevant, but when you say

1 you want e-mails related to their operations, that's
2 every e-mail that they've ever generated.

3 MS. DAVIS: You're right. Well, then --
4 you're right, Your Honor, but it would be incumbent upon
5 them to cull their e-mail and produce the e-mail that is
6 relevant to the -- under Rule 26.1, that is their duty
7 and that's what we have done.

8 THE COURT: I agree with that. So when you
9 say internal e-mail related to the RFP, I agree. They
10 should go through their e-mails and look through that
11 and anything they have related to the RFP process should
12 be disclosed.

13 All right. But when you say we want you to
14 go through your e-mail and cull out all of the ones that
15 deal with your operations, that's an impossibility and
16 certainly not proportionate to the needs of this case.

17 MS. DAVIS: Your Honor, I would agree --

18 THE COURT: Okay.

19 MS. DAVIS: -- and I perhaps --

20 THE COURT: So the RFP is what you're asking
21 for.

22 MS. DAVIS: Well, if there is an e-mail, for
23 instance, regarding the agreement between Dakota and
24 Solid Edge, that I would like to see as well.

25 THE COURT: Okay.

1 MS. DAVIS: And it's hard for me to tell
2 what e-mail they have or have not produced because we
3 haven't seen any.

4 THE COURT: Okay. So Mr. Weech, seems to me
5 that your client needs to go through the e-mail and find
6 e-mails related to the RFP process and related to the
7 agreement related to the 135 operation between Solid
8 Edge and Dakota. Do you have any disagreement with
9 that?

10 MR. WEECH: None.

11 THE COURT: All right. How long would it
12 take you to get that accomplished? I realize these
13 things can take some time but --

14 MR. WEECH: I don't have a good guesstimate.
15 I would guess it's not going to be two weeks. It's
16 going to be --

17 THE COURT: I think 30 days -- I mean, you
18 can just simply type in search terms and should be able
19 to pull it out pretty quickly.

20 MR. WEECH: Possibly, but Your Honor, it may
21 require hiring someone to come in and do that. I'm not
22 sure -- I would doubt that Dakota's personnel have the
23 ability to do that, but they may. By putting in a
24 search term and just in accumulated e-mails?

25 THE COURT: What I'm going to do is I'll

1 give you 30 days from today's date to search the e-mails
2 and disclose the e-mails that are related to the
3 agreement between Solid Edge and Dakota as to the C-135
4 operations and as to the RFP process. So let me
5 calculate 30 days from today's date would be June 25th.

6 MS. DAVIS: Your Honor, can we broaden that
7 to --

8 THE COURT: Hang on.

9 MR. WEECH: I'm sorry, I need to have --

10 THE COURT: Both of you are asking questions
11 at the same time, so --

12 MR. WEECH: I didn't understand the --
13 before we move on, you said two things. One was the RFP
14 process and the --

15 THE COURT: Agreement between Solid Edge and
16 Dakota as to the 135 operations.

17 MR. WEECH: Got them both circled. Thank
18 you.

19 THE COURT: All right. Counsel.

20 MS. DAVIS: Would that mean memos as well as
21 e-mails? So for instance, if there was a memo or a
22 letter, would your order encompass that?

23 THE COURT: Communications between Dakota
24 and Solid Edge on those two topics will be due to be
25 disclosed by June 25th. If nothing's disclosed by June

Exhibit 5

1  Davis Miles

2 McGuire Gardner

3 40 E. Rio Salado Parkway, Suite 425

4 Tempe, AZ 85281

5 Telephone: (480) 733-6800

6 Fax: (480) 733-3748

7 efile.dockets@davismiles.com

8 Bradley D. Weech, SBN 011135

9 Marshall R. Hunt, SBN 031060

10 Attorneys for Plaintiff

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STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT

DAKOTA TERRITORY TOURS, A.C.C.,
an Arizona close corporation,

Plaintiff,

vs.

SEDONA-OAK CREEK AIRPORT
AUTHORITY, an Arizona corporation,

Defendant.

CASE NO. V1300CV201780201

PLAINTIFF'S SUPPLEMENTAL
RESPONSES TO DEFENDANT'S
FIRST REQUEST FOR
PRODUCTION
OF DOCUMENTS

(Assigned to the Honorable
John Napper)

Plaintiff, Dakota Territory Tours, A.C.C., by counsel, submits this supplemental response to Defendant's First Request for Production of Documents to Plaintiff ("Request"). *Supplemental information is bold and italicized.*

General Objection: Dakota objects to SOCAA's prefatory definitions and instructions as excessive and unnecessary. Dakota further objects to the definitions and instructions to the extent they contradict or exceed the requirements of Ariz. R. Civ. P. 34. Dakota further objects to the Requests as they exceed the 10 requests permitted by Ariz. R. Civ. P. 34 when considered in conjunction with the Requests served by SOCAA's co-counsel.¹ Dakota's answers below are a good faith effort to

¹ Ariz. R. Civ. P. 34(b)(1) is clear that the presumptive limits on discovery apply to "parties" — the Rules make no differentiate between requests supposedly

1 answer the interrogatories to the extent they are not objectionable and should not be
2 construed as a waiver of these objections.

3
4 **REQUEST FOR PRODUCTION NO. 1** Any and all Documents or
5 Communications (including, but not limited to, emails, notes, voicemails, and
6 recordings) between Dakota or any of its employees, principals, members, owners,
7 agents, or attorneys, and any of the following:

- 8 a. Any member of the Yavapai County Board of Supervisors;
9 b. Any Yavapai County employee, representative, or attorney, including but not
10 limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;
11 c. Any member of the Sedona City Council;
12 d. Any City of Sedona employee, representative, or attorney;
13 e. Any Guidance Air Service, LLC employee, agent, representative, or attorney;
14 f. Any Federal Aviation Administration employee, agent, representative, or
15 attorney.
16 g. Any Westwind Aviation, Inc. employee, representative, or attorney.
17 h. Any past or present SOCAA Board Member, employee, or former employee.

18
19 **RESPONSE:**

20 Dakota objects to this request as seeking irrelevant information—every
21 “communication” (especially in light of the broad definition given that term) with
22 all the people listed is not relevant to the specific claims and counterclaims at issue
23 in this case. This request is further overbroad, unduly cumulative, and
24 disproportionate to the needs of this case, given the time and expense that would be

25
26
27 served in furtherance of a party’s defenses, as opposed to requests served in
28 furtherance of a party’s counterclaims.

1 required to produce the requested documents as compared to the minimal benefit of
2 some or all of the requested documents.

3 Without waiving these objections, see the *additional* documents disclosed with *this*
4 *supplemental* response.

5
6 **REQUEST FOR PRODUCTION NO. 2:** Any and all Communications or
7 Documents related to the SOCAA May 2017 Part 135 Request for Proposals ("RFP"),
8 and Dakota's response thereto, including internal, non-privileged emails, notes,
9 voicemails, and recordings.

10
11 **RESPONSE:**

12 Dakota notes that the Request seeks "non-privileged" communications, and
13 therefore understands the request not to seek attorney-client, work product or other
14 privileged documents. To the extent this understanding is inaccurate, to avoid
15 waiver, Dakota objects to this Request to the extent it seeks such privileged
16 information. Dakota further objects to this Request as overbroad and unduly
17 cumulative. Dakota further objects to any request for communications directed at
18 SOCAA or SOCAA's own agents/attorneys, as these documents can be obtained
19 more easily from another source—namely SOCAA itself.

20 Without waiving these objections, see documents already disclosed in this matter.
21 See also the documents disclosed with this response. Due to the overbreadth of the
22 request, Dakota is continuing to search its records, and will supplement this
23 response as it discovers further communications.

24
25 **REQUEST FOR PRODUCTION NO. 3:**Any and all Communications or Documents
26 related to or concerning Guidance Air Service, LLC, Westwind Aviation, Inc., Eddie

1 Ochoa, Yavapai County, the City of Sedona, and/or Amanda Shankland, including
2 internal, non-privileged emails, notes, voicemails, and recordings.

3 **RESPONSE:**

4 Dakota notes that the Request seeks “non-privileged” communications, and
5 therefore understands the request not to seek attorney-client, work product or other
6 privileged documents. To the extent this understanding is inaccurate, to avoid
7 waiver, Dakota objects to this Request to the extent it seeks such privileged
8 information. Dakota further objects to this Request as overbroad and unduly
9 cumulative. Dakota further objects to any request for communications directed at
10 SOCAA or SOCAA’s own agents/attorneys, as these documents can be obtained
11 more easily from another source – namely SOCAA itself.

12 Without waiving these objections, see documents already disclosed in this matter.
13 See also responsive documents disclosed in response to Request #1 above. See also
14 all other documents disclosed with this response. Due to the overbreadth of the
15 request, Dakota is continuing to search its records, and will supplement this
16 response as it discovers further communications.

17
18 **REQUEST FOR PRODUCTION NO. 4:**Any Document used in preparing your
19 answers to Counterclaimant’s First Set of Non-Uniform Interrogatories, dated April
20 4, 2019.

21 **RESPONSE:**

22 Dakota objects to this Request as vague as to its reference to “preparing.”
23 Without waiving this objection, see the documents referenced in the Non-Uniform
24 Interrogatories, which are either part of the Court record (such as the transcript of
25 the Preliminary Injunction) or are being produced in response to other Requests in
26 this Request for Production.

1 **REQUEST FOR PRODUCTION NO. 5:** Any and all Communications or Documents
2 related to or concerning your retention of any private investigator, contractor of
3 other personnel hired to research or investigate Amanda Shankland and/or any
4 other SOCAA Board Member, employee, former employee, or representative.

5 **RESPONSE:**

6 Dakota objects to this interrogatory as attempting to invade the work product
7 privilege set out in Ariz. R. Civ. P. 26(b)(3); SOCAA may not discover information
8 that a party or its representative prepared in anticipation of litigation or for trial.
9 This interrogatory likewise violates the privileges and limitations on divulging
10 information specific to private investigators under Arizona law. *See* A.R.S. § 32-2455.
11 Dakota further objects to this interrogatory as seeking irrelevant information under
12 Ariz. R. Civ. P. 26(b).

13
14 **REQUEST FOR PRODUCTION NO. 6:** Any and all Communications or Documents
15 with the City of Cottonwood, or any of its Council members, employees,
16 representatives, or attorneys regarding Dakota's operations at the Cottonwood
17 Airport.

18 **RESPONSE:**

19 Dakota objects to this Request as irrelevant to this case—there are no claims or
20 counterclaims in this matter that relate to the City of Cottonwood generally, or
21 Dakota's operations at the Cottonwood Airport. Dakota further objects to this
22 Request as overbroad, unduly cumulative and burdensome, and disproportionate to
23 the needs of this case in light of the considerations set out in Ariz. R. Civ. P. 26(b).

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RESPECTFULLY SUBMITTED this 30th day of July, 2019.

DAVIS MILES MCGUIRE GARDNER, PLLC

By: /s/ Bradley D. Weech
Bradley D. Weech
Marshall R. Hunt
Attorneys for Plaintiff

ORIGINAL of the foregoing e-mailed
and mailed this 30th day of July, 2019
and mailed this 31st day of July, to:

Tony S. Cullum
Law Office of Tony S. Cullum, PLLC
14 E. Dale Avenue
Flagstaff, AZ 85001
Attorneys for Defendant SOCAA

J. Daniel Campbell
Ellen B. Davis
O'Connor & Campbell, P.C.
7955 South Priest Drive
Tempe, AZ 85284
*Attorneys for Defendants SOCAA and
Shanklands*

Kiersten Murphy
Henze Cook Murphy, PLLC
722 East Osborn Road, Suite 120
Phoenix, AZ 85014
Attorneys for Defendant SOCAA

/s/ Ashley Barnard

Exhibit 6



Dear Proposer,

We would like to thank you for your interest in operating at the Sedona-Oak Creek Airport. This is an exciting time in Aviation and the Sedona-Oak Creek Airport Authority is looking forward to a positive business relationship.

Please find in this packet; the requirements and exhibits of the RFP. It is imperative that you completely fill out each section and return to us all required documents.

Note; there will be a RFP Pre-submission meeting, held at the Sedona Airport Terminal on May 16th at 2:00 p.m. to address questions that present themselves throughout the RFP process.

Return all packets to the Business Office.

We appreciate your interest,

A handwritten signature in black ink, appearing to read "Amanda Shankland". The signature is fluid and cursive, with the first name being more prominent.

Amanda Shankland
Airport General Manager

**THE SEDONA-OAK CREEK AIRPORT AUTHORITY
REQUEST FOR PROPOSALS
FOR THE OPERATION OF COMMERCIAL 135 OPERATIONS
(COMMUTER AND ON DEMAND OPERATIONS)
AT SEDONA, ARIZONA (KSEZ) AIRPORT**

NOTICE IS HEREBY GIVEN that the Sedona Oak-Creek Airport Authority (SOCAA) will receive proposals for the leasing of Commercial 135 Operations at SOCAA Airport, Sedona, Arizona for the purpose of operations for commercial use. The location of the site(s) are located at 1225 Airport Road, past the four way stop and next to the airport restaurant and two helipads/ tie downs #1, and #2 (see Exhibit A1 and Attachment (A), incorporated herein by this reference).

Space for commercial use at the airport is limited. The Sedona Oak-Creek Airport Authority is interested in forming a business relationship with one site and two helipads/tie downs at the airport. The Authority desires commercial uses which contribute to the economy of the airport and the surrounding community and which will be operational within approximately two months of the publishing of this RFP. Since space is limited, the Authority is interested in proposals that maximize the use of this site.

The following information is set forth to aid prospective proposers in gaining an understanding of the proposal requirements and procedures. It is the responsibility of prospective Lessees to review all of the documents and make such further investigation as is necessary to assure full understanding of the nature of the proposal, its requirements and procedures. All information and specifications concerning submittal of proposals may be obtained from the Airport Office, located at 325 Air Terminal Drive, Sedona, Arizona, 86336, during regular office hours.

GENERAL REQUIREMENTS

The general proposal requirements and procedures are as follows:

WHERE: Proposals will be received at the Office of the Airport Authority, KSEZ, 325 Air Terminal Drive, Sedona, Arizona, 86336.

WHEN: Proposals shall be received not later than 4:00 p.m., May 31st, 2017, at which time proposals will be opened at 4:30 p.m. POSTMARKS WILL NOT BE ACCEPTED.

HOW: Proposal packages must be placed in a sealed envelope and the envelope should be identified on the outside as a "Sedona Oak-Creek Airport Authority Airport Commercial 135 Operations Proposal RFP." May 2017

Packages must include a non-refundable certified check, money order or cashier's check in the amount of seven hundred and fifty dollars (\$750) processing fee, Payable to the Sedona Oak-Creek Airport Authority. Packages must also include, a completed/executed Questionnaire and Proposal Form.

(Exhibit A1 and Attachment (A), B, and C, incorporated herein by this reference.)

The Authority will hold an RFP pre-submission meeting on May, 16th 2017, at 2:00 p.m., at the Airport Conference Room, Sedona Oak-Creek Airport Authority, 325 Air Terminal Drive, Sedona, Arizona. Parties considering submitting a proposal are encouraged to attend the meeting and inspect the site(s).

SELECTION OF A SUCCESSFUL PROPOSER:

Approval to lease and operate from the site(s) for commercial 135 operations at Sedona-Oak Creek Airport Authority, will be granted to the best responsible proponent for the site.

The "best responsible proponent" shall be that proponent which the Sedona-Oak Creek Airport Authority and Yavapai County may determine, in the exercise of their sole, absolute and complete discretion, to be the best proponent to lease and operate commercial 135 operations at the designated site(s) at the airport.

Selection of the "best responsible proponent" will be based on a number of factors, including, but not limited to:

- a) The dollar amount of rental consideration set forth in the proposal which includes the base rental plus a 2.5% of gross revenue amount (the minimum acceptable amount must not be less than \$1.35/sq. ft.) and estimate of fuel purchased and/ or fuel flowage paid to the airport (\$_____per/gal).
- b) The proponent's conceptual plans for the operation and marketing of a commercial 135 operations and the overall completeness of the proposal.
- c) The business background, experience and reputation of the proponent, including the proponent's prior experience in the operation of a commercial operation.

- d) The financial statement, including assets and liabilities, of the proponent.
- e) The business development and marketing plans and timetable proposed for development and operation.
- f) The financial solvency and relevant business experience of the proponent.
- g) Whether or not the proposer is an existing commercial operator at the Sedona-Oak Creek Airport or other Airports.
- h) Number of local aviation jobs to be retained and/or created by proposer.

ANY PROPOSAL WILL BE SUBJECT TO FEDERAL AVIATION ADMINISTRATION REVIEW AND APPROVAL PRIOR TO COMMENCEMENT OF ANY LEASE/AGREEMENT. IN ADDITION, ALL OTHER LOCAL, STATE AND FEDERAL PERMITS AND/OR APPROVALS REQUIRED SHALL BE SOLELY THE RESPONSIBILITY OF PROPONENT.

The "best responsible proponent" for each site may not necessarily be the proponent with the highest proposed rental payment. The Authority may, at its sole absolute and complete discretion, use any or all of the above criteria in its selection of a proponent and may weight each factor in its sole, absolute and complete discretion.

The commercial 135 operation shall be located as identified in Exhibit A-1 and Attachment (A).

The best responsible proponent will enter into a lease and license with the Sedona Oak Creek Airport Authority for a term of two years, for the land area to be used. At the expiration of the lease, ownership of all improvements constructed will revert to the Authority. The Sedona Oak Creek Airport Authority reserves the right to reject any and all proposals.

The submittal of a proposal shall constitute an acknowledgment on the part of the proponent that he/she is fully aware of his/her responsibilities in making the proposal. Final terms and conditions for the lease agreement will be negotiated by the proponent the Authority and must be ratified by the Yavapai County Board of Supervisors.

ADDITIONAL INFORMATION:

Any proposal may be withdrawn at any time prior to the time fixed for the opening of proposals in the RFP, by filing a request, executed in writing by the proponent or his/her duly authorized representative, with the Airport Business Office, at 325 Air Terminal Drive, Sedona, AZ 86336. Any proposal so withdrawn shall be returned only after the proposals have been opened. The seven hundred and fifty dollar (\$750) processing fee is non-refundable and will not be returned.

The Authority reserves the right to request supplemental information from any proponent any time between the dates of the opening of proposals and approval by the Yavapai County Board of Supervisors.

The proposals will be opened and reviewed and rated by Authority staff. The Airport Manager will present the results to the Airport Board at a public meeting to seek a vote for approval before presenting the proposals to the County. The Yavapai County Board of Supervisors will consider the proposals on or before June, 2017.

Upon being selected, the successful proponent(s) shall have thirty (30) calendar days to execute the Lease with the Authority. The proponent, at the time of executing to Lease, shall submit an additional non-refundable payment to the Authority in the amount of (\$5,000). The option payment is consideration for the Lease.

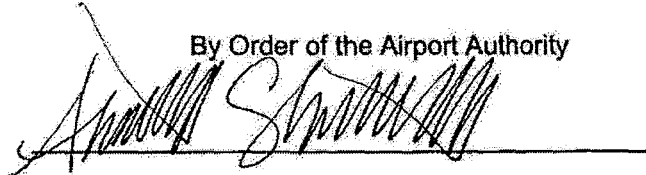
If the successful proponent refuses to execute the Lease within the thirty (30) calendar day period, the Authority shall select the next best responsible proponent within thirty (30) calendar days after the last day on which the original proponent had to execute the Option to Lease. The Airport Board, at its discretion, may execute a Lease with any one of the remaining proponents whom the Council determines to be the next best responsible proponent.

The Sedona-Oak Creek Airport Authority reserves the right to amend this RFP as the Board deems to be in the public interest, prior to the opening of proposals. Notice of such amendments shall be given to each prospective proponent who previously furnished his/her name and address (or that of his/her authorized representative) to the Business Office, by either mailing a copy of such notice not later than the seventh (7th) calendar day prior to the date set for the proposal opening; or personal delivery of a copy of such notice not later than twenty-four (24) hours prior to the date and time set for the proposal opening. Any such change shall also be announced immediately prior to the proposal opening, and this shall be the only notice to be given to any proponent who may have failed to furnish his/her name and address to the Business Office as required above.

In its review of proposals, the Authority reserves the right to meet with proponents to review, discuss, analyze, and clarify their respective proposals.

Dated this day of May 1st, 2017

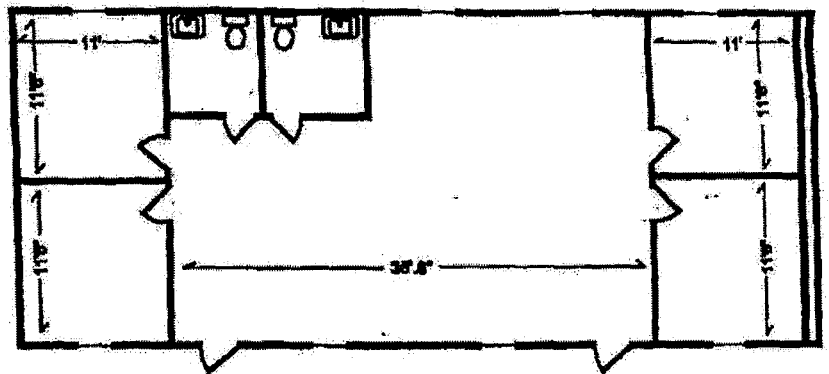
By Order of the Airport Authority

A handwritten signature in black ink, appearing to read "Andrew Small", is written over a horizontal line.

Manager

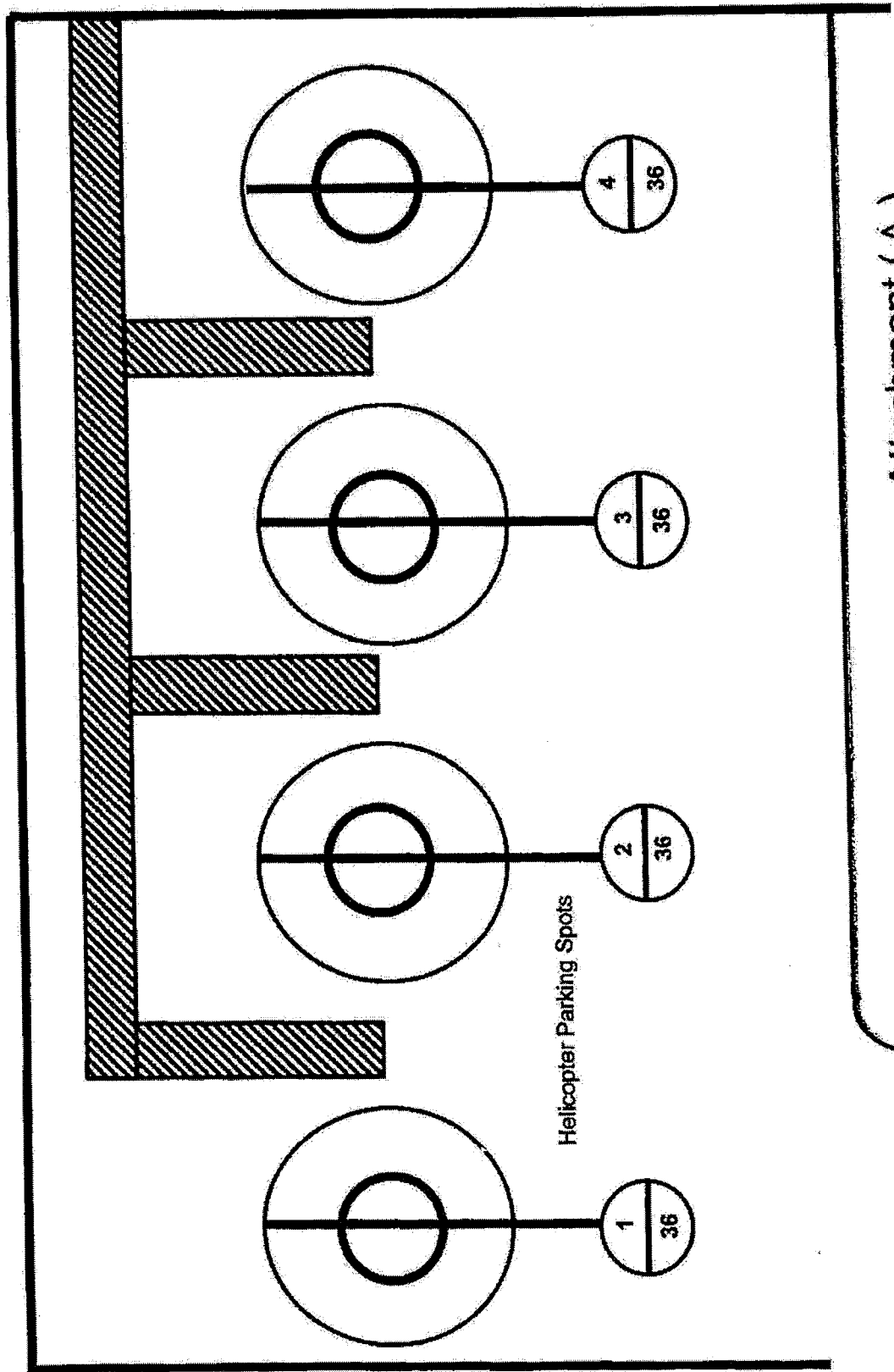
EXHIBIT A

DEPICTION AND/OR DESCRIPTION OF PREMISES



24 x 80 modular office building

- 1440 square feet of office building; and includes four private offices and one generous common office area.
- Two handicapped accessible restroom
- This office building provides ample office space for 10 to 13 people.
- All offices are oversized, no need to conserve on the size of your office furniture.
- Central Heating and Air Conditioning systems, provides a comfortable working environment
- Carpet floors offer an almost maintenance free office building
- Upgraded interior wall coverings and decorative wood siding, provides for a contemporary and professional appearance
- Acoustical T-bar ceiling, decreases the noise traveling from room to room
- Energy efficient fluorescent lighting, won't put a squeeze on your utility budget



Attachment (A)

QUESTIONNAIRE

EXHIBIT B

All information requested in this Questionnaire must be submitted with the proposal. Statements must be complete and accurate. Omission, inaccuracy, or misstatement may result in rejection of a Proposal.

I. Proposer

1. Name and address of proposer exactly as it is to appear on the Lease:

2. Proposer, if selected, intends to carry on the business as a sole
Proprietorship ()

Partnership ()

Corporation ()

Other ()

Explain:

II. Partnership Statement

1. If a partnership, answer the following:
Name, address, and share of each general partner:

<u>Name</u>	<u>Address</u>	<u>Dollar Amount Share Invested</u>
_____	_____	% _____
_____	_____	% _____
_____	_____	% _____
_____	_____	% _____

2. Date of organization _____
3. General or Limited Partnership _____
4. Agreement Recorded Yes () No ()
5. Registered in Arizona? Yes () No ()
- City _____ State _____ Date _____

III. Corporate Statement

1. If a corporation, answer the following:
- When incorporated? _____
- In what State? _____
2. Authorized to do business in Arizona? Yes () No ()
- If so, as of what date? _____
2. Value per share of Common Stock:
- Par \$ _____
- Book \$ _____
- Market \$ _____
4. Furnish the name, title, address, and the number of voting and non-voting shares of stock held by each officer, director and principal shareholder.

IV. Business Development and Marketing Plan for the First Thirty-Six Months of Commercial Operation (include site plan).

V. Financial Data

1. Include the amount of cash investment Proposer will invest in the Facility during the first twelve months of operation.

2. Financial Statement

Submit a current, complete financial statement. Said financial statement should include a detailed balance sheet, and if an ongoing business, current operating statement(s) covering the most recent 12-month period for which statement(s) (has/have) been prepared. The financial statement must contain a statement certifying the accuracy and completion of the information, followed by your signature and the signature of the party preparing the statement.

References

List three persons or firms with whom you have conducted business transactions during the past two years. Two of the references named should have knowledge of your debt payment history.

REFERENCE NO. 1

Name/Title: _____

Firm: _____

Address: _____

Telephone: _____

REFERENCE NO. 2

Name/Title: _____

Firm: _____

Address: _____

Telephone: _____

REFERENCE NO. 3

Name/Title: _____

Firm: _____

Address: _____

Telephone: _____

3. Proposer's bank and branch address.

4. Are there any judgments pending or entered against the Principles, Partners, Officers, Shareholders or Owners?

Yes () No ()

If so, attach a statement describing the circumstances.

5. Have the Principles, Partners, Officers, Shareholders or Owners ever filed for bankruptcy?

Yes () No () If yes, when? _____

If yes, provide a brief explanation of circumstances.

VI. Experience Statement

On a separate page, enumerate in detail the duration and extent of your business experience with special emphasis upon any qualifications or experiences you may have which would be beneficial to you for the lease of Commercial 135 Operations.

VII. Character and Reputation

1. Have you ever been convicted of a misdemeanor (excluding minor traffic violations)?

Yes () No ()

2. Have you ever been convicted of a felony?

Yes () No ()

If the answer to either #1 or #2 is yes, on a separate page describe the charge(s) and identify the time(s) and place(s) of conviction(s). If a partnership, answer for each partner. If a corporation, answer for each officer and each member of the Board of Directors.

VIII. Proposed Rental Consideration

\$ _____ per square foot is proposed as monthly rental consideration to lease the Premises from the Sedona-Oak Creek Airport Authority (minimum acceptable amount is \$ _____).

IX. Other Information

On a separate page, please provide any other information which you feel would have a bearing on the Authority's decision as to whether or not you will be deemed the best responsible proponent.

The Authority reserves the right to request additional information to supplement responses received in any proposal.

I certify that all questions herein have been answered fully and truly, to the best of my knowledge.

Signed _____

Dated _____

EXHIBIT C

PROPOSAL FORM

PROPOSAL FORM

**SEDONA-OAK CREEK AIRPORT
REQUEST FOR PROPOSALS
FOR DEVELOPMENT AND OPERATION OF A COMMERCIAL BUSINESS
AT SEDONA AIRPORT**

Pursuant to the Request For Proposals (RFP) dated _____, 2017, for leasing of land for the purpose of operating a commercial business at the Sedona Airport, the undersigned proponent hereby submits his/her proposal as follows:

NAME OF PROPONENT: _____

BUSINESS ADDRESS: _____
Street _____

City _____ State _____ Zip _____

TELEPHONE: () _____

Business _____ Home _____

Enclosed is a certified check, money order, cashier's check in the amount of seven-hundred and fifty dollars (\$750) in consideration of this proposal. Further, the undersigned hereby agrees that if approval is granted by the Airport Authority of the undersigned will submit an additional amount of (\$5,000) to the Authority within forty-five (45) calendar days.

NOTE: IN ORDER TO BE CONSIDERED, EACH WRITTEN PROPOSAL MUST BE ACCOMPANIED BY A DEPOSIT IN THE FORM OF CERTIFIED CHECK, MONEY OR CASHIER'S CHECK IN THE AMOUNT OF \$750.00, PAYABLE TO THE SEDONA OAK CREEK AIRPORT AUTHORITY. PERSONAL CHECKS WILL NOT BE ACCEPTED.

The RFP, Questionnaire and Proposal Form are all made a part of this proposal by reference, and this proposal is made subject to all of the provisions thereof. Submitted with this proposal and made a part hereof is a financial statement verified signed) by a Certified Public Accountant, a fully answered Questionnaire which has been verified, and other information further describing the proposal (e.g., the dollar amount of rental consideration proposed, fuel, marketing and operation of commercial use.

The undersigned proponent hereby acknowledges that he/she has received, examined and is familiar with the RFP, the Questionnaire, the Proposal Form, and the Option to Lease, and that he/she has inspected and exercised due diligence in gathering information about the site(s) for which this proposal is made.

The undersigned proponent acknowledges that if they are selected as the best responsible proponent for a site, they will be required to pay an additional non-refundable amount of five thousand dollars (\$5,000) within thirty (30) calendar days of the date of selection. Failure of the undersigned proponent to execute the Option to Lease and pay the \$5,000 within thirty (30) calendar days may be treated as a material breach of the RFP, whereupon the Airport Board may select another proposer. The undersigned proponent hereby stipulates that it would be impracticable and extremely difficult to fix the actual damages to the Authority which may arise from the failure of the undersigned to execute the Lease within the prescribed time, and that the non-refundable processing fee of \$750 shall be liquidated damages for said failure.

NOTICE: The undersigned proponent hereby declares that all persons interested in this proposal as principals have been so identified.

If the proponent is a corporation, the authorized corporate officers must each sign this Form and the corporate seal must be affixed. If the proponent is a partnership, all general partners must sign. If the proponent is an individual, sign by using first, middle, and last name in full.

Signature/Title: _____

Dated: _____

Exhibit 7

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 DAKOTA TERRITORY TOURS, AAC,)

5 Plaintiff,)

6 vs.)

Case No. V1300CV201780201

7 SEDONA-OAK CREEK AIRPORT)
8 AUTHORITY, INC., et al.,)

9 Defendants.)
10 _____

11
12
13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE JOHN D. NAPPER

16 ORAL ARGUMENT

17 JUNE 13, 2019

18 Prescott, Arizona

19
20
21
22
23 **COPY**

24 TRANSCRIBED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

Mina G. Hunt (928) 777-3095

TR01371

1 THE COURT: Can somebody explain to me. Both
2 sides were so heated in the discovery dispute. I don't
3 know what happened. It sounds like there was an error
4 in the books of about a million dollars.

5 MR. WEECH: No. That's wrong, Your Honor.
6 That's wrong.

7 THE COURT: I've got one saying no and --

8 MR. WEECH: I know. I sat here and I didn't
9 object any more than what I did. What Ms. Davis told
10 you is not accurate. And in fact I'll take you right
11 to something --

12 Just go to Exhibit 6. Read Mr. Sterling's
13 affidavit. Because here is the bookkeeper saying yeah.
14 I looked at this. I talked to him about it. We even
15 decided together how we were going to present the
16 Sedona income separate from the other income.

17 And yes. I signed one of these pages. I
18 looked at it. It's my signature. Somebody got my
19 information wrong.

20 Who cares if we went out and got the affidavit
21 of the man who says I was there? I looked at it? I
22 advised him? Everything looks good to me? I'm not a
23 CPA. Somebody got that wrong. I'm a bookkeeper.
24 Here's my qualifications.

25 We presented you with an affidavit, admissible

1 evidence. They presented you with nothing but a story
2 from counsel. And this is \$1.3 million is actually
3 1.394, I think it is, is the other income.

4 And the reason it is separated out is
5 explained by Mr. Sterling in a sworn affidavit that
6 says SOCAA would probably want to know what the income
7 was in relationship to Sedona.

8 But here's all the other expenses. We've only
9 got a matter of 30 days from the date they issued this
10 before we have to give a report to separate out all
11 these expenses. We didn't have a chance to do that.

12 So you have Sedona income at the top of that,
13 profit and loss. You have all of the expenses for all
14 locations, for all operations, for -- I don't want to
15 describe that as being bigger than it is. But anything
16 outside of Sedona plus Sedona is in the expenses. And
17 then you add back in the extra income on the bottom.
18 And there is no error.

19 What happened is when we went to look at this
20 and tried to find out why it was called "management
21 fee" -- I described this as their starting point of
22 this whole story of we don't understand and we suspect
23 that, man, there must be fraud going on here.

24 Your Honor, brought up in the very first
25 hearing a movie. One of my favorites is My Cousin

1 Vinny. And the prosecutor. He goes in front of the
2 jury in his opening statement, puts out his hand like
3 this and says, and the gutter was mint green.

4 That's what they're doing. And the underlying
5 story is this: No waiving of hands. No explanations
6 of fraud. There is a signature that is admittedly the
7 signature of the bookkeeper who says that he signed one
8 of these pages, that he reviewed it, that he looked at
9 it, that it was all appropriate and that he counseled
10 with SOCAA -- with Dakota about how to present it in
11 this P&L.

12 We also point out to you in a footnote that
13 the only other bidder gave him nothing. They gave him
14 a combined financial statement. Yet the bidder is not
15 the combined group. So this wasn't material to SOCAA
16 at all.

17 All this hand waiving, all of this fraud, it's
18 unimportant that his signature is on all three pages
19 because he says it's his signature and he says he
20 looked at the document and that he agreed that it was
21 appropriate and right. So there is no mistake. There
22 is no fraud. There is no any of this.

23 THE COURT: Okay. All right.

24 MR. WEECH: Back to the difference between the
25 damages.

1 nothing. This is much ado about something extremely
2 serious, which is the other issue. Not only did Dakota
3 give us the two pages that you see -- if you look at
4 Exhibit 3 to the joint statement, you look at all the
5 financials -- look -- it's the last page of that
6 exhibit, Your Honor. It's SOCAA DX-365.

7 THE COURT: Do you know what --

8 MS. DAVIS: It's really teeny-tiny --

9 THE COURT: Do you know what exhibit number
10 that would be?

11 MS. DAVIS: Yes. It's Exhibit 3 to this joint
12 statement. And it's an excerpt from Dakota's RFP
13 admission. And it's a really tiny typed balance sheet.
14 It's only got four lines on it.

15 What you see there is a representation of
16 current assets, fixed assets, total liabilities and
17 equity.

18 QuickBooks has the ability to do historical
19 printouts as well and to compare. So we're entitled to
20 the QuickBooks file to go back in April of 2017 and
21 look and see is that anywhere close to accurate. Was
22 Dakota a qualified bidder? Did they flat out lie to us
23 in the RFP?

24 And if they did, we're entitled to bring that
25 to the jury's attention. That is another issue, in

1 other words. We need to look at the QuickBooks to see
2 if what they told us in April 2017 was true. We need
3 to look at the QuickBooks to look at the overall
4 profitability of the business. And we need to look at
5 the QuickBooks to see if they were committing an abuse
6 of process.

7 THE COURT: I was just going to say I don't
8 think Mr. Weech is saying that you aren't entitled to
9 the information that leads you to figure what the
10 profit and loss was.

11 Am I understanding correctly, Mr. Weech?

12 MR. WEECH: Yes, Your Honor.

13 THE COURT: All right.

14 MS. DAVIS: If he's willing to give me the
15 QuickBooks file, the entire QuickBooks file --

16 THE COURT: So this is what --

17 Go ahead.

18 MR. WEECH: Thank you. We are here on a joint
19 statement. They went first so I get the last word.

20 THE COURT: Well --

21 MS. DAVIS: Your Honor, I wasn't finished.

22 THE COURT: I'm just kind of -- you guys have
23 sort of reached an impasse. And all I'm -- what I'm
24 thinking is sort of an old-school privilege log. And
25 that is you will disclose everything in the QuickBooks

1 accounts unless you think that there is something that
2 should not be disclosed.

3 And then you need to give that to Ms. Davis so
4 that Ms. Davis can give that to her expert.

5 And your expert says you need it. File
6 something -- go to Mr. Weech and say I need this
7 particular --

8 For instance, what possible difference does it
9 make what the value of a plane is?

10 MS. DAVIS: It would be added into current
11 assets, Your Honor, and it would be part of their
12 overall balance sheet that we would test it against.

13 Your Honor --

14 THE COURT: If you're trying to figure out
15 whether or not they made or lost money on a particular
16 date --

17 MS. DAVIS: One of the things. Correct.

18 THE COURT: So I don't know why you would need
19 to know what the value of a plane was to figure out
20 whether or not they made a loss or --

21 MS. DAVIS: I wouldn't. But I would need to
22 know whether or not their balance sheet was accurate.

23 THE COURT: I'll let you finish. I'm just
24 suggesting to you guys that that's probably the most
25 meaningful way to proceed.

1 MS. DAVIS: Mr. Weech is assuming I did not go
2 to my expert and ask him what documents they would
3 need. But of course I did. That's the very first
4 thing I did.

5 And he told me he needs the entire QuickBooks
6 files. He also wanted all the underlying documentation
7 that was used to enter all the documents into the
8 QuickBooks file. But I haven't asked that today
9 because I thought Your Honor would not be happy.

10 THE COURT: Whether or not I'm happy doesn't
11 make any difference.

12 MS. DAVIS: That is what my expert told me is
13 I would need the entire QuickBooks file, not reports
14 from it, not --

15 If you look at page 14 of the joint statement,
16 with what Mr. Weech is offering is reports and
17 summaries. And that's not what I want. I should not
18 have to take his word for it that's an accurate
19 representation of the universe of the data. I should
20 be able to look at the actual documents that they used
21 to come up with these numbers and verify them.

22 THE COURT: Seems to me to make the most
23 amount of sense that I order that all of the QuickBooks
24 documents related to profit and loss be disclosed. And
25 I'm going to do that from 2016 to 2018, a year before

1 and a year after. So that will give you representative
2 sample of the finances of the company.

3 Mr. Weech, if you have something in particular
4 or an area you believe is irrelevant and should not be
5 disclosed, make a list of that and provide that to
6 Ms. Davis. Ms. Davis can have her expert make a
7 determination about whether or not it's relevant.

8 If for some reason there is a dispute about
9 that, which I'm sure there will be, I can take that up
10 when I get a better handle on what the specific
11 objections are.

12 MS. DAVIS: Your Honor, may I address
13 scheduling?

14 THE COURT: Yeah. Sure.

15 MR. WEECH: Before -- I want to correct one
16 thing. I mean this in a very positive way so we can
17 move forward more easily. If Ms. Davis would
18 communicate something that she doesn't understand -- if
19 she would communicate something she doesn't understand,
20 then we can explain it.

21 And the example is this: She started out just
22 now on her second piece saying -- I'm going to go with
23 Logan because I can't pronounce her last name either.

24 But Logan says right here that these journal
25 entries are wrong. I'm an accounting undergraduate. I

Exhibit 8

1
2
3 **Davis Miles**
4 **McGuire Gardner**

40 E. Rio Salado Pkwy., Ste. 425

Tempe, AZ 85281

Telephone: (480) 733-6800

Fax: (480) 733-3748

efile.dockets@davismiles.com

Bradley D. Weech, SBN: 011135

Marshall R. Hunt, SBN: 031060

Attorneys for Plaintiff

8
9 **STATE OF ARIZONA**
YAVAPAI COUNTY SUPERIOR COURT

10 Dakota Territory Tours, ACC

11 Plaintiff,

12 vs.

13 Sedona-Oak Creek Airport Authority, Inc.,
14 an Arizona non-profit corporation; Amanda
Shankland and John Doe Shankland, husband
and wife,

15 Defendants.
16

CASE NO. V1300CV201780201

Declaration of Marc S. Sterling

Assigned to: Hon. John Napper

17 I, Marc S. Sterling, declare as follows:

18 1. I am over the age of 18 and am competent to make this declaration.

19 2. I am the Trustee of the Sterling Living Trust dated 5/26/2009.

20 3. I have thirty-five (35) years of experience with the IRS and public accounting,
21 including employment with the IRS in the early 1980s. I am not a Certified Public
22 Accountant.

23 4. I, through my revocable living trust, owned a membership interest in Sterling
24 Financial Services, LLC.

25 5. On or about January 1, 2017, the assets of Sterling Financial Services, LLC,
26 including the tradename of "Sterling Financial Services" were sold to Four Peaks Wealth
27

1 Sedona, LLC dba Four Peaks Wealth & Accounting ("**Four Peaks**"). Much of the staff at
2 Sterling Financial Services, LLC continued as employees of Four Peaks.

3 6. For a period of time, including May of 2017, I was a part-time employee of Four
4 Peaks. My work there included services provided to Dakota Territory Tours, ACC ("**Dakota**").

5 7. I reviewed the Profit & Loss Statement and Balance Sheet attached hereto as
6 Exhibit 1.

7 8. While I was a part-time employee of Four Peaks, the QuickBooks file for Dakota
8 was located at Four Peaks and Dakota personnel did not have remote access to the file.

9 9. Ann-Marie Brunner was a client of Sterling Financial Services, LLC, and then
10 became a client of Four Peaks after the asset sale. She provided payroll information quarterly
11 on a thumb drive, which she or one of the staff would input in order to generate quarterly
12 reports. Various bookkeepers at Sterling Financial Services, LLC and then Four Peaks had
13 access to the Dakota QuickBooks file. All used the same login credentials and there was no
14 record kept as to who accessed the Dakota QuickBooks file.

15 10. I discussed the content of an interim financial report approximately April of 2017
16 with Ann-Marie Brunner prior to the report being generated. We specifically discussed that if
17 income from Dakota's Sedona Airport operations, only, was listed separately at the top of a
18 Profit & Loss Statement, and then ALL expenses of the company were listed (due to the
19 difficulty in separating them in the short amount of time available), that the negative number
20 would not be representative of the company's profit either at the Sedona Airport or overall, and
21 would, in fact, show as a loss. We discussed and decided that the company's income from
22 other operations should be included in order to show the company's overall profit. That
23 additional other income is what is labeled as "Management Fee." The label should more
24 appropriately have been something such as "Income for Other Operations."

25 11. I have also reviewed that portion of each page of Exhibit 1 at the lower left hand
26 corner, which bears a copy of my signature. I remember signing *one* page of an interim Profit
27 and Loss Statement, and may have signed the first page of the copy of the Quick Books Report

1 that is part Exhibit 1. I do not have access to the records to compare the information.
2 However, I did not sign the subsequent pages, and the information that is typed next to my
3 signature is incorrect. The typed information is not correct in that my first and last names are
4 spelled wrong, as is the name of the company. My first name is spelled with a "c" and not a
5 "k"; my last name does not include an "a," and the company name also does not contain an "a"
6 in "Sterling." Further, since Sterling Financial Services, LLC had sold the tradename as of
7 1/1/17, the company name should have been Four Peaks Wealth & Accounting, LLC. And I
8 am not now, nor have I ever been, a Certified Public Accountant.

9 12. I did not add the typed information and I did not have the computer knowledge to
10 have modified the QuickBooks report to include the incorrect information. Also, I am familiar
11 with the computer skills of the staff at Four Peaks at the time and, based on conversations and
12 interactions, that of Ann-Marie Brunner. I do not believe any of them to have had the skills to
13 have modified the document in the way that it was modified.

14 13. Further, Ann-Marie Brunner and the staff at Four Peaks were familiar with the
15 correct spelling of my name and my credentials, and would not have made such errors.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18
19 Executed on JUNE 10, 2019.

20
21 
22 _____

23
24
25
26
27
Marc S. Sterling

Exhibit D3
(continued)

EXHIBIT 1

DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 1 of 3

9:37 AM

05/31/17

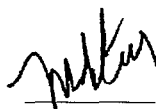
Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	<u>Apr '16 - Mar '17</u>
Ordinary Income/Expense	
Income	
Services	1,171,908.98
Total Income	1,171,908.98
Cost of Goods Sold	
Mdso Purchases	3,910.24
Total COGS	3,910.24
Gross Profit	1,167,998.74
Expense	
Advertising	77,843.47
Aircraft Fuel	127,695.81
Aircraft Repairs & Maintenance	185,454.60
Automobile Expense	37,902.52
Bank Charges	708.97
Merchant Charges	51,521.24
Commission	48,448.37
Continuing Education	450.00
Dues & Subscriptions	278.61
Equipment Rental	9,886.16
Flight Fees	157,212.49
Freight	44,000.00
Insurance	
Business Liability	150,102.41
Employee Insurance	8,366.30
Total Insurance	159,468.71
Janitorial	37.41
Legal & Accounting	69,936.95
Meals & Entertainment	4,597.87
Office Supplies	29,311.06
Outside Services	320,834.78
Payroll Taxes	42,404.08
Payroll Processing Fees	1,065.27
Penalties & Fines	10,000.00
Pension Expense	6,000.00
Postage & Delivery	576.09
Promotional	5,236.00
Rent	101,262.53
Repairs & Maintenance	35,421.74
Salaries & Wages	427,956.10
Supplies	14,865.70
Taxes & Licenses	28,913.60
Telephone	12,453.47
Tour Fees	167,698.83
Travel	2,545.94
Uniforms	4,407.31
Utilities	10,801.16
Total Expense	2,195,167.84
Net Ordinary Income	-1,027,169.10
Other Income/Expense	
Other Income	
Management Fee	1,386,725.31
Interest Income	10.33
Total Other Income	1,386,735.64
Other Expense	
Depreciation Expense	120,289.00

 **Mark S. Stearling**
Certified Public Accountant
Stearling Financial Services LLC

Page 1

Exhibit D3
(continued)

DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 2 of 3

9:37 AM

05/31/17

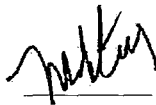
Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	<u>Apr '16 - Mar 17</u>
Interest Expense	<u>36,821.74</u>
Total Other Expense	<u>157,110.74</u>
Net Other Income	<u>1,239,624.80</u>
Net Income	<u>212,455.80</u>



Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 2

Exhibit D3
(continued)

DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 3 of 3

9:38 AM

05/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Balance Sheet

As of March 31, 2017

	<u>Mar 31, 17</u>
ASSETS	
Current Assets	520,935.88
Fixed Assets	<u>279,307.49</u>
TOTAL ASSETS	<u>800,243.37</u>
LIABILITIES & EQUITY	<u>800,243.37</u>



Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 1

Exhibit 9

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)
)
 Plaintiff,)
)
 vs.) No. V1300CV201780201
)
SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation, AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)
)
 Defendants.)
-----)

THE DEPOSITION OF LOGAN ACCIAVATTI

(30(b)(6) for Dakota related to damages)

Phoenix, Arizona
October 4, 2019
11:12 a.m.

(ORIGINAL)

PREPARED FOR:

SUPERIOR COURT

REPORTED BY:

HERDER & ASSOCIATES, LLC
HALEY DAWN WESTRA, RPR
Certified Court Reporter
AZ-CR No. 50762

1 to enter numbers in Dakota's QuickBooks?

2 A. No.

3 Q. Do you have any reason to believe that
4 Dakota's QuickBooks is not an accurate representation
5 of the income and expenses at Dakota?

6 A. I believe it is correct.

7 Q. It is an accurate representation?

8 A. It is accurate.

9 Q. Let's look at the first column on Exhibit 10.

10 And I will represent to you that this was
11 generated by the QuickBooks file that Dakota gave us
12 through this litigation; and in a way as to match the
13 categories that were in Exhibit 11, which is the RFP --

14 A. Okay.

15 Q. -- and those numbers don't match.

16 A. Correct.

17 There was a journal entry in question that
18 I had found was mislabeled. It's the 1,396,725.31
19 under "Other Income" in column 3.

20 Q. What does that mean "mislabeled"?

21 A. Mislabeled or incorrect. I wasn't sure what
22 exactly what it was. I had asked Ann-Marie and Eric
23 what it would be.

24 I think it was labeled "Management Fee." Is
25 that what it was on here? Yeah, a management fee on

Exhibit 10

Profit & Loss

April 2016 through March 2017

QB to Ex 66 Comparison			
Ex 66 Dakota Proposal			
	Apr '16 - Mar 17	Apr 2016 - Mar 2017	Difference
Ordinary Income/Expense			
Income			
Services	2,600,014.52	1,171,908.98	1,428,105.54
Total Income	2,600,014.52	1,171,908.98	1,428,105.54
Cost of Goods Sold			
Mdse Purchases	3,910.24	3,910.24	-
Total COGS	3,910.24	3,910.24	0.00
Gross Profit	2,596,104.28	1,167,998.74	1,428,105.54
Expense			
Advertising	81,866.73	77,843.47	4,023.26
Aircraft Fuel	132,808.11	127,695.81	5,112.30
Aircraft Repairs & Maintenance	202,205.67	185,454.60	16,751.07
Automobile Expense	38,222.09	37,902.52	319.57
Bank Charges	730.97	708.97	22.00
Merchant Charges	54,278.20	51,521.24	2,756.96
Commission	52,612.45	48,448.37	4,164.08
Continuing Education	450.00	450.00	-
Dues & Subscriptions	278.61	278.61	-
Equipment Rental	9,866.16	9,866.16	-
Flight Fees	157,945.01	157,212.49	732.52
Freight	44,000.00	44,000.00	-
Insurance			
Business Liability	179,376.41	150,102.41	29,274.00
Employee Insurance	12,752.64	9,366.30	3,386.34
Total Insurance	192,129.05	159,468.71	32,660.34
Janitorial	37.41	37.41	-
Legal & Accounting	101,751.27	69,936.95	31,814.32
Meals & Entertainment	4,650.73	4,597.87	52.86
Office Supplies	29,379.18	29,311.06	68.12
Outside Services	320,834.78	320,834.78	-
Payroll Taxes	42,404.08	42,404.08	-
Payroll Processing Fees	1,763.32	1,065.27	698.05
Penalties & Fines	10,000.00	10,000.00	-
Pension Expense	6,000.00	6,000.00	-
Postage & Delivery	596.28	576.09	20.19
Promotional	5,236.00	5,236.00	-
Rent	110,599.01	101,252.53	9,346.48
Repairs & Maintenance	35,937.34	35,421.74	515.60
Salaries & Wages	427,956.10	427,956.10	-
Supplies	15,692.79	14,865.70	827.09
Taxes & Licenses	26,913.60	26,913.60	-
Telephone	14,309.48	12,453.47	1,856.01
Tour Fees	168,858.72	167,699.83	1,158.89
Travel	2,571.89	2,545.94	25.95
Uniforms	4,960.49	4,407.31	553.18
Utilities	12,025.91	10,801.16	1,224.75
Total Expense	2,309,871.43	2,195,167.84	114,703.59

EXHIBIT NO. 10
L. ACCIAVATTE
10-4-2019
HALEY DAWN WESTRA, RPR, CRR

Profit & Loss

April 2016 through March 2017

QB to Ex 66 Comparison			
Ex 66 Dakota			
Proposal			
Apr 2016 -			
	Apr '16 - Mar 17	Mar 2017	Difference
Net Ordinary Income	286,232.85	-1,027,169.10	1,313,401.95
Other Income/Expense			
Other Income		1,396,725.31	(1,396,725.31)
Interest Income	10.97	10.33	0.64
Total Other Income	10.97	1,396,735.64	-1,396,724.67
Other Expense			
Depreciation Expense	120,289.00	120,289.00	-
Interest Expense	36,822.27	36,821.74	0.53
Total Other Expense	157,111.27	157,110.74	0.53
Net Other Income	-157,100.30	1,239,624.90	-1,396,725.20
Net Income	129,132.55	212,455.80	-83,323.25
As Stated		212,455.80	
Difference		-	

Exhibit 11

1 Tony S. Cullum, Bar No. 004160
2 **LAW OFFICE OF TONY S. CULLUM, PLLC**
3 14 East Dale Avenue
4 Flagstaff, Arizona 86001
5 (928) 774-2565
6 tony@tonycullumlaw.com

7 Kiersten Murphy, Bar No. 022612
8 **HENZE COOK MURPHY, PLLC**
9 4645 North 32nd Street, Suite 150
10 Phoenix, Arizona 85018
11 (602) 956-1730
12 kiersten@henzecoockmurphy.com

13 *Attorneys for Defendant/Counterclaimant SOCAA*

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
15 **IN AND FOR THE COUNTY OF YAVAPAI**

16 DAKOTA TERRITORY TOURS, ACC, Case No.: CV2017-80201

17 Plaintiff,

18 vs.

19 SEDONA-OAK CREEK AIRPORT
20 AUTHORITY, INC., an Arizona non-
21 profit corporation, AMANDA
22 SHANKLAND and JOHN DOE
23 SHANKLAND, husband and wife,

24 Defendants.

**COUNTERCLAIMANT SEDONA-OAK
CREEK AIRPORT AUTHORITY, INC.'S
FIRST REQUESTS FOR PRODUCTION
OF DOCUMENTS TO PLAINTIFF**

(Assigned to the Hon. John Napper)

25 **TO: PLAINTIFFS AND THEIR ATTORNEYS OF RECORD**

26 Counterclaimant Sedona-Oak Creek Airport Authority, Inc. requests that the documents or things designated in the attached list be produced for inspection and copying pursuant to Arizona Rule of Civil Procedure 34. The time and place of inspection are:

TIME: Thirty (30) days from the date of service

1 **PLACE:** LAW OFFICE OF TONY S. CULLUM, PLLC
2 14 East Dale Avenue
3 Flagstaff, Arizona 86001

4 **INSTRUCTIONS**

5 The response shall state, with respect to each item or category, that
6 inspection and related activities will be permitted as requested, unless the request
7 is objected to, in which event the reasons for objection shall be stated.

8 The documents or things sought by this Request include documents and
9 things in the possession, custody or control of the party or person, his attorney and
10 all agents, servants, representatives, investigators and others who may have
11 obtained custody of the documents and things on behalf of the opposing party or
12 his attorneys.

13 Where the terms "you," "plaintiff," "defendant" or any other designation for a
14 party are used, they are meant to include every individual party, and separate
15 responses should be given for each person named as a party, if requested. Where
16 an individual request calls for a response which involves more than one item, the
17 response of each party should be clearly set out so that it is understandable and so
18 that the items are differentiated.

19 The answers are to be signed by the person(s) making them, and the
20 objections by the attorney making them.

21 These requests for production are intended as continuing requests,
22 requiring You to supplement your production with any responsive documents
23 after acquired by You or Your attorneys or representatives after your initial
24 response.

1 Each party upon whom this Discovery is served is notified that should such
2 party fail to comply with this Discovery, or any part, then the undersigned party
3 may seek sanctions under Arizona Rule of Civil Procedure 34.

4 **DEFINITIONS**

5 1. "Communications" means the act or fact of communicating, whether by
6 correspondence, telephone, meeting, e-mail, voice mail, or any occasion of
7 joint or mutual presence, as well as the transfer of any document from one
8 to another whether via the mail, facsimile, e-mail, text, posting, internet,
9 intranet or hand-delivery.

10 2. "Data" means any and all information stored on any Media that may be
11 accessed by a person with the aid of any device.

12 3. "Document" means and includes both paper and Electronic Records, and
13 shall include letters, correspondence, word processed documents,
14 QuickBooks files or reports, spread sheets, emails, text or SMS messages,
15 financial records, notes, diaries, statements, notices, reports, medical
16 records, proposals, estimates, diagrams, drawings, sketches, contracts,
17 drafts of any of the foregoing, calendars, telephone pads, text messages,
18 instant messages, pictures, photographs, videos, plans, calculations,
19 journals, invoices, diaries, receipts, writings, whether sent or received.
20 This includes any copy different in any respect from the original or other
21 version of the documents, such as copies containing notations, insertions,
22 corrections, or any other variations. "Document" also includes any
23 computer memory that is or was capable of being printed, downloaded,
24 saved onto disk, or otherwise viewed by a person with access to that
25 computer, terminal, hard drive, or disk containing such memory and
26 information.

- 1 4. "Electronic record" means a record that is created, generated, sent,
2 communicated, received or stored by technology that has electrical, digital,
3 magnetic, wireless, optical or electromagnetic capabilities or similar
4 capabilities.
- 5 5. "Media" – Removable and fixed devices on which data is stored or used to
6 read and write data to or from a removable device (e.g. Computer,
7 smartphone, flash drive, iCloud, cloud based storage, hard drive, etc.).
- 8 6. The term **"Dakota"** refers to Dakota Territory Tours, A.C.C., an Arizona
9 Corporation and the Plaintiff in this action.
- 10 7. The term **"Solid Edge"** refers to Solid Edge Aviation L.L.C., an Arizona
11 limited liability company organized on January 20, 1999.
- 12 8. Unless the request indicates otherwise, the pertinent timeframe for each
13 request is April 30, 2017 to present.

14 **REQUEST FOR PRODUCTION OF DOCUMENTS OR THINGS LIST**

15
16 **REQUEST #1**

17 Any and all Documents or Communications (including, but not limited to, emails,
18 notes, voicemails, and recordings) between Dakota or any of its employees,
19 principals, members, owners, agents, or attorneys, and any of the following:

- 20 a. Any member of the Yavapai County Board of Supervisors;
- 21 b. Any Yavapai County employee, representative, or attorney, including but
22 not limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;
- 23 c. Any member of the Sedona City Council;
- 24 d. Any City of Sedona employee, representative, or attorney;
- 25 e. Any Guidance Air Service, LLC employee, agent, representative, or
26 attorney;

1 f. Any Federal Aviation Administration employee, agent, representative, or
2 attorney.

3 g. Any Westwind Aviation, Inc. employee, representative, or attorney.

4 h. Any past or present SOCAA Board Member, employee, or former
5 employee.

6 ///

7 **REQUEST #2**

8 Any and all Communications or Documents related to the SOCAA May 2017 Part
9 135 Request for Proposals ("RFP"), and Dakota's response thereto, including
10 internal, non-privileged emails, notes, voicemails, and recordings.

11 **REQUEST #3**

12 Any and all Communications or Documents related to or concerning Guidance
13 Air Service, LLC, Westwind Aviation, Inc., Eddie Ochoa, Yavapai County, the
14 City of Sedona, and/or Amanda Shankland, including internal, non-privileged
15 emails, notes, voicemails, and recordings.

16 **REQUEST #4**

17 Any Document used in preparing your answers to Counterclaimant's First Set of
18 Nun-Uniform Interrogatories, dated April 4, 2019.

19 **REQUEST #5**

20 Any and all Communications or Documents related to or concerning your
21 retention of any private investigator, contractor or other personnel hired to
22 research or investigate Amanda Shankland and/or any other SOCAA Board
23 Member, employee, former employee, or representative.

24 **REQUEST #6**

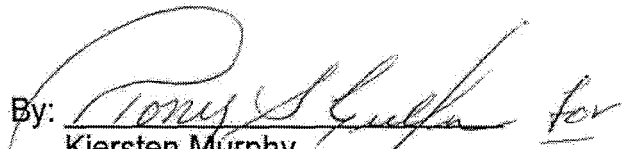
25 Any and all Communications or Documents with the City of Cottonwood, or any
26 of its Council members, employees, representatives, or attorneys regarding
Dakota's operations at the Cottonwood Airport.

DATED: April 5, 2019.

24

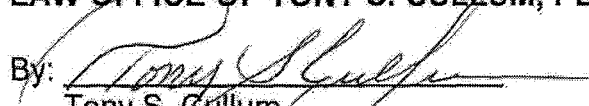
HENZE COOK MURPHY, PLLC

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By:  for

Kiersten Murphy
4645 North 32nd Street, Suite 150
Phoenix, Arizona 85018
Attorneys for Counterclaimant SOCAA

LAW OFFICE OF TONY S. CULLUM, PLLC

By: 

Tony S. Cullum
14 East Dale Avenue
Flagstaff, Arizona 86001
Attorneys for Counterclaimant SOCAA

ORIGINAL of the foregoing mailed

April 3, 2019 to:

24,

Bradley D. Weech
Marshall R. Hunt
DAVIS MILES McGUIRE GARDNER
40 E. Rio Salado Parkway, Suite 425
Tempe, Arizona 85281
Attorneys for Plaintiff Dakota Territory
Tours, ACC

COPY of the foregoing mailed

April 3, 2019 to:

24,

J. Daniel Campbell
Ellen B. Davis
O'CONNOR & CAMPBELL, P.C.
7955 South Priest Drive
Tempe, AZ 85284
dan.campbell@occlaw.com
ellen.davis@occlaw.com
602-241-7000

By: 

Exhibit 12

To: Ashley J. Barnard[Ajbarnard@davismiles.com]
From: Ann-Marie Klein-Brunner
Sent: Fri 6/28/2019 5:26:56 PM
Subject: RFP Steve Shattuck emails
Sedona Submittal Acknowledgement of Receipt (.jpg and PDF formats)...
Mrs. Brunner, AZ Driver's License Scans...
Mildred C. Brunner, AZ Driver's License copy...
Almost done with my part...
Sedona RFP new version (not completed)...
Corrected: I spelled McDonnell Douglas incorrectly...now fixed. (Blame it on autocorrect)...
Sedona RFP...
Re: RFP
PRINT This one...please!...
RFP...please print (NOT a final version by any stretch of the imagination!)...
Re: RFP Working Session Hangar 5/25 morning
Re: RFP Sedona

Exhibit 13



COMMERCIAL TRIAL BOUTIQUE

BET THE COMPANY • AVIATION • CONTRACT DISPUTES

Daniel B. Mestaz
602-445-7722 (direct)

July 9, 2020

Sent via email

Ellen B. Davis
Koeller, Ebeker, Carlson & Haluck, LLP
One East Washington Street, Suite 400
Phoenix, AZ 85004
ellen.davis@knchlaw.com

Re: Dakota/SOCAA—deposition of Steven Shattuck

Dear Ms. Davis:

Our paralegal, Jeff Elder, is sending you, by drop box, documents that we may use for Steven Shattuck's deposition this afternoon, Bates numbered CL000001-CL000161, as well as the native files for CL000126-128 and CL000129-161. We are concurrently delivering a thumb drive with these documents to Mr. Shattuck.

You should already have most of these Shattuck related documents. We Bates numbered all of them, however, to be clear and precise about what we identify in the deposition. So if we use the same documents at trial, everyone will know what we are referring to.

Because we are new to the case, however, we could not confirm that you already have all of the documents. One, in particular, we do not believe you have seen. That document, CL000125-128, is a May 31, 2017, 10:01 am email from Marc Sterling to Eric and Ann-Marie Brunner, which attaches the "signed financials." The attachments are the financial statements that found their way into the RFP proposal as Exhibit D-3, in modified form. Each page is separately signed by Mr. Sterling. Despite diligently searching for these types of documents months ago, Ms. Brunner only found it yesterday.

Very truly yours,

A handwritten signature in black ink, appearing to be 'DMestaz', with a long horizontal line extending to the right.

Daniel B. Mestaz

dmestaz@williamsmestaz.com

Exhibit 14

Sent: Wed, 31 May 2017 10:01:32 -0700
From: Marc Sterling <marc@sterlingfinancialaz.com>
Subject: signed financials
To: 'Ann-Marie Klein-Brunner' <gohelisedona@outlook.com>, "eric@sedonaairtours.com" <eric@sedonaairtours.com>
2017_05_31_09_59_44.pdf

Please review

Marc



Virus-free. www.avast.com

9:37 AM

05/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	Apr '16 - Mar 17
Ordinary Income/Expense	
Income	
Services	1,171,908.98
Total Income	1,171,908.98
Cost of Goods Sold	
Mdse Purchases	3,910.24
Total COGS	3,910.24
Gross Profit	1,167,998.74
Expense	
Advertising	77,843.47
Aircraft Fuel	127,695.81
Aircraft Repairs & Maintenance	185,454.60
Automobile Expense	37,902.52
Bank Charges	708.97
Merchant Charges	51,521.24
Commission	48,448.37
Continuing Education	450.00
Dues & Subscriptions	278.61
Equipment Rental	9,868.16
Flight Fees	157,212.49
Freight	44,000.00
Insurance	
Business Liability	150,102.41
Employee Insurance	9,366.30
Total Insurance	159,468.71
Janitorial	37.41
Legal & Accounting	69,936.95
Meals & Entertainment	4,597.67
Office Supplies	29,311.06
Outside Services	320,834.78
Payroll Taxes	42,404.08
Payroll Processing Fees	1,085.27
Penalties & Fines	10,000.00
Pension Expense	6,000.00
Postage & Delivery	576.09
Promotional	5,236.00
Rent	101,252.53
Repairs & Maintenance	35,421.74
Salaries & Wages	427,956.10
Supplies	14,865.70
Taxes & Licenses	26,913.60
Telephone	12,453.47
Tour Fees	167,699.83
Travel	2,545.94
Uniforms	4,407.31
Utilities	10,801.16
Total Expense	2,195,167.84
Net Ordinary Income	-1,027,169.10
Other Income/Expense	
Other Income	
Management Fee	1,396,725.31
Interest Income	10.33
Total Other Income	1,396,735.64
Other Expense	
Depreciation Expense	120,289.00

9:37 AM

05/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	Apr '16 - Mar 17
Interest Expense	36,821.74
Total Other Expense	157,110.74
Net Other Income	1,239,624.90
Net Income	212,455.80



9:38 AM

05/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Balance Sheet

As of March 31, 2017

	Mar 31, 17
ASSETS	
Current Assets	520,935.88
Fixed Assets	279,307.49
TOTAL ASSETS	800,243.37
LIABILITIES & EQUITY	800,243.37

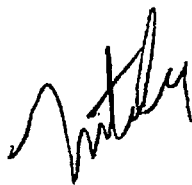


Exhibit 15

From: Ellen Davis <ellen.davis@knchlaw.com>
Sent: Wednesday, July 22, 2020 6:44 PM
To: Daniel Mestaz; Dan Campbell; Kim Miller; Kiersten Murphy; 'Tony S. Cullum'
Cc: Diana Clark; Jeff Elder; 'Rick Boyle'
Subject: RE: Dakota/SOCAA
Attachments: 2019-05-21 OA Discovery Dispute.pdf; PL RT DF NUI01 19-06-28.pdf; PL RT DF RFP01 19-06-28.pdf

Daniel,

Friday sounds good. We will get back to you with an exact time in the morning.

In the meantime, here's the 5/21/19 transcript and Dakota's June 28, 2019 discovery responses.

In September of 2018, Ann-Marie testified that she did not "assist in preparing" Dakota's response to the RFP. P.56:5-7. Ann-Marie denied knowing who else was involved in working on Dakota's RFP response. P. 57:7-11. Ann-Marie's recently produced emails prove otherwise. That line of questioning would have gone very differently.

We sent Dakota a 30 b 6 subpoena for its witness(es) relating to the creation of the financial statements in the RFP (and had to file a discovery dispute to get Dakota to schedule a deposition). Ann-Marie appeared on 10/6/2019 and disavowed knowledge of almost everything. For example, Ann-Marie said she did not know how the numbers in the RFP profit and loss statement "got on the paper." P. 11. She claimed not to know how the financial statement was generated pp. 15-17. Obviously that line of questioning would have gone very differently if we had an email re "Eric and I will handle the financials."

Our May 11, 2020 motion to continue the trial in order to take Shattuck's deposition outlines much of the discovery abuse. In 2018 and 2019, Dakota and SOCAA filed a number of discovery disputes, many of which could be relevant.

Note that Dakota's financials in the RFP have been the source of discovery disputes since August 18, 2018.

There is undoubtedly more, but I'm still working on a brief due tomorrow. Ellen.

From: Daniel Mestaz [mailto:dmestaz@WilliamsMestaz.Com]
Sent: Wednesday, July 22, 2020 5:48 PM
To: Ellen Davis; Dan Campbell; Kim Miller; Kiersten Murphy; 'Tony S. Cullum'
Cc: Diana Clark; Jeff Elder; 'Rick Boyle'
Subject: RE: Dakota/SOCAA

Ellen: I am fine with a meet-and-confer. Tomorrow does not work for me. But I am available on Friday between 10am and 4pm.

Here's what I suggest in the meantime. Obviously I'm less versed than you in the history of this case. And I don't seem to have the 5/21/19 transcript. Nor do I know what requests, specifically, you are referring to. Would you mind emailing me, or identifying, the discovery & pleadings that will be the basis for your motion? For example, the requests, the responses, the meet-and-confer, any motions to compel, the complete 5/21/19 transcript, any supplemental responses, and any orders? If you can't physically send that stuff, just tell me (and Jeff, cc'd) what those specific documents are (date, title) so we can search for them and I can review them before the call. At least then I'll be able to meaningfully participate and perhaps we can get to some common ground and save the rest for the motion work.

Thank you.

Daniel B. Mestaz
WILLIAMS | MESTAZ, L.L.P.

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Diana, legal secretary, 602-445-7735 (direct)

www.williamsmestaz.com

From: Ellen Davis <ellen.davis@knchlaw.com>

Sent: Wednesday, July 22, 2020 4:11 PM

To: Daniel Mestaz <dmestaz@WilliamsMestaz.Com>; Dan Campbell <dan.campbell@knchlaw.com>; Kim Miller <kim.miller@knchlaw.com>; Kiersten Murphy <kiersten@henzcookmurphy.com>; 'Tony S. Cullum' <tony@tonycullumlaw.com>

Cc: Diana Clark <dclark@WilliamsMestaz.Com>; Jeff Elder <jelder@WilliamsMestaz.Com>; 'Rick Boyle' <Rboyle@TonyCullumLaw.com>

Subject: RE: Dakota/SOCAA

Daniel,

I am following up on our discussion on the 10th. See below. Anytime you are available to have that meet and confer, we will make ourselves available, schedule around it, and provide a call in number. We would like to have the discussion before close of business tomorrow so we can advise the Court of the matter and discuss it during the status conference on the 28th. Unless we are able to agree to the discovery protocol set forth below, we anticipate requesting full briefing of a significant discovery dispute. We would like you to join us in a request that Judge Carman let us file more than the 3 page joint summary permitted under the current order.

We will be asking for severe sanctions which will include, at a minimum, additional limited discovery at Dakota's expense due to violation of a Court order. At the discovery dispute hearing on May 21, 2019 at pp.46-47, Judge Napper ordered Dakota to "go through their emails and look through that and anything they have related to the RFP process should be disclosed" 30 days from that date or by June 25, 2019. The emails that Ann-Marie "found" June 9 and 10, 2020 were the exact documents Judge Napper ordered Dakota to produce by June 25, 2019.

The discovery we will seek will include a forensic evaluation of Eric and Ann-Marie's hard drive: [1] to check for emails relating to the RFP, [2] to see if a simple word search would have turned up the undisclosed documents, and [3] to see if the "emails" to Sterling were actually sent and received. Some of the header trails are missing. The untimely disclosed emails are suspicious at best.

We will then want to depose Eric and/or Ann-Marie to discover how / why Dakota ignored Judge Napper's order. Finally, we will want to depose Marc Sterling to discover if he sent or received the emails, or if the signatures are forged as we believe.

Please let us know today when you are available for a call tomorrow.

Ellen Davis & Dan Campbell.

From: Ellen Davis
Sent: Friday, July 10, 2020 10:48 AM
To: 'Daniel Mestaz'; Dan Campbell; Kim Miller; Kiersten Murphy; 'Tony S. Cullum'
Cc: Diana Clark; Jeff Elder; 'Rick Boyle'
Subject: RE: Dakota/SOCAA

Sounds reasonable. We also anticipate a motion.

From: Daniel Mestaz [<mailto:dmestaz@WilliamsMestaz.Com>]
Sent: Friday, July 10, 2020 10:47 AM
To: Ellen Davis; Dan Campbell; Kim Miller; Kiersten Murphy; 'Tony S. Cullum'
Cc: Diana Clark; Jeff Elder; 'Rick Boyle'
Subject: RE: Dakota/SOCAA

You're welcome.

And by the way, I suppose I ought to tee this up and make it explicit. We may use the CL prefix documents we shared yesterday and today, as well as the native files thereof, at trial. Please let me know your availability next week for a meet and confer on a rule 37 motion for relief from late disclosure.

Thank you.

Daniel B. Mestaz
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602-256-9400 (main); 800-251-8243 (toll free)
Diana, legal secretary, 602-445-7735 (direct)
www.williamsmestaz.com

From: Ellen Davis <ellen.davis@knchlaw.com>
Sent: Friday, July 10, 2020 10:39 AM
To: Daniel Mestaz <dmestaz@WilliamsMestaz.Com>; Dan Campbell <dan.campbell@knchlaw.com>; Kim Miller <kim.miller@knchlaw.com>; Kiersten Murphy <kiersten@henzecoockmurphy.com>; 'Tony S. Cullum' <tony@tonycullumlaw.com>
Cc: Diana Clark <dclark@WilliamsMestaz.Com>; Jeff Elder <jelder@WilliamsMestaz.Com>; 'Rick Boyle' <rboyle@TonyCullumLaw.com>
Subject: RE: Dakota/SOCAA

Thank you.

From: Daniel Mestaz [<mailto:dmestaz@WilliamsMestaz.Com>]
Sent: Friday, July 10, 2020 10:29 AM
To: Ellen Davis; Dan Campbell; Kim Miller; Kiersten Murphy; 'Tony S. Cullum'
Cc: Diana Clark; Jeff Elder; 'Rick Boyle'
Subject: RE: Dakota/SOCAA

I understand your objection. You do not have to repeat it every time I raise or refer to such documents in the deposition, so, yes, I recognize that you have a standing objection to those documents. I suppose the court will have to sort it later.

Daniel B. Mestaz
WILLIAMS | MESTAZ, L.L.P.

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Diana, legal secretary, 602-445-7735 (direct)

www.williamsmestaz.com

From: Ellen Davis <ellen.davis@knchlaw.com>

Sent: Friday, July 10, 2020 10:24 AM

To: Daniel Mestaz <dmestaz@WilliamsMestaz.Com>; Dan Campbell <dan.campbell@knchlaw.com>; Kim Miller <kim.miller@knchlaw.com>; Kiersten Murphy <kiersten@henzecoockmurphy.com>; 'Tony S. Cullum' <tony@tonycullumlaw.com>

Cc: Diana Clark <dclark@WilliamsMestaz.Com>; Jeff Elder <jelder@WilliamsMestaz.Com>; 'Rick Boyle' <Rboyle@TonyCullumLaw.com>

Subject: RE: Dakota/SOCAA

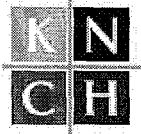
Daniel,

I understand that you are new to the case and are doing the best you can. But we object to Dakota's use of the new documents, and contest their admissibility at trial. These should have been disclosed long ago, and before the close of discovery. At the latest they should have been produced June 28, 2019, with the RFP responses. Dakota had a responsibility to "find" and disclose this document long before now.

Would you agree that we have a standing objection to Dakota's use of any of the documents? If so, I won't object to every question. The we can take this up with the judge later.

Ellen.

KOELLER | NEBEKER | CARLSON | HALUCK LLP



Ellen Davis

One East Washington Street, Suite 400 | Phoenix, AZ 85004

Phone 602-256-0000 | Fax 602-256-2488 | 602 419 9640

cell

ellen.davis@knchlaw.com

www.knchlaw.com

IRVINE | SAN DIEGO | PHOENIX | LAS VEGAS | SACRAMENTO | ORLANDO | AUSTIN | MIAMI

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From: Daniel Mestaz [<mailto:dmestaz@WilliamsMestaz.Com>]
Sent: Thursday, July 9, 2020 12:51 PM
To: Ellen Davis
Cc: Diana Clark; Jeff Elder
Subject: Dakota/SOCAA

Attached is the native email, 5/31/17, from Marc Sterling to the Brunners.

Daniel B. Mestaz
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Exhibit 16

From: Daniel Mestaz
Sent: Tuesday, July 28, 2020 1:50 PM
To: 'Ellen Davis'; Dan Campbell; Kiersten Murphy
Cc: 'Diana Clark (dclark@williamsmestaz.com)'
Subject: Dakota/SOCAA email issue
Attachments: 20170531_EmailHeader.txt

Counsel: I had hoped to contact you earlier about this, but I'm getting you up to the minute relevant information.

First, attached is a text file that contains the full header for the 5/31/17 Sterling email. Obvious question: why can't we just give you the native? Well, the email is in Ann Marie's outlook.com inbox. But when Jefford tries to export/extract it as a native file, outlook.com strips it of much of the header. And that is exactly what you have now---the native with the stripped header. We are open to letting Brian Chase screen share with Jefford Englander as he demonstrates this. We think it may have something to do with the fact that Ann Marie has been using the free mail app on her computer, rather than the outlook program. Her mail app is the free version that pre-dates Office- 365. Basic and rudimentary.

Second, after speaking with my client, here's our proposal (which I believe mirrors our discussion from Friday):

1. I will get the entire native email accounts for Eric and Ann-Marie.
2. We will run keyword searches for emails relating to the RFP process and Dakota's response to the RFP. We will share the keywords used. We will log anything privileged.
3. We will review all May 2017 emails for responsive documents, irrespective of keywords.
4. If we find any emails that do not relate to the RFP issue, but nevertheless require production under rule 26.1, we will produce those too if they have not been produced already.
5. Ann Marie will sit for her continued Zoom 30(b)(6) deposition on the RFP/financial statement issue, at a date TBD, after you get your emails.
6. I expect to get you responsive emails within two weeks or so. So if you want to set another conference, say, three weeks out, that is fine. Perhaps, if we are all on the same page by that time, we can just ask that it be vacated. If the trial is continued for a while though, I suggest another conference 30 days out and three weeks to get you the emails.
7. The above is without prejudice to SOCAA doing whatever it wants to do, as long as you give me a chance to work on #s 1-4 over the next few weeks free of briefing. If, at that point, you want more relief, e.g., more depositions, sanctions, hard drives, whatever, we can meet and confer and see if we can work it out and if not you can file your motion. What we find in our email search may inform your decision (and mine in response).
8. Meanwhile, my clients are preserving all emails and hard drives, etc.

Feel free to read this into the record.

Daniel B. Mestaz
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Exhibit 17



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Daniel B. Mestaz
602-445-7722 (direct)

August 31, 2020

Sent via email

Ellen B. Davis
J. Daniel Campbell
Koeller, Ebeker, Carlson & Haluck, LLP
ellen.davis@knchlaw.com
Dan.campbell@knchlaw.com

Re: Dakota/SOCAA—seventh supplemental disclosure

Dear Ellen and Daniel:

Enclosed is Dakota's seventh supplemental disclosure statement. Our paralegal, Jeff Elder, is sending you, by drop box, the non-privileged documents with a Bates range of CL000172-CL000773, and a privilege log for all documents withheld. The production includes all emails regarding Dakota's RFP proposal and any other emails found in the course of that search that arguably fall within rule 26.1 subject matter relevance. The emails reflect our work: (i) obtaining the complete email accounts for Eric Brunner and Ann-Marie Brunner; (ii) running searches through all folders using the search terms "RFP" and "Sterling;" and (iii) reviewing every email in the inbox and sent folders for May 2017.

CL000732-CL000736 is a May 31, 2017 email string. You have the first email—Marc Sterling's 10:01 am email to Ann Marie and Eric Brunner attaching the signed financials containing the authentic, unaltered, non-duplicative signatures of Mr. Sterling on each of the three pages of the financial statements. The second email in that string is Mr. Brunner's email forwarding those same signed financials to Mr. Shattuck. This email string proves that the Brunners delivered the authentic, unaltered signed financials to Mr. Shattuck, who then altered the signatures with a photo-shopped "Mark Stearling" signature block and license number.

Very truly yours,

A handwritten signature in black ink, appearing to be 'DM', with a long horizontal line extending to the right.

Daniel B. Mestaz

dmestaz@williamsmestaz.com

DBM/dlc
Attachment

Exhibit 18

Keith D. Koeller •
 William A. Nebeker •†
 Robert C. Carlson •†
 William L. Haluck •
 Lynn Bouslog (1953-1997)
 Edward W. Schmitt •
 Ellen E. Hunter (1957-2016)
 Megan K. Dorsey •†
 Mark D. Newcomb •†
 Robert A. Fisher II •
 Martha J. Dorsey •†
 Erik R. Musurlian •
 Jerome R. Satran •
 Jay M. Bulger •†
 Gary L. Hoffman •
 Zahnie L. Soe Myint •†
 John P. Donovan •o
 Troy G. Allen •†
 Ian P. Gillan •†
 Christopher J. Grossi •o
 Chad N. Dunigan •†
 Judith A. Downs •†
 Maria K. Pleše •
 Tracy L. Hughes •
 Andrew C. Green •o
 Stephanie L. Young •†
 Julia L. Bergstrom •†
 Fort A. Zackary, Jr. •
 Peter W. Dye •
 David W. Kash •†
 Mark F. Roach •o
 Michael P. Zech •o
 Sarah P. Long •†
 Alicia A. Hagerman •†
 Andre C. Robin •
 Douglas C. Koeller •
 Ryan T. Antes •
 Scott R. Cook •†
 Zachary M. Schwartz •
 Megan O. Barnett •
 Scott A. Davis •
 Justin M. Lelse •
 Ryan C. Brooks •
 Michael J. Logan •
 John H. Cline •†
 Eileen C. Luttrell •†
 John M. Sicht •†
 Jay C. Patterson •
 Katherine E. Carlson •
 Erin P. Myers •
 Mary C. Coombe •
 Stacey N. Juntto •
 Alana P. Zech •
 Katherine L. Klapa •
 Rikki J. Hevra •†
 Denise Cespedes •
 Stacy G. Fallon •
 Gregory K. Koeller •
 Wesley M. Cox •†
 Mark D. Gushiken •
 Reginald S. Thomas •†
 Jasmine L. Davis •
 Nikki K. Orr •†
 Ryan J. McKee •o
 Daniela R. Litvak •
 Karin M. Bruce •
 David C. Bass •†
 James P. Smeriglio III •
 Alejandra Mangual •
 Julie A. Ferguson •
 Brittany M. De Robertis •†
 Kristin E. Goulet •
 Nathaniel T. Collins •†
 Kynsle M. Lovell •
 Omer David •†
 Ryan K. Li •
 Joy E. Sandoz •
 Jordan E. Kingsley •†
 Michael D. Dissinger •†
 Anne P. Barber •†
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September 17, 2020

VIA ELECTRONIC MAIL

Mr. Daniel B. Mestaz, Esq.
 Williams Mestaz
 6225 N. 24th Street, Suite 125
 Phoenix, Arizona 85015
dmestaz@williamsmestaz.com

Re: *Dakota v. Sedona-Oak Creek Airport*
 Yavapai Superior Court Case Number V1300 CV 2017-80201

Dear Daniel,

This letter represents SOCAA's response to your suggestions as to Dakota's search for and further production of documents. We appreciate your willingness to work with us and have no reason to doubt your sincerity or professionalism.

But after having had the opportunity to work through the materials you uncovered as part of your search, whatever trust we had in Dakota has been obliterated. This recent production, 722 pages of emails, falls into one of two categories: a) emails related to Dakota's response to SOCAA's Request for Proposals dated May 1, 2017; and b) communications with the FAA. The emails in category (a) should have been produced more than a year ago, by June 25, 2019, when Judge Napper ordered their production¹, or at the latest on June 28, 2019 in response to SOCAA's RFP#1 (as counterclaimant) dated April 4, 2019 (re-issued on April 24, 2019). The emails in category (b), communications with the FAA, should have been produced more than two years ago; that is, on June 11, 2018, in response to SOCAA's RFP#6 dated May 4,

¹ See, 5/21/2019 Hearing Transcript p. 45:23 "The Court, I think [Dakota's] internal emails related to the RFP submission would certainly be relevant. P. 46:9-12 "They should go through their email and look through that and anything they have related to the RFP process should be disclosed." p.47:4-10: The Court: Okay. So Mr. Weech, seems to me that your client needs to go through the email and find emails related to the RFP process and related to the agreement related to the 135 operations between Solid Edge and Dakota. Do you have any disagreement with that? Mr. Weech: None." p. 48:23-49:49:4: "Communications between Dakota and Solid Edge on those two topics will be due to be disclosed by June 25th. If nothing's disclosed by June 25th, the assumption will be that they do not exist, and anything disclosed after the 25th will be precluded unless SOCAA wants to use the information."

Mr. Daniel Mestez, Esq.
Williams Mestez
September 17, 2020

2018 (seeking communications between Dakota or Solid Edge and the FAA). Moreover, in addition to those production deadlines, discovery and final disclosures closed *eight months* before this production.

The fact that Dakota is producing documents now that were created in 2017 proves without a doubt that Dakota failed to comply with its disclosure and discovery obligations, failed to comply with explicit Court orders, and that Dakota's counsel made avowals to the Court that simply were not true. The timing of the production, on the eve of Steven Shattuck's deposition, proves that Dakota's prior failure was intentional. Dakota produced nothing for years, despite SOCAA's requests and Dakota's counsel's avowals to the Court that it would either comply with the Court's orders or that it had no additional, responsive documents. Dakota produced the documents only on the eve of Shattuck's deposition's (and only after SOCAA hired a private investigator to track him down, camp out at his house, and serve him), and then only because Dakota perceived an advantage, in hopes of blunting the expected negative impact of Shattuck's testimony.

The content of the production is also very troubling. CL000317-20 is an email exchange that purports to be from bookkeeper Marc Sterling to Eric and Ann-Marie Brunner explaining how and why Sterling is trying to "justify changes" to Dakota's profit and loss statement included in its RFP response in order to turn a large loss into a profit.

Hi!

I'm trying to justify changes to the P&L, and even if I take all of the advertising, aircraft repairs and maintenance, auto expense, insurance, freight, legal & accounting, and penalties & fines off the books, that still leaves a loss of around 522,000.

Question, instead of adjusting all the actual expenses, if we show "other income" at the bottom of the form, such as a management fee, to get the amount of net income to around 200k+, do you pay tax on that to the airport?

Marc

Ann-Marie instructed Sterling to make the changes.

Marc,

Marc Sterling[marc@sterlingfinancialaz.com]

Ann-Marie Klein-Brunner

Wed 5/31/2017 9:12:56 AM

RE: questions

We will need completed financials this morning signed by you so we can print and submit with application early this afternoon.

The only income we pay percent of gross on is income generated from the Sedona Airport. We do not pay percent on other income. If you show a 200,000.00 profit that is fine. A management fee for other services outside of Sedona Airport no percent paid on that.

Please advise of timeline.

Since the plain language of these emails demonstrates subterfuge, we assume that Dakota now wants to explain it. Dakota cannot. It refused to do so earlier. On May 4, 2018, in non-uniform interrogatory #9, SOCAA asked Dakota to identify the payor and nature of the services or value provided by Dakota that generated the management fee that Dakota reported as “other income” on its profit and loss statement in its RFP response. Dakota objected to the question and refused to answer because the “other income” was not relevant to any claim or defense. Dakota’s 30(b)(6) witness, Logan Acciavatti, testified that the “other income” was a journal error, and that she had asked Eric, Ann-Marie and Marc Sterling about the entry when she discovered it. See, 10/4/2019 Transcript p. 89:23- 91:23.

The fact that these email exchanges exist exposes another lie. Dakota’s June 28, 2019 response to NUI#1, Dakota represented that Ann-Marie had only “verbal communications” with Eric and Steve Shattuck in regards to Dakota’s proposal. The fact that Ann-Marie discussed the financial statement with Sterling exposes a different lie. Ann-Marie testified that she had no involvement in the RFP or the financial statement. She denied knowing how the \$1,396,725.31 of “other income” came to be included in that profit and loss statement. Any claim by Ann-Marie that she could not remember such a remarkable exchange with Sterling during her depositions, or that that information (contained in her contemporaneous email) was not “reasonably available” to her as Dakota’s 30(b) (6) witnesses is absurd. The Brunners had the email. The Brunners knew where to look for it. They claimed to have gotten the financial statements for their RFP response from Sterling. It would not have been difficult for Dakota to locate an email from Sterling to Ann-Marie on the very day that Dakota’s RFP response was submitted.

In addition to not producing the emails, Dakota did not identify Lynne Brownd, Steve Graff or Brad Weech as persons who were obviously involved in preparation of its RFP response as part of their affirmative disclosure obligations or when specifically asked to do so. See, Ariz. R. Civ. P. 26.1; Dakota’s June 28, 2019 response to non-uniform interrogatory #1.

Dakota’s recent production is also troubling because it includes a 2-page email, CL000771-772, dated November 30, 2017 between Shattuck, Eric Brunner, and the FAA’s principal operations inspector, Darren Henley. As noted above, Dakota was required to produce its communications with the FAA in response to request for production #6 on June 11, 2018. Similarly, Dakota should have produced this email in response to request #4, seeking documents relating to pilot competence testing.

At the February 12, 2019 hearing, Dakota’s and Solid Edge’s counsel, Bradley Weech, avowed to the Court that all communications with the FAA had been produced. See, 02/21/2019 Transcript p. 27:3-13. When SOCAA questioned the production, and in response to a question from the Court, Weech made the same avowal on May 21, 2019. See, 05/21/2019 Transcript p. 29:9-30:7. The recent production proves those avowals to be false. Eric Brunner had not searched his emails. When SOCAA complained again, Dakota produced some communication with the FAA in June of 2019 – and again claimed that there was nothing more to produce, despite indications to the contrary. In an April 4, 2018 letter, the FAA told Solid Edge that the

Mr. Daniel Mestez, Esq.
Williams Mestez
September 17, 2020

certificate holder was only allowed to operate in the legal name of the entity listed on the certificate. *See*, Dakota 001041-47. Dakota wrote to the FAA on April 6, 2018 to clarify its position, claiming that Dakota Territory Tours A.C.C. was a legal d/b/a of Solid Edge LLC. *See*, Dakota001041.² Despite repeated requests, Dakota has never produced the FAA's response to its April 5, 2018 letter. Given that Dakota misrepresented its production on at least three prior occasions, we now ask for your avowal that no such document exists. If the document exists, SOCAA demands that it be produced at long last.

Similarly, Dakota has repeatedly taken the position that the FAA approved Dakota's Part 135 operations and/or Dakota's and Solid Edge's joint operations using Solid Edge's Part 135 certificate. *See, e.g.* Eric Brunner's February 20, 2020 Declaration at ¶ 12: "Dakota continues to undergo and pass yearly inspections with its FAA Principal Operations Inspector, and to conduct Part 135 operations." The recently produced email exchange demonstrates that Eric Brunner did tell the FAA that the check ride request was made on Dakota's behalf or for joint operations with Solid Edge. Shattuck was never a pilot for Solid Edge. Dakota is not even mentioned in that email.

Given Dakota's inexcusable, repeated and intentional failures, we ask for the following.

1. Describe what was searched.

Your correspondence did not identify the computers or mail boxes that were searched. If we are to have any confidence in the most recent productions, we ask that you describe exactly what computers, devices, and/or email addresses were searched and what searches were performed. We know that Eric Brunner has several email accounts, and ask for confirmation that you searched any and all email accounts for both Eric and Ann Marie Brunner.

2. Expand the search to files on computers and to other email accounts.

The recently produced emails appear to have come from Ann-Marie Brunner's email account and one of Eric Brunner's email accounts. However, SOCAA's April 24, 2019 Requests for Production (answered by Dakota on June 28, 2019) sought more than emails. It sought "any and all communications or Documents related to the SOCAA May 2017 Part 135 Request for Proposals ("RFP), and Dakota's response thereto, including internal, non-privileged emails, notes, voicemails and records." "Documents" were defined to include both paper and electronic letters, correspondence, word processed documents, QuickBooks files or reports, text messages, etc." RFP #1 also sought "any and all Documents or Communications" with "any Federal Aviation Administration employee, agent, representative or attorney." Since those requests were not limited to emails, we ask that Dakota also search computers used by Ann-Marie, Eric or other employees of agents of Dakota, and locate and produce responsive documents.

² Claiming that a corporation is a d/b/a of an LLC or vice versa is not only contrary to Arizona law, it is prohibited by Solid Edge's operations. *See*, Dakota001184, the certificate holder may not "Use a 'doing business as' (DBA) name in any way that represents an entity that does not hold an air carrier certificate."

Mr. Daniel Mestez, Esq.
Williams Mestez
September 17, 2020

Other email accounts are at issue. A review of the documents you provided, and Dakota's extant disclosure and discovery obligations, at least the following addresses were used and should be searched:

For Ann-Marie Brunner
gohelisedona@outlook.com
gohelisedona@hotmail.com

For Eric Brunner
mad_duck@hotmail.com
eric@SedonaAirTours.com
infor@SedonaAirTours.com

For Lynn Brownd
lynn@sedonaairtours.com

The following mail boxes should also be searched for communications with the FAA:
elliotcluff@gmail.com (if available)
Elliot@SedonaAirTours.com
tyner65@gmail.com (or any Sedona Air Tours.com box for pilot Terry Tyner)

In addition to searching those email boxes, we ask that you search the recycle bin, deleted files, Acrobat, Word, or Excel, and QuickBooks on any computers used by Eric or Ann-Marie Brunner during 2017 and 2018. Because of the delay in Dakota's search for and production of records, we also ask that you identify what steps, if any, Dakota took to preserve documents at the time it filed its lawsuit in 2017.

3. Search Terms

We ask that the search include the following terms:

RFP or request for proposals
SAA, Sedona Airport, Airport Authority,
Faa.gov
Sterling

In addition, to the extent not captured above, we ask that you expand the search to locate documents that should have been produced on June, 28, 2019 in response to SOCAA's April 4 / 25, 2019 request for production #1-#6. Dakota did not make a good faith effort to respond. For example, request #5 seeks communications with the private investigator hired to interview Amanda Shankland. As discussed below, responsive documents now appear on your privilege log.

4. Modify Dakota's claims of privilege and produce the withheld pages.

SOCAA asks that Dakota produce CL000218-221, communications between Ann-Marie and Brian Sinnott. SOCAA disputes any claim of attorney client or work product privilege. Mr. Sinnott is not listed as licensed to practice law in Arizona on the State Bar website. Brian

Sinnott testified during the preliminary injunction hearing. He said he was retired and had worked as a paramedic and ambulance company owner. *See*, 08/18/2017 Transcript p. 123:1-2. Sinnot testified that he was not working “on behalf” of Dakota, but was just helping-out Eric, which is inconsistent with a claim of privilege on behalf of the entity. *Id.* p. 127:3-9. Further, if there had been any privilege, it was waived when Dakota opted to have Sinnot testify on its behalf.

SOCOA disputes that CL000274-275, 286-300 or any communications between Ann-Marie and private investigator Kenneth Engstrom can be protected by the work product privilege. When deposed, Eric Brunner testified that he personally hired Engstrom to talk to Amanda Shankland “about why she was not in aviation anymore” (See, 09/14/2018 Deposition p.225:3-21), and that his lawyer was not involved. *Id.* p. 225:22-3; 227:17-18. Eric Brunner denied that Engstrom was hired to assist in Dakota’s lawsuit (*Id.* p. 226:4-227:2); or that Engstrom produced a report or that they exchanged emails of “any kind.” *Id.* p.228:7 – 228:21. As noted above, Dakota failed to produce these communications with Engstrom in response to request for production #5. If Brad Weech or another attorney representing Dakota had hired Engstrom to approach Shankland, that would have been an ethical violation. Dakota was aware that Shankland was then represented by her own lawyer and protected by SOCAA’s control group privilege.

SOCOA asks that Dakota produce CL000643-646, email between Steve Shattuck and Eric Brunner. That communication cannot be protected by the attorney client privilege. Any privilege that might have existed was waived when Eric Brunner submitted his February 12, 2020 declaration claiming that at least some portion of Shattuck’s work on the RFP was not authorized by Dakota. *See*, 02/12/2020 Declaration at ¶¶4-11. If that waiver was not clear, on May 6, 2020 at 4:31 p.m. Dakota’s counsel Brad Weech confirmed in an email to the undersigned that the corporation was not asserting the attorney client privilege as to Shattuck. “We don’t believe Mr. Shattuck worked for Dakota very long. We do not believe he is a necessary witness. We are not claiming attorney client privilege, prior employee status, nor will we represent him in any fashion.” *See*, 05/06/2020 email from Weech to Campbell, Davis, Cullum, Murphy, Boyle, etc.

5. Provide the Verification for Dakota’s 7th Supplemental Disclosure.

It may have been an oversight, but our copy of the verification was not signed.

6. SOCAA Will Not Agree to Allow Dakota To Cure Its Discovery Failures. SOCAA Will Seek Instructions.

Dakota’s 7th Supplemental Disclosure indicates that Dakota will attempt to introduce the recently produced email at trial. SOCAA objects. At the May 21, 2019 hearing, Judge Napper instructed Dakota that it would not be permitted to use any such email not produced by June 25, 2019. SOCAA will also similarly seek to preclude Dakota from using any other subsequently produced documents. Discovery had closed. Rules 26.1 and 37(c)(1) are clear. There is no “good cause” that could excuse Dakota’s failures.

Rule 37 (b)(2) and (c) (1) gives the Court discretion to fashion appropriate orders in response to Dakota's failures as outlined above. SOCAA will also ask that the Court instruct the jury that Dakota failed to meet its disclosure and discovery obligations, and to comply with the Court's orders, and that it may consider such failures as evidence in SOCAA's abuse of process claim.

SOCAA will also ask that Dakota be precluded from offering any evidence or testimony explaining the "management fee," to the effect that the \$1,396,725.31 represents Dakota income from other operations, or from offering any evidence as to the allocation of income or expenses between the Sedona Airport and other locations (other than Mr. Evans's rebuttal opinion and evidence which is already in the record).

We understand that you are relatively new to this case and that Dakota's past failures were not on your watch. In any event, SOCAA is justifiably outraged by Dakota's complete disregard for the Arizona Rules of Civil Procedure, applicable Court orders in this case, and by the frequency and breadth of the lies. Dakota's conduct in this litigation has unreasonably expanded this litigation. It caused SOCAA to incur tens of thousands in unnecessary attorneys' fees. As to this letter alone, SOCAA spent considerable time reviewing the current production and comparing it to the prior requests, testimony and transcripts. SOCAA will not agree to re-open discovery in general, or even in relation to the issues raised in the emails or the FAA correspondence – other than demanding that Dakota rectify its failures as outlined in this letter, and/or as otherwise required by the Rules of Civil Procedure, or as required to avoid perjury at trial.

Dakota had years to explain the profit and loss statement in its RFP submission, the management fees, or to explain the revenue and expense numbers offered in support of its damages. Despite a court order, Dakota never provided the detail from which its profits from the Sedona Airport operation could be calculated. Dakota has very little evidence (if any) to support its damages or to verify the accuracy of its profit and loss statement. It should not be permitted to cure those intentional and gaping holes in its case now.

6. Absent Preclusion, Dakota Should Have to Pay.

If Dakota were to attempt to offer any explanation for the management fee, or introduce any of the late-produced documents, and/or if any further production warrants it, SOCAA would seek to re-open discovery for it alone, seek to recover the cost from Dakota, and insist upon reviewing all of Dakota's financials. SOCAA would seek a full version of Dakota's QuickBooks file as opposed to the "condensed version" previously produced, bank statements, including off-sets such as deposit tickets, cancelled checks, credit and debit memos, wire transfers etc., complete credit card statements, complete data files as produced by the on-line reservation service, as well as copies of invoices, receipts, work order, etc., for the purpose of understanding the business nature of Dakota's money disbursement transactions (relative to Sedona and other location operations) for the years 2014-2019.

Mr. Daniel Mestez, Esq.
Williams Mestez
September 17, 2020

Moreover, as to the email exchanges with Sterling, SOCAA's position is that the cost and burden of proving their legitimacy should fall on Dakota. SOCAA has been unable to retain a forensic computer analyst due to the cost involved. Before the Court could consider admitting them, SOCAA would ask that Dakota pay for the time it takes for SOCAA's analyst and Jefford Englander to jointly analyze the relevant email accounts, service provider caches, and meta data in order to attempt to determine whether any of the recently produced emails were altered. Although we doubt that Dakota will agree to pay, if it does not, at a minimum, SOCAA will seek that amount as sanctions. In the event we go down that road, it could be cheaper for Dakota to just pay for the analysis and eliminate the issue rather than to fight about it.

7. Request for Rule 7.1(h) Conference.

This letter sets forth the basic arguments the arguments that SOCAA will advance in its motion for sanctions and includes most of the evidence that would be offered. This is our attempt to avoid filing that motion. We ask that Dakota complete the production as outlined above by **October 5, 2020**, and agree to the suggested limitations and instructions.

If Dakota rejects this offer, this letter is our request for Rule 7.1 (h) conference. If you have suggestions that would eliminate the need for briefing or reduce the number of issues that Judge Napper has to decide, let's discuss them. **We are available to confer next week Friday, September the 25th or Monday the 28th.** If we cannot agree, we need sufficient time for the motion, response and reply to be fully briefed before our next status conference.

Note that SOCAA has not yet fully analyzed how it has been impacted by these violations, and cannot predict the impact of any future production. SOCAA is not waiving any right it has to seek further sanctions in the future prompted by further analysis or additional productions or testimony.

We look forward to working with you to obtain the production and to arrive at the most efficient resolution of these disputes.

Sincerely,
Koeller, Nebeker, Carlson & Haluck, LLP

/s/ Ellen B. Davis
Ellen B. Davis
Ellen.Davis@knchlaw.com

/s/ J. Daniel Campbell
J. Daniel Campbell
Dan.Campbell@knchlaw.com

Exhibit 19



COMMERCIAL TRIAL BOUTIQUE

BET THE COMPANY • AVIATION • CONTRACT DISPUTES

Daniel B. Mestaz
602-445-7722 (direct)

November 2, 2020

Sent via email

J. Daniel Campbell
Ellen B. Davis
Koeller, Ebeker, Carlson & Haluck, LLP
ellen.davis@knchlaw.com
Dan.campbell@knchlaw.com

Re: Dakota/SOCAA—eighth supplemental disclosure

Dear Daniel and Ellen:

Our paralegal, Jeff Elder, provided you with Dakota's eighth supplemental disclosure statement, a privilege log, and documents, including the FAA emails and the documents that, after further review, we agreed to de-designate as privileged. I had hoped to get this to you sooner, but ran into some obstacles. Thank you for your patience.

We gathered and produced the FAA emails by searching all email accounts for Eric and Ann-Marie Brunner, using the search term "faa.gov," for the period from 2012 through June 2019, when, according to your September 17 letter, Mr. Weech promised that he had provided you with Dakota's FAA communications. We will also search for RFP emails (using the same protocols and search terms that we used for the Brunners' accounts) and FAA emails in the following accounts: lynn@sedonaairtours.com; info@sedonaairtours.com. Thus far, we have not been able to access the other company email you mentioned, elliott@sedonaairtours.com, but my client is still trying. I will get you the rest of the FAA and RFP emails by November 13. Note that we do not have control over the two gmail accounts you mentioned.

We also respond to issues you raised in your September 17 and October 27 letters.

- You asked if the FAA responded to Dakota's April 5, 2018, letter. I understand that Dakota did not, in fact, receive a response. Certainly, no FAA emails were omitted from the email production.
- You asked about the Engstrom emails. We de-designated and produced those Engstrom emails and reports that, after further review, we agree are

6225 N 24th St., Suite 125 • Phoenix AZ 85016 • 602 256-9400
williamsmestaz.com

J. Daniel Campbell
Ellen B. Davis
November 2, 2020
Page 2

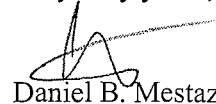
not privileged. We are still evaluating the balance of the other logged Engstrom emails for privilege and will let you know by November 13. Note that none of those documents relate to Amanda Shankland.

- We still intend to search Dakota's computers for the RFP related documents—*i.e.*, non-email documents—but will need until the end of the month for that.
- I did not agree to run particular search terms on other computer files. I said that I was open to using search terms that you suggest. But you would need to: (i) tell me what you want; (ii) tell me why you are entitled to it; and (iii) suggest what search terms to use. For example, I refused to search for documents responsive to several requests because Dakota served objections and no court order requires production. That is why I have been focusing on the RFP and FAA materials—because, after reviewing the requests, Dakota's responses, and my predecessor's representations to the court, I believe you are entitled to those materials.

Also, your October 27 letter misstates things a bit. First, I prefaced our October 2 meet and confer with a caveat—that everything I said was subject to client approval and reflected what I was inclined to do but was not an agreement to do anything. After speaking to my clients, of course, we are following through on what we discussed. Second, I did not file a motion for reconsideration “instead” of producing the FAA emails. I prepared and filed a motion in addition to, not in lieu of, that production. In fact, I do lots of things. I even have other cases that require care and attention. I did not work on those matters “instead” of producing the FAA emails.

Finally, we produced the RFP and FAA emails in disclosure statements, where we state that we may use those documents for trial. I realize that we are well past the disclosure cutoff. If we wanted to use those documents in our case in chief, then we would file a motion for relief from late disclosure under rules 26.1 and 37(c). But if SOCAA, for its case, tries to mislead the jury with evidence that the late disclosed materials contradict or disprove, I believe it would open the door to their use notwithstanding the late disclosure.

Very truly yours,



Daniel B. Mestaz

dmestaz@williamsmestaz.com

cc: Kiersten Murphy

Exhibit 20

1
2
3 **WILLIAMS|MESTAZ, LLP**

4 6225 NORTH 24TH STREET, SUITE 125
5 PHOENIX, ARIZONA 85016
6 TELEPHONE (602) 256-9400

7 Daryl M. Williams (004631)
8 dwilliams@williamsmestaz.com
9 Daniel B. Mestaz (024477)
10 dmestaz@williamsmestaz.com
11 Attorneys for plaintiff

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

13 IN AND FOR THE COUNTY OF YAVAPAI

14 Dakota Territory Tours, ACC,
15 Plaintiff,

16 vs.

17 Sedona-Oak Creek Airport Authority, Inc.,
18 Defendants.

19 } No. V-1300-CV-201780201

20 } **Plaintiff's Eighth Supplemental**
21 } **Disclosure Statement**

22 } (Assigned to the Honorable John Napper)

23 **VIII. TANGIBLE EVIDENCE AND RELEVANT DOCUMENTS**
24 **THAT MAY BE USED AT TRIAL**

25 Plaintiff is herewith producing copies of the following bates numbered documents:

26 CL000211-CL000214 (previously withheld as privileged);

27 CL000218-CL000221 (previously withheld as privileged);

28 CL000223 (previously withheld as privileged);

CL000224-CL000228 (previously withheld as privileged);

CL000253-CL000260 (previously withheld as privileged);

CL000378-CL000381 (previously withheld as privileged);

CL000643 (CL00643-CL00646 previously withheld as privileged; 5/30/17 emails at

CL00643 are being produced, with the balance redacted on same privilege grounds); and

CL000774-CL002187 (FAA communications).

1 The following documents have been redacted and designated as **CONFIDENTIAL-**
2 **ATTORNEYS EYES ONLY.**

3 CL000783-CL000787;
4 CL002052-CL002061; and
5 CL002070-CL002074.

6 No specific determination has yet been made as to which of the attached documents will be
7 used or if these are all of the documents that could be relevant to any of the issues in this case.
8 Documents designated and withheld as privileged are listed and identified on the privilege log
9 attached hereto as exhibit A. Plaintiff intends to use scanned images of documents at depositions
10 and at trial.

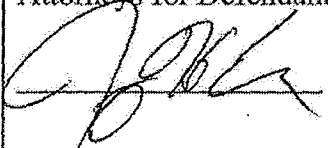
11 Dated this 2nd day of November, 2020.

12
13
14 
15 Daniel B. Mestaz
16 Williams|Mestaz, LLP
17 6225 North 24th Street, Suite 125
18 Phoenix, Arizona 85016
19 Attorneys for plaintiff

18 Emailed this 2nd day
19 of November, 2020, to;

20 J. Daniel Campbell
21 Ellen B. Davis
22 Koeller, Nebeker, Carlson & Haluck, LLP
23 One East Washington St., Suite 400
24 Phoenix, AZ 85004
25 dan.campbell@knchlaw.com
26 ellen.davis@knchlaw.com
27 Attorneys for Defendant

24 Kiersten Murphy
25 Henze Cook Murphy, PLLC
26 722 East Osborn Road, Suite 120
27 Phoenix, AZ 85018
28 kiersten@henzecoockmurphy.com
Attorneys for Defendant



Dakota Territory Tours v. Sedona-Oak Creek Airport Authority
Case Number: V-1300-CV-201780201
Exhibit A - PRIVILEGE LOG
Updated: November 2, 2020

Document ID	Description	Date Sent Date of Document (if different)	Author	Recipient(s)	Privilege Asserted
CL000172	Email re SOCAA RFP	05/03/2017	Steven Graff	Eric Brunner	Attorney Client Communication
CL000173- CL000175	Email re SOCAA RFP	05/03/2017	Bradley Weech	Steven Graff, Eric Brunner	Attorney Client Communication / Work Product
CL000176- CL000177	Email re SOCAA RFP	05/04/2017	Bradley Weech	Eric Brunner, Steven Graff, Emma Chalverus, Marshall Hunt	Attorney Client Communication / Work Product
CL000178- CL000180	Email and attachment re SOCAA RFP and audit	05/10/2017	Ann-Marie Brunner	Bradley Weech	Attorney Client Communication
CL000181- CL000183	Email and attachment re SOCAA RFP and audit	05/10/2017	Bradley Weech	Ann-Marie Brunner, Eric Brunner, Steven Graff, Yvonne Salatas	Attorney Client Communication / Work Product
CL000186	Email re SOCAA RFP	05/21/2017	Ann-Marie Brunner	Bradley Weech	Attorney Client Communication

PL004198

CL000232- CL000236	Email and attachments re RFP, prepared for Weech	05/25/2017	Eric Brunner	Ann-Marie Brunner	Attorney Client Communication / Work Product
CL000269- CL000270	Email re SOCAA RFP	05/25/2017	Ann-Marie Brunner	Kenneth Engstrom (consultant/ investigator)	Work Product
CL000274- CL000275	Email re SOCAA RFP	05/25/2017	Kenneth Engstrom (consultant/ investigator)	Ann-Marie Brunner	Work Product
CL000286- CL000300	Email and attachment re SOCAA RFP	05/30/2017	Kenneth Engstrom (consultant/ investigator)	Ann-Marie Brunner, Eric Brunner	Work Product
CL000321- CL000352	Email and attachments re SOCAA RFP	05/02/2017	Bradley Weech	Eric Brunner, Steven Graff, Marshall Hunt	Attorney Client Communication / Work Product
CL000353	Email re SOCAA RFP	05/03/2017	Steven Graff	Eric Brunner, Bradley Weech	Attorney Client Communication / Work Product
CL000362- CL000364	Email re SOCAA RFP	05/15/2017	Bradley Weech	Eric Brunner, Steven Graff	Attorney Client Communication
CL000444- CL000494	Email and attachments re SOCAA RFP	05/29/2017	Eric Brunner	Bradley Weech, Aviation Counsel	Attorney Client Communication / Work Product
CL000495- CL000503	Email and attachments re SOCAA RFP	05/29/2017	Eric Brunner	Bradley Weech, Aviation Counsel	Attorney Client Communication / Work Product

CL000507- CL000557	Email and attachments re SOCAA RFP	05/30/2017	Bradley Weech	Eric Brunner, Aviation Counsel	Attorney Client Communication
CL000558- CL000610	Email and attachments re SOCAA RFP	05/30/2017	Bradley Weech	Eric Brunner, Aviation Counsel	Attorney Client Communication
CL000611	Email re SOCAA RFP	05/30/2017	Eric Brunner	Bradley Weech	Attorney Client Communication / Work Product
CL000612- CL000626	Email and attachments re SOCAA RFP	05/30/2017	Eric Brunner	Bradley Weech, Aviation Counsel	Attorney Client Communication / Work Product
CL000627- CL000641	Email and attachments re SOCAA RFP	05/30/2017	Eric Brunner	Bradley Weech, Aviation Counsel	Attorney Client Communication / Work Product
CL000642	Email re SOCAA RFP	05/30/2017	Bradley Weech	Eric Brunner	Attorney Client Communication / Work Product
CL000643- CL000646	Redacted email re SOCAA RFP	05/30/2017	Bradley Weech	Eric Brunner	Attorney Client Communication
CL000737	Email re SOCAA RFP	05/31/2017	Eric Brunner	Bradley Weech, Aviation Counsel	Attorney Client Communication
CL000766	Email re SOCAA RFP	05/31/2017	Steven Graff	Eric Brunner, Bradley Weech	Attorney Client Communication

CL000767	Email re SOCAA RFP	05/31/2017	Eric Brunner	Bradley Weech	Attorney Client Communication
CL000783- CL000787	Email re drug test results (redacted to remove personal identification information)	08/23/20183	Ann-Marie Brunner	FAA	Confidential-Attorneys Eyes Only
CL000790- CL000804	Email re Part 16 Draft Complaint	11/25/2017	Bradley Weech	Eric Walberg, Eric Brunner, Ann Marie Brunner, Cheryl Riggle, Yvonne Salatas	Attorney Client Communication
CL000849- CL000856	Redacted email forwarding email from FAA	10/02/2015	Daryl Williams	Larry Brunner	Attorney Client Communication
CL001931- CL001934	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication
CL001935- CL001946	Redacted email forwarding email to FAA	01/24/2019	Eric Brunner	Jimne Pursell	Attorney Client Communication
CL001947	Redacted email forwarding email to FAA	01/24/2019	Eric Brunner	Jimne Pursell	Attorney Client Communication
CL001948	Redacted email forwarding email	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication

	from FAA					
CL001949- CL001973	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL001974	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL001975- CL002005	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL002006- CL002007	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL002008	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL002009	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL002010	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	
CL002011	Redacted email forwarding email to FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication	

CL002012	Redacted email forwarding email from FAA	01/24/2019	Eric Brunner	Jimmie Pursell	Attorney Client Communication
CL002052- CL002061	Email re drug test results (redacted to remove personal identification information)	09/06/2018	Eric Brunner	Shandra Perry (FAA)	Confidential-Attorneys Eyes Only
CL002070- CL002074	Email re drug test results (redacted to remove personal identification information)	08/23/2018	Ann-Marie Brunner	FAA	Confidential-Attorneys Eyes Only
CL002075- CL002076	Redacted email forwarding email from FAA	08/20/2018	Bradley Weech	Eric Brunner, Marshall Hunt, Yvonne Salatas, Todd Lang	Attorney Client Communication
CL002131- CL002148	Email re correspondence with SDL FLT Standards	06/08/2018	Eric Walberg	Eric Brunner, Bradley Weech, Marshall Hunt	Attorney Client Communication

Exhibit 21

To: World Wide Helicopter Service Inc. (mad_duck@hotmail.com)[mad_duck@hotmail.com]; Gohelisedona@outlook.com[Gohelisedona@outlook.com]; C. Harshman (christopher@ds4law.com)[christopher@ds4law.com]
Cc: Marshall Hunt[mhunt@davismiles.com]; Ashley J. Barnard[Abarnard@davismiles.com]; Yvonne Salatas[ysalatas@davismiles.com]
From: Bradley D. Weech
Sent: Fri 5/31/2019 5:29:41 PM
Subject: Report On 5/21/19 Hearing and Transcript and Other Matters
052119-SM-CV pdf.pdf

Everyone:

Eric/Ann-Marie - Attached is an FYI copy of the transcript of the 5/21/19 hearing. The Court has still not issued a Minute Entry with orders from this hearing. Also, although I called and asked for clarification regarding whether Judge Napper wants me to provide a revised Word version or that he is going to include it in his Minute Entry. I'll call again and see what they say.

In any event, here is a summary. There were several items set for hearing, some that were not, but bore on the issues in the other filings. **Simply put, they all had to do with SOCAA still trying to get Dakota's business information, especially for their expert (which we've now filed to have excluded.**

Judge Napper mostly just ignored the filings and focused only on what he thought was relevant and if so, that SOCAA should receive it. He turned them down on the super majority:

First, ; SOCAA Lost on Most All of What it Was Demanding, AND we were able to keep Dakota's information from SOCAA and Dakota's competitors – this was another major victory.

Here is what Dakota/Solid Edge are required to do:

Redacted

3. Produce by 6/25/19:

- a. Any internal communications that discuss (1) the RFP Process and (2) the 135 operation agreement between Solid Edge and Dakota (excludes attorney-client communications)

- i. If none exist, then Dakota will NOT be allowed to use any later on, and SOCAA will, if they are discovered to exist.
- ii. Eric/Ann-Marie: All you need to do is run a word search in your email program for terms that might bring up such messages; You can scroll through them as well. We will need to provide the words used to search.

Now, a summary of the 5/21/19 hearing:

Redacted

Redacted

i. What they did not get:

Redacted

v. Any more FAA correspondence, assuming all related to Part 135 operations has been produced, which I avowed to again, based on Eric's information to me.

Redacted

Redacted

Redacted

Bradley D. Weech



bweech@davismiles.com

<http://www.davismiles.com>



40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-4066
Cell: (480) 635-2828
Toll Free: (844) 366-4529

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Please consider the environment before printing this email.

Exhibit 22

To: Bradley D. Weech[bweech@davismiles.com]
From: Ann-Marie Klein-Brunner
Sent: Tue 6/18/2019 9:40:28 PM
Subject: Fwd: Dakota's Discovery

Ashley/Brad:

Please read the email below and just let me know specifically do not refer back to old emails from April or May but based on last weeks hearing, exactly everything that you need and exactly which dates so that I can see if Logan is available to comply with week end and 7/11/19 demands.

Thanks!

Ann-Marie

Begin forwarded message:

From: Ashley J. Barnard <abarnard@davismiles.com>
Date: Jun 18, 2019 at 4:59 PM
To: Ann-Marie Klein-Brunner <gohelisedona@outlook.com>
Subject: RE: Dakota's Discovery

I get you!!! I was not given much instruction, but then Brad sent an email clarifying. I will forward it to you.

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Tuesday, June 18, 2019 4:58 PM
To: Ashley J. Barnard
Subject: RE: Dakota's Discovery

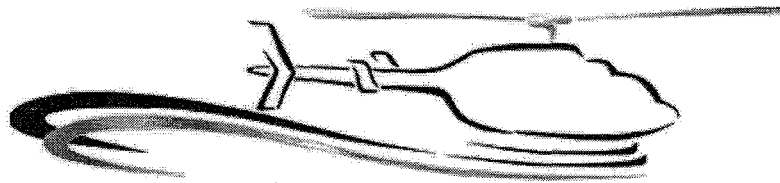
**** External Sender ****

Ashley,

To be very blunt, I am at a loss as to precisely what we need to produce by the END of this week. It was my understanding that the hearing last week was about discovery disputes and we would have until 7/11/19 to give this (I still need exact clarification of what we HAVE to hand over and what we CAN and SHOULD redact) to opposing counsel.

The constant chaos and intentional disregard of the courts rulings by Ellen Davis makes it challenging for me to know where to begin. Please advise sooner than later and I hope if it requires our bookkeeper, that she is available on such short notice. Thanks!

Ann-Marie Brunner



SEDONA AIR TOURS

(928) 300-2336 Direct Cell

From: Ashley J. Barnard <Abarnard@davismiles.com>
Sent: Tuesday, June 18, 2019 2:38:54 PM
To: World Wide Helicopter Service Inc.; Ann-Marie Klein-Brunner
Cc: Yvonne Salatas; Marshall Hunt; Bradley D. Weech
Subject: Dakota's Discovery

Hi, Eric and Ann Marie! I am following up on these discovery requests (Non-Uniform Interrogatories and Request for Production) that were emailed to you on May 20th. Our deadline slipped by but we have until the end of the week to get our responses in. We're doing what we can with what we have; if you can answer any of the interrogatories or provide any of the documentation requested on the Request for Production, that would be awesome. Again, our deadline is the end of this week. Thank you!!

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-0976
Fax: (480) 733-3748

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DM000038

Exhibit 23

To: Ashley J. Barnard[abarnard@davismiles.com]
From: Ann-Marie Klein-Brunner
Sent: Tue 6/25/2019 10:29:20 AM
Subject: Re: Dakota's Discovery

Redacted

Trying to decipher precisely which email communications we need to hand over. If it only pertains to the RFP there really is nothing. Redacted

Redacted

Is there a streamlined way to put all of the emails into one file? I couldn't seem to figure it out.

On Jun 25, 2019 at 10:23 AM, <Ashley J. Barnard> wrote:

Hello, my dear. We're still working on the discovery over here, so I'm not being pushy but just checking in to see how it's going on your end.

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

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Tempe, AZ 85281
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From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Tuesday, June 18, 2019 4:58 PM
To: Ashley J. Barnard
Subject: RE: Dakota's Discovery

** External Sender **

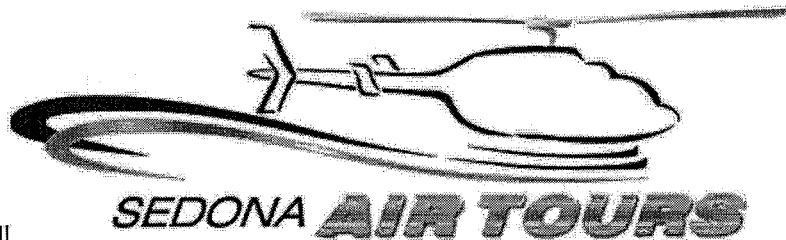
Ashley,

DM000099

To be very blunt, I am at a loss as to precisely what we need to produce by the END of this week. It was my understanding that the hearing last week was about discovery disputes and we would have until 7/11/19 to give this (I still need exact clarification of what we HAVE to hand over and what we CAN and SHOULD redact) to opposing counsel.

The constant chaos and intentional disregard of the courts rulings by Ellen Davis makes it challenging for me to know where to begin. Please advise sooner than later and I hope if it requires our bookkeeper, that she is available on such short notice. Thanks!

Ann-Marie Brunner



(928) 300-2336 Direct Cell

From: Ashley J. Barnard <Abarnard@davismiles.com>
Sent: Tuesday, June 18, 2019 2:38:54 PM
To: World Wide Helicopter Service Inc.; Ann-Marie Klein-Brunner
Cc: Yvonne Salatas; Marshall Hunt; Bradley D. Weech
Subject: Dakota's Discovery

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Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

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Exhibit 24

To: World Wide Helicopter Service Inc. (mad_duck@hotmail.com)[mad_duck@hotmail.com]; Gohelisedona@outlook.com[Gohelisedona@outlook.com]
Cc: Marshall Hunt[mhunt@davismiles.com]; Ashley J. Barnard[Abarnard@davismiles.com]
From: Bradley D. Weech
Sent: Thur 6/27/2019 12:50:46 PM
Subject: FW: Dakota v SOCAA / Discovery disputes
Report On 5/21/19 Hearing and Transcript and Other Matters

Eric/Anne-Marie:

Ellen Davis just sent the email at the bottom of this email. We did not send her anything because we did not receive anything from you and we do not believe any exist. However, so that I can respond to her, please confirm that you searched and that there are no Emails, Memos or Letters, etc. BETWEEN DAKOTA and SOLID EDGE regarding the following two items (and, yes, it is asinine to expect that you sent yourselves, emails, memos or letters regarding:

1. the agreement between Solid Edge and Dakota as to the C-135 operations; and
2. as to the RFP process.

The detail is in my 5/31/19 email to your (attached) where I listed this item as follows – and see the Court's actual orders below as well (captured here for use with Ms. Davis as well):

3. Produce by 6/25/19:

a. Any internal communications that discuss (1) the RFP Process and (2) the 135 operation agreement between Solid Edge and Dakota (excludes attorney-client communications)

i. If none exist, then Dakota will NOT be allowed to use any later on, and SOCAA will, if they are discovered to exist.

ii. **Eric/Ann-Marie: All you need to do is run a word search in your email program for terms that might bring up such messages; You can scroll through them as well. We will need to provide the words used to search.**

Judge Napper's Actual Order: Also, here is what Judge Napper actually said (and I'm pulling these out here for my email to go back to Ms. Davis). He did not include this in his formal order, but, it still controls:

THE COURT: I think their -- hang on. I think their internal e-mails related to the RFP submission would certainly be relevant, but when you say you want e-mails related to their operations, that's every e-mail that they've ever generated.

Transcript: 45:24 to 46:2

THE COURT: I agree with that. So when you say internal e-mail related to the RFP, I agree. They should go through their e-mails and look through that and anything they have related to the RFP process should be disclosed.

Transcript: 46:8-12

THE COURT: Okay. So Mr. Weech, seems to me that your client needs to go through the e-mail and find

e-mails related to the RFP process and related to the agreement related to the 135 operation between Solid Edge and Dakota. Do you have any disagreement with that?
MR. WEECH: None.

Transcript: 47:4-9

THE COURT: I think 30 days -- I mean, you can just simply type in search terms and should be able to pull it out pretty quickly.

MR. WEECH: Possibly, but Your Honor, it may require hiring someone to come in and do that. I'm not

sure -- I would doubt that Dakota's personnel have the ability to do that, but they may. By putting in a

search term and just in accumulated e-mails?

THE COURT: What I'm going to do is I'll give you 30 days from today's date to search the e-mails and disclose the e-mails that are related to [1] the agreement between Solid Edge and Dakota as to the C-135 operations and [2] as to the RFP process. So let me calculate 30 days from today's date would be June 25th.

Transcript: 47:17-19 (Emphasis added.)

MS. DAVIS: Would that mean memos as well as e-mails? So for instance, if there was a memo or a

letter, would your order encompass that?

THE COURT: Communications between Dakota and Solid Edge on those two topics will be due to be disclosed by June 25th. If nothing's disclosed by June 25th, the assumption will be that they do not exist, and

anything disclosed after the 25th will be precluded unless SOCAA wants to use the information.

Transcript: 48:20 to 49:3 (Emphasis added.)

Part 135 Agreement: I've understood from previous discussions with you that there is no formal, written agreement "related to the C-135 operations" between Solid Edge and Dakota." We've represented to the Court before that there is no written agreement between the two, and Judge Napper did not order you to produce something that doesn't exist.

Emails, Memos, Letters re Two Items: And, I doubt there are any emails, memos or letters where you sent yourselves emails, memos or letters on behalf of Solid Edge on the one hand and Dakota on the other related to:

1. the agreement between Solid Edge and Dakota as to the C-135 operations; and
2. as to the RFP process.

Please confirm that you searched and that there are no internal emails, memos or letters, etc. that fit these two limited items and I'll email Ms. Davis back, correct her on her claim that the court ordered the disclosure of any written agreement (but that, still, as previously stated, none exists), and I'll tell her that there are no emails, memos or letters between the two companies related to the two items noted above. I don't think we'll give the words you used to search -- the Court didn't actually order that.

Thanks,
Brad

Bradley D. Weech



bweech@davismiles.com

<http://www.davismiles.com>

 **Davis Miles**
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Please consider the environment before printing this email.

From: Ellen Davis [<mailto:Ellen.Davis@occlaw.com>]
Sent: Thursday, June 27, 2019 11:19 AM
To: Bradley D. Weech; Marshall Hunt; Yvonne Salatas
Cc: Dan Campbell; Natalie McKenney; 'Tony S. Cullum'; 'Kiersten Murphy'; 'Rick Boyle'; Kelly Jerioski
Subject: Dakota v SOCAA / Discovery disputes

**** External Sender ****

Brad, Marshall,

This email is to inquire as to the status of Dakota's production that was due on Tuesday, June 25th. Judge Napper ordered Dakota to disclose any written agreement between Solid Edge and Dakota re Part 135 operations, as well as any emails related to the agreement between Solid Edge and Dakota or the RFP process.

Was that put in the mail? We have not yet received it.



ELLEN B. DAVIS | Attorney
O'Connor & Campbell, P.C.
7955 South Priest Drive | Tempe, Arizona 85284
P: 602.241.7007 | F: 602.241.7039
Home Office: 480.283.8315 Cell: 602.419.9640
[vCard](#) | [Email](#) | [Bio](#) | [Website](#)

DM000136

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Exhibit 25

To: Bradley D. Weech[bweech@davismiles.com]
From: World Wide Helicopter Service Inc.
Sent: Thur 6/27/2019 1:47:42 PM
Subject: Re: Dakota v SOCAA / Discovery disputes
image001.png
54cbe3.png

Brad,

I searched my email for any correspondence between Solid Edge and Dakota ... I searched using words such as " RFP " ... "SolidEdge RFP" ... " Dakota RFP " ... " RFP Sedona" Nothing came up... We did not email Between Dakota & Solid Edge...

Eric

Sent from my iPhone

On Jun 27, 2019, at 12:52 PM, Bradley D. Weech <bweech@davismiles.com> wrote:

Eric/Anne-Marie:

Ellen Davis just sent the email at the bottom of this email. We did not send her anything because we did not receive anything from you and we do not believe any exist. However, so that I can respond to her, please confirm that you searched and that there are no Emails, Memos or Letters, etc. BETWEEN DAKOTA and SOLID EDGE regarding the following two items (and, yes, it is asinine to expect that you sent yourselves, emails, memos or letters regarding:

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1. the agreement between Solid Edge and Dakota as to the C-135 operations; and
2. as to the RFP process?

Please confirm that you searched and that there are no internal emails, memos or letters, etc. that fit these two limited items and I'll email Ms. Davis back, correct her on her claim that the court ordered the disclosure of any written agreement (but that, still, as previously stated, none exists), and I'll tell her that there are no emails, memos or letters between the two companies related to the two items noted above. I don't think we'll give the words you used to search – the Court didn't actually order that.

Thanks,
Brad

Bradley D. Weech



bweech@davismiles.com

<http://www.davismiles.com>

<54cbe3.png>

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-4066
Cell: (480) 635-2828
Toll Free: (844) 366-4529

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Please consider the environment before printing this email.

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Cc: Dan Campbell; Natalie McKenney; 'Tony S. Cullum'; 'Kiersten Murphy'; 'Rick Boyle'; Kelly Jerioski
Subject: Dakota v SOCAA / Discovery disputes

**** External Sender ****

DM000456

Brad, Marshall,

This email is to inquire as to the status of Dakota's production that was due on Tuesday, June 25th. Judge Napper ordered Dakota to disclose any written agreement between Solid Edge and Dakota re Part 135 operations, as well as any emails related to the agreement between Solid Edge and Dakota or the RFP process.

Was that put in the mail? We have not yet received it.

<image001.png>

ELLEN B. DAVIS | Attorney
O'Connor & Campbell, P.C.
7955 South Priest Drive | Tempe, Arizona 85284
P: 602.241.7007 | F: 602.241.7039
Home Office: 480.283.8315 Cell: 602.419.9640
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<mime-attachment>

DM000457

Exhibit 26

To: Ashley J. Barnard[Abarnard@davismiles.com]
From: Ann-Marie Klein-Brunner
Sent: Fri 6/28/2019 2:46:11 PM
Subject: RE: Emails

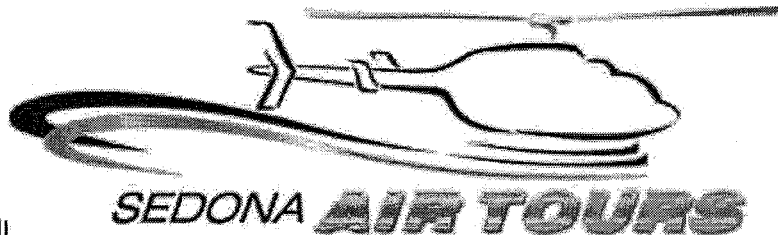
Ashley,

After fully reading Brad's email yesterday, THERE ARE NO letters, emails or written communication between Solid Edge Aviation and Dakota in reference to the 135 Certificate and the RFP process. [Redacted]

[Redacted]

[Redacted]

Ann-Marie Brunner



(928) 300-2336 Direct Cell

From: Ashley J. Barnard <Abarnard@davismiles.com>
Sent: Friday, June 28, 2019 10:59:06 AM
To: Ann-Marie Klein-Brunner
Subject: RE: Emails

Oh, my gosh – I am so sorry you have been sick!!! I hope you get better. I passed on your question regarding OP and the discovery deadlines; I'll let you know. Thanks for meeting with Eric today in spite of your illness!

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, June 28, 2019 10:56 AM
To: Ashley J. Barnard
Subject: Re: Emails

** External Sender **

I started getting sick yesterday and was up all night- still not well fighting going to urgent care. I will be meeting Eric in Sedona at 2 PM with IT to try to capture all internal emails in regards to the RFP [Redacted]

[Redacted] Then get it to you this afternoon. [Redacted]

[Redacted]

[Redacted]

Ann-Marie

On Jun 28, 2019 at 10:02 AM, <[Ashley J. Barnard](mailto:Ashley.J.Barnard)> wrote:

Hi, Ann-Mariel Just following up on the emails that we need for the request for production. I know it's a lot, but we need to get out what we can today. Let me know how it's going over there, and if you have some collected that you can send over.

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

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Exhibit 27

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
From: Ashley J. Barnard
Sent: Fri 6/28/2019 3:04:36 PM
Subject: RE: Emails

Thanks, lady!! Marshall and Brad are meeting about what they need right now – hopefully your email interrupted their email when I forwarded it so they can discuss that too.

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, June 28, 2019 2:46 PM
To: Ashley J. Barnard
Subject: RE: Emails

**** External Sender ****

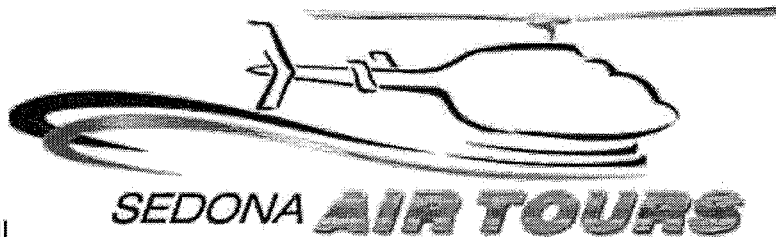
Ashley,

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Redacted

Redacted

Ann-Marie Brunner



(928) 300-2336 Direct Cell

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[Redacted]

[Redacted]

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To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
From: Ashley J. Barnard
Sent: Fri 6/28/2019 3:29:20 PM
Subject: RE: Emails

Okay – here is the word back from them:

Everything from the RFP.

I will set up a call for you if you want.

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, June 28, 2019 2:46 PM
To: Ashley J. Barnard
Subject: RE: Emails

** External Sender **

Ashley,

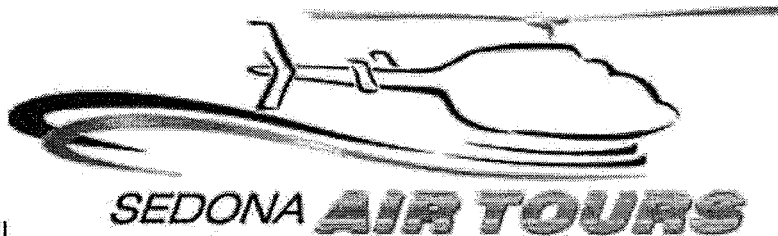
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Redacted

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Tel: (480) 344-0976
Fax: (480) 733-3748

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Please consider the environment before printing this email.

DM000228

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
From: Ashley J. Barnard
Sent: Fri 6/28/2019 4:29:57 PM
Subject: RE: Emails

Hi! Leaving you a voicemail right now. Go ahead and send what you have so far, [Redacted]
[Redacted] Sorry for rushing you!!

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, June 28, 2019 2:46 PM
To: Ashley J. Barnard
Subject: RE: Emails

**** External Sender ****

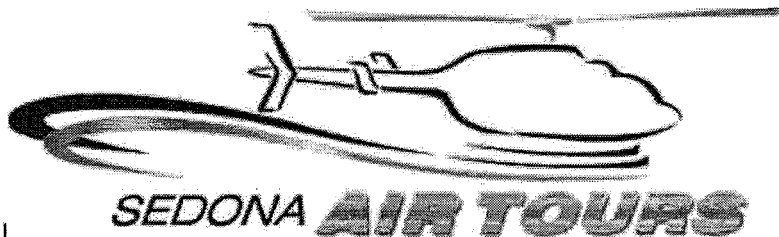
Ashley,

After fully reading Brad's email yesterday, THERE ARE NO letters, emails or written communication between Solid Edge Aviation and Dakota in reference to the 135 Certificate and the RFP process. [Redacted]

[Redacted]

[Redacted]

Ann-Marie Brunner



(928) 300-2336 Direct Cell

From: Ashley J. Barnard <Abarnard@davismiles.com>
Sent: Friday, June 28, 2019 10:59:06 AM
To: Ann-Marie Klein-Brunner
Subject: RE: Emails

Oh, my gosh – I am so sorry you have been sick!!! I hope you get better. I passed on your question regarding OP and the discovery deadlines; I'll let you know. Thanks for meeting with Eric today in spite of your illness!

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, June 28, 2019 10:56 AM
To: Ashley J. Barnard
Subject: Re: Emails

**** External Sender ****

I started getting sick yesterday and was up all night- still not well fighting going to urgent care. I will be meeting Eric in Sedona at 2 PM with IT to try to capture all internal emails in regards to the RFP [Redacted]
[Redacted] Then get it to you this afternoon. [Redacted]

[Redacted]

[Redacted]

Ann-Marie

On Jun 28, 2019 at 10:02 AM, <Ashley J. Barnard> wrote:

Hi, Ann-Marie! Just following up on the emails that we need for the request for production. I know it's a lot, but we need to get out what we can today. Let me know how it's going over there, and if you have some collected that you can send over.

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-0976
Fax: (480) 733-3748

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Please consider the environment before printing this email.

Exhibit 28

To: Ann-Marie Klein-Brunner[gohelisedona@outlook.com]; World Wide Helicopter Service Inc. (mad_duck@hotmail.com)[mad_duck@hotmail.com]
Cc: Marshall Hunt[mhunt@davismiles.com]; Yvonne Salatas[ysalatas@davismiles.com]; Bradley D. Weech[bweech@davismiles.com]
From: Ashley J. Barnard
Sent: Fri 6/28/2019 6:12:01 PM
Subject: Discovery responses
[Dakota's Response to First Request for Production.pdf](#)
[Dakota's Response to Non-Uniform Interrogatories.pdf](#)
[Dakota's Response to Second Request for Production.pdf](#)

Hi, guys. Thanks so much for scrambling on this. I know you sent some emails that are not included here, but we will supplement the ones we did not object to, and hold onto the ones we *did* object to for now in case we're court-ordered later to produce them. Have a good and relaxing weekend!!

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-0976
Fax: (480) 733-3748

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Please consider the environment before printing this email.

Exhibit 29

 **Davis Miles**

McGuire Gardner

40 E. Rio Salado Pkwy., Ste. 425

Tempe, AZ 85281

Telephone: (480) 733-6800

Fax: (480) 733-3748

efile.dockets@davismiles.com

Bradley D. Weech, SBN: 011135

Marshall R. Hunt, SBN: 031060

Attorneys for Plaintiff

STATE OF ARIZONA

YAVAPAI COUNTY SUPERIOR COURT

Dakota Territory Tours, ACC

Plaintiff,

vs.

Sedona-Oak Creek Airport Authority,
Inc., an Arizona non-profit corporation;
Amanda Shankland and John Doe
Shankland, husband and wife,

Defendants.

CASE NO. V1300CV201780201

**RESPONSE TO REQUESTS FOR
PRODUCTION**

Assigned to: Hon. John Napper
Presiding Judge: Hon. Robert Mackey

Plaintiff, Dakota Territory Tours, ACC ("Dakota") submits the following as its Response to Defendant Sedona-Oak Creek Airport Authority, Inc.'s ("SOCAA") Requests for Production.

General Objection: Dakota objects to SOCAA's prefatory definitions and instructions as excessive and unnecessary. Dakota further objects to the definitions and instructions to the extent they contradict or exceed the requirements of Ariz. R. Civ. P. 34. Dakota further objects to the interrogatories to the extent they exceed, when including all subparts, 10 requests as permitted by the Rules. Dakota's responses below are a good faith effort to respond to the requests to the extent they are not objectionable and should not be construed as a waiver of these objections.

1 **REQUEST #1**

2 Any and all Communications, Data, Documents, Electronic Records or
3 Media identified in, referred to or used to draft Your Answers to the Non-
4 Uniform Interrogatories served simultaneously herewith.

5 **Response:**

6 **See responses to Non-Uniform Interrogatories.**

7
8 **REQUEST #2**

9 A copy of the manual required by 14 C.F.R part 135.21 that sets forth the policies and
10 procedures applicable to the flight, ground and maintenance personnel used in
11 conducting Dakota's operations at the Sedona Airport.

12 **Response:**

13 **Dakota objects to this interrogatory as the specifics of Dakota's compliance with 14**
14 **C.F.R. part 135, including the requested manual, are not relevant to any party's claim**
15 **or defense; this request has no relevance to Dakota's claims relating to the parties'**
16 **Settlement Agreement and the RFP, nor does the requested manual relate to**
17 **SOCAA's counterclaims regarding Dakota's overall status as a Part 135 operator.**

18 **This information is further irrelevant as the FAA has already determined SOCAA's**
19 **complaints with regard to Dakota lack merit. See OCHOA SDT 63-66.** If they were
20 relevant, any documents responsive to this request would be confidential under the
21 parties' stipulated protective order.

22
23 **REQUEST #3**

24 A copy of the records maintained by Dakota to comply with 14 C.F.R. part 135.63 from
25 January 2012 to present, including but not limited to the:

- 26 a. The certificate holders operations specifications; and
27

- 1 b. a current list of the aircraft available for use in operations and the
2 operations for which each is equipped; and
3 c. the information regarding the pilots required by 135.63(a)(4).

4 **Response:**

5 Dakota objects to this interrogatory as the specifics of Dakota's aircraft and pilots are
6 not relevant to any party's claim or defense; this request has no relevance to Dakota's
7 claims relating to the parties' Settlement Agreement and the RFP, nor do specifics
8 flight destinations and pilot names relate to SOCAA's counterclaims regarding
9 Dakota's overall status as a Part 135 operator. Dakota further objects as this request
10 is disproportionate to the needs of this case; the information requested is of little to
11 no importance in resolving the issues, and the burden of the request far outweighs
12 its likely benefit. This information is further irrelevant as the FAA has already
13 determined SOCAA's complaints with regard to Dakota lack merit. See OCHOA
14 SDT 63-66. Dakota further objects as this request is overbroad and overly
15 burdensome; there is no basis to seek documents back to 2012. If they were relevant,
16 any documents responsive to this request would be confidential under the parties'
17 stipulated protective order.

18
19 **REQUEST#4**

20 A copy of the records showing compliance by Dakota with 14 C.F.R. part 135 drug
21 testing, and pilot competence, testing, and training from January 2012 to present,
22 including but not limited to

- 23 a. Compliance with part 135.63,
24 b. Compliance with part 135.267;
25 c. Compliance with part 135.293; and
26 d. Compliance with part 135.297.

1 Response:

2 Dakota objects to this interrogatory as the specifics of Dakota's pilot drug testing
3 and training are not relevant to any party's claim or defense; this request has no
4 relevance to Dakota's claims relating to the parties' Settlement Agreement and the
5 RFP, nor do the requested documents relate to SOCAA's counterclaims regarding
6 Dakota's overall status as a Part 135 operator and/or its ability to perform Part 135
7 operations under a relevant part 135 certificate. Dakota further objects as this request
8 is disproportionate to the needs of this case; the information requested is of little to
9 no importance in resolving the issues, and the burden of the request far outweighs
10 its likely benefit. This information is further irrelevant as the FAA has already
11 determined SOCAA's complaints with regard to Dakota lack merit. See OCHOA
12 SDT 63-66; SOCAA has not claimed that this determination is wrong, nor made any
13 relevant allegations to that effect in its counterclaims or proposed amended answer.
14 Dakota further objects as this request is overbroad and overly burdensome; there is
15 no basis to seek documents back to 2012. If they were relevant, any documents
16 responsive to this request would be confidential under the parties' stipulated
17 protective order.

18
19 **REQUEST#5**

20 A copy of the records showing compliance with 14 C.R.F. part 135 for each multi-
21 engine aircraft that Dakota or Solid Edge caused to take off from the Sedona Airport
22 from 2012 to present, including but not limited to aircraft flight time meter readings,
23 aircraft logs, operations, maintenance and inspection logs, and any related
24 documents generated by or given to the FAA.

25 Response:

26 Dakota objects to this interrogatory as the specifics of Dakota's flight operations are
27 not relevant to any party's claim or defense; this request has no relevance to Dakota's

1 claims relating to the parties' Settlement Agreement and the RFP, nor do specifics
2 flight destinations and pilot names relate to SOCAA's counterclaims regarding
3 Dakota's overall status as a Part 135 operator. Dakota further objects as this request
4 is disproportionate to the needs of this case; the information requested is of little to
5 no importance in resolving the issues, and the burden of the request far outweighs
6 its likely benefit. This information is further irrelevant as the FAA has already
7 determined SOCAA's complaints with regard to Dakota lack merit. *See* OCHOA
8 SDT 63-66. Dakota further objects as this request is overbroad and overly
9 burdensome; there is no basis to seek documents back to 2012. If they were relevant,
10 any documents responsive to this request would be confidential under the parties'
11 stipulated protective order.

12 REQUEST#6

13 Any correspondence, reports, communications, or documents exchanged between the
14 FAA and Dakota, Solid Edge, or any person or entity representing Dakota or Solid
15 Edge or any associated trade name or dba, between January 2012 and the present.

16 **Response:**

17 Dakota objects to this interrogatory as the vast majority of Dakota/Solid Edge's
18 communications with the FAA are not relevant to any party's claim or defense; these
19 communications are not relevant to Dakota's claims relating to the parties'
20 Settlement Agreement and the RFP, nor do the vast majority of the communications
21 relate to SOCAA's counterclaims regarding Dakota's overall status as a Part 135
22 operator. Dakota further objects as this request is disproportionate to the needs of
23 this case; the information requested is of little to no importance in resolving the
24 issues, and the burden of the request far outweighs its likely benefit. Dakota further
25 objects as this request is overbroad and overly burdensome; there is no basis to seek
26 documents back to 2012.

27 Without waiving these objections, please see DAKOTA 001080-001122

1
2 **REQUEST#7**

3 Complete copies of all insurance policies (including declaration pages, provisions,
4 endorsements, notices, addendum, amendments, deletions, and exclusions) of any type
5 that name SOCAA or Yavapai County as an additional insured purchased by or on
6 behalf of either Dakota or Solid Edge for the time period between January 2012 and the
7 present.

8 **Response:**

9 Dakota objects to this interrogatory as the requested insurance policies are not
10 relevant to any party's claim or defense; this request has no relevance to Dakota's
11 claims relating to the parties' Settlement Agreement and the RFP, nor do the
12 requested insurance policies relate to SOCAA's counterclaims regarding Dakota's
13 overall status as a Part 135 operator; there is no allegation, for instance, that Dakota
14 breached the requirement in its lease to hold insurance. Dakota further objects as
15 this request is overbroad and overly burdensome; there is no basis to seek
16 documents back to 2012. If they were relevant, any documents responsive to this
17 request would be confidential under the parties' stipulated protective order.

18
19 RESPECTFULLY SUBMITTED June 11, 2017.

20 DAVIS MILES MCGUIRE GARDNER, PLLC

21 /s/ Bradley D. Weech

22 Bradley D. Weech

23 Marshall R. Hunt

24 *Attorneys for Plaintiff*
25
26
27

1 ORIGINAL mailed this 11th day of
June, 2017 to:

2 J. Daniel Campbell
3 Ellen B. Davis
4 O'Connor & Campbell, P.C.
7955 South Priest Drive,
Tempe, AZ 85284
Attorneys for Defendant SOCAA

6 COPY to:

7 Tony S. Cullum
Law Office of Tony S. Cullum, PLLC
8 14 E. Dale Avenue
Flagstaff, AZ 85001
9 *Attorneys for Defendant SOCAA*

10 Kiersten Murphy
Henze Cook Murphy, PLLC
11 4645 N. 32nd Street, Ste. 150
Phoenix, AZ 85018
12 *Attorneys for Defendant SOCA*

13
14 /s/ Cheryl L. Riggle

15 \\PROLAW\ProLawFiles\ProLawDocuments\40471\40471-001\3743107.docx
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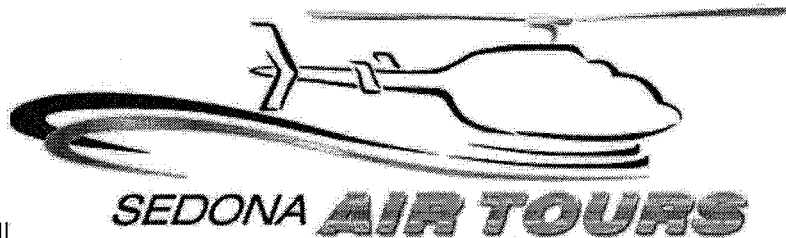
Exhibit 30

To: Duck Mad[mad_duck@hotmail.com]
From: Ann-Marie Klein-Brunner
Sent: Thur 6/20/2019 5:49:14 PM
Subject: Dakota Request for Production
REQUEST FOR PRODUCTION BY DAKOTA 6-2019.docx

Eric,

I went through this with Marshall today and broke down specifically in the attached documents what they are looking for. We do have until next week to get this completed but he wants this and the Nui's ASAP.

Ann-Marie Brunner



(928) 300-2336 Direct Cell

REQUEST FOR PRODUCTION BY DAKOTA 6-2019

- 1) Any and ALL communication- notes, emails, voicemails, recordings: YCBOS, Yavapai Employees, reps, attorneys, Sedona City Council, City of Sedona employees, reps or attorneys, Guidance Air/Westwind employees, agents, reps, attorneys, FAA-employee agent, reps or attys., Any past or present SOCAA board Member, employee or former employee. MARSHALL SAID IT NEEDS TO RELATE TO THE CASE. NOT GENERAL COMMUNICATIONS OR PRIVILEGED
- 2.) Any and ALL communications/documents related to RFP and Dakota's response (internal, non - privileged emails, notes, voicemails, recordings. (Marc Sterling, etc.)

Redacted

Exhibit 31

To: arielair1@aol.com[arielair1@aol.com]
From: World Wide Helicopter Service Inc.
Sent: Wed 5/31/2017 11:11:24 AM
Subject: Fwd: signed financials
2017_05_31_09_59_44.pdf
[ATT00001.htm](#)

Sent from my iPhone

Begin forwarded message:

From: Marc Sterling <marc@sterlingfinancialaz.com>
Date: May 31, 2017 at 10:01:13 AM MST
To: 'Ann-Marie Klein-Brunner' <gohelisedona@outlook.com>, <eric@sedonaairtours.com>
Subject: signed financials

Please review

Marc



Virus-free. www.avast.com

9:37 AM

05/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	Apr '16 - Mar 17
Ordinary Income/Expense	
Income	
Services	1,171,908.98
Total Income	1,171,908.98
Cost of Goods Sold	
Mdse Purchases	3,910.24
Total COGS	3,910.24
Gross Profit	1,167,998.74
Expense	
Advertising	77,843.47
Aircraft Fuel	127,695.81
Aircraft Repairs & Maintenance	185,454.60
Automobile Expense	37,902.52
Bank Charges	708.97
Merchant Charges	51,521.24
Commission	48,448.37
Continuing Education	450.00
Dues & Subscriptions	278.61
Equipment Rental	9,866.16
Flight Fees	157,212.49
Freight	44,000.00
Insurance	
Business Liability	150,102.41
Employee Insurance	8,366.30
Total Insurance	159,468.71
Janitorial	37.41
Legal & Accounting	69,936.95
Meals & Entertainment	4,597.87
Office Supplies	29,311.06
Outside Services	320,834.78
Payroll Taxes	42,404.08
Payroll Processing Fees	1,085.27
Penalties & Fines	10,000.00
Pension Expense	6,000.00
Postage & Delivery	576.09
Promotional	5,236.00
Rent	101,252.53
Repairs & Maintenance	35,421.74
Salaries & Wages	427,956.10
Supplies	14,865.70
Taxes & Licenses	26,913.60
Telephone	12,453.47
Tour Fees	167,699.83
Travel	2,545.84
Uniforms	4,407.31
Utilities	10,801.16
Total Expense	2,195,167.84
Net Ordinary Income	-1,027,169.10
Other Income/Expense	
Other Income	
Management Fee	1,396,725.31
Interest Income	10.33
Total Other Income	1,396,735.64
Other Expense	
Depreciation Expense	120,289.00

9:37 AM

06/31/17

Cash Basis

DAKOTA TERRITORY TOURS A C C

Profit & Loss

April 2016 through March 2017

	Apr '16 - Mar 17
Interest Expense	36,821.74
Total Other Expense	157,110.74
Net Other Income	1,239,624.90
Net Income	212,455.80



9:38 AM
05/31/17
Cash Basis

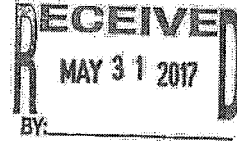
DAKOTA TERRITORY TOURS A C C
Balance Sheet
As of March 31, 2017

	Mar 31, 17
ASSETS	
Current Assets	520,935.88
Fixed Assets	279,307.49
TOTAL ASSETS	800,243.37
LIABILITIES & EQUITY	800,243.37



Exhibit 32

To: Eric Brunner[eric@sedonaairtours.com]; Ann Marie Burnner[gohelisedona@outlook.com]
From: Steve Shattuck
Sent: Wed 5/31/2017 4:30:15 PM
Subject: Sedona Submittal Acknowledgement of Receipt (.jpg and PDF formats)...
Sedona RFP Submittal Receipt.pdf



**Submittal Acknowledgement
of Receipt**

For

**SEDONA-OAK CREEK AIRPORT
REQUEST FOR PROPOSALS
FOR THE OPERATION OF A COMMERCIAL 135 OPERATION
(COMMUTER AND ON DEMAND OPERATIONS)
AT SEDONA, ARIZONA (KSEZ) AIRPORT**

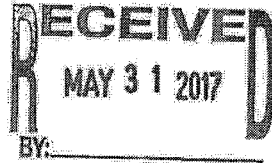
I, Nelson Durkee, hereby acknowledge receipt of the Sedona-Oak Creek
Printed Name (First, MI., Last)

Airport Request for Proposals from Dakota Territory Tours, A.C.C., (Proposer) on May 31, 2017

at 2:20 PM.

Signed: [Signature]
Signature of Recipient





**Submittal Acknowledgement
of Receipt**

For

**SEDONA-OAK CREEK AIRPORT
REQUEST FOR PROPOSALS
FOR THE OPERATION OF A COMMERCIAL 135 OPERATION
(COMMUTER AND ON DEMAND OPERATIONS)
AT SEDONA, ARIZONA (KSEZ) AIRPORT**

I, Nelson Duricee, hereby acknowledge receipt of the Sedona-Oak Creek
Printed Name (First, MI., Last)

Airport Request for Proposals from Dakota Territory Tours, A.C.C., (Proposer) on May 31, 2017

at 2:20 PM.

Signed: 

Signature of Recipient

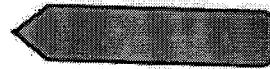


Exhibit 33

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. V1300cv201780201
	)	
SEDONA-OAK CREEK AIRPORT	)	
AUTHORITY, INC., an Arizona	)	
non-profit corporation,	)	
AMANDA SHANKLAND and JOHN DOE	)	
SHANKLAND, husband and wife,	)	
	)	
Defendants.	)	
	)	

VIDEOCONFERENCE DEPOSITION OF STEVEN SHATTUCK

Gilbert, Arizona
July 10, 2020
1:35 p.m.

PREPARED BY:

KATE E. ROUNDY, RPR
Certified Reporter
Certificate No. 50582

SEYMOUR REPORTING SERVICES
Registered Reporting Firm R1000
137 East Elliot Road, #2473
Gilbert, Arizona 85299
(P) 602.258.5800
(F) 888.881.5400

STEVEN SHATTUCK JULY 10, 2020

1 Dakota's response to SOCAA's request for proposals or RFP?

2 A. I was tasked by Mr. Brunner to assemble the
3 responses to the RFP questions. I received information
4 from different sources to include Mr. Brunner from
5 Ann-Marie Brunner, his wife, and Lynne Brond. She was our
6 pseudo-HR individual who had been with the Brunners on and
7 off for quite some time.

8 Q. And she worked on it with you as well?

9 A. Worked on it, no, not on the specific RFP. She
10 provided historical background information.

11 MR. MESTAZ: I'm sorry. Let me interject.

12 Who was that again that was helping?

13 THE WITNESS: Lynne Bron, B-r-o-n -- I'm not sure
14 whether it's e-d or -d.

15 MR. MESTAZ: Lynne Brond. Okay. Thank you.

16 THE WITNESS: Yes, sir.

17 BY MS. DAVIS:

18 Q. The people you worked on with the RFP, would that
19 have been Eric Brunner, Ann-Marie Brunner, and Lynne, and
20 yourself?

21 A. That is correct, yes.

22 Q. Just the four of you?

23 A. That is correct, yes.

24 Q. Anyone else?

25 A. No, ma'am.

1 correct?

2 A. Correct. Yes.

3 Q. And in the course of working on it, before the
4 May 31, 2017, due date, you would occasionally print out
5 drafts for the Brunners; is that right?

6 A. No, I don't believe I printed them out. I
7 believe that I forwarded whatever I had in an e-mail. I
8 don't recall printing those until the very last -- I'm
9 sorry -- until the very last final version.

10 Q. You would send whatever draft you had by e-mail
11 to the Brunners?

12 A. That's my recollection, yes.

13 Q. Do you recall that one of the last things you
14 needed from the Brunners was the financial statement that
15 needed to be dropped into the Exhibit D3 attachment?

16 A. Absolutely, yes.

17 And I will further that, that and the check from
18 Mrs. Millie Brunner for the \$750. We wanted to make sure
19 that that was sent along with the package.

20 Q. Okay. And you understood that the Brunners
21 needed to get the financial statements from whatever
22 bookkeeper was working for Dakota in order for them to
23 forward it to you.

24 Is that fair to say?

25 MS. DAVIS: Objection. Form. Foundation.

STEVEN SHATTUCK JULY 10, 2020

1 THE WITNESS: That's correct. Yes.

2 BY MR. MESTAZ:

3 Q. Did you know that that accountant or bookkeeper,
4 whatever you want to call him or her, was Marc Sterling?

5 A. I did not know. I didn't know, no.

6 Q. You just knew there was some other third-party
7 professional that was going to give them the financial
8 statements that they would then give to you?

9 MS. DAVIS: Form. Foundation.

10 THE WITNESS: That was my assumption, yes.

11 BY MR. MESTAZ:

12 Q. Now, you talked about how you prepared
13 Exhibit D3, which we looked at containing the financial
14 statements that were dropped into it.

15 Do you remember that?

16 A. Yes.

17 Q. And you talked about how you would have dropped
18 in an image file, and you may have used Photoshop as a
19 step in the process?

20 A. That's correct. Yes.

21 Q. I want to talk about the Photoshop process
22 generally.

23 How long have you used Photoshop?

24 A. Probably, again, this is a wild guess, maybe
25 since 2010, '12 time frame.

STEVEN SHATTUCK JULY 10, 2020

1 Q. And have you used it regularly?

2 A. No.

3 Q. Occasionally?

4 A. Very occasionally.

5 Q. You know how to use it, but it's not something
6 you do all the time.

7 Is that fair to say?

8 A. No. It's a fairly complicated program if you
9 really want to get into it and you want to use it
10 effectively, but it's good for some basic things.

11 Q. And you know how to do the basic things?

12 A. Yes, I do. I have -- I have photography as a
13 hobby, and I will import photos into Photoshop and light
14 room and adjust the tone and color and so on and so forth.

15 Q. So you know that you can drag a pdf file into
16 Photoshop, for example; right?

17 A. Yes.

18 Q. And then once in Photoshop, Photoshop creates
19 like an image file; right?

20 A. I guess that's what it does, yes.

21 Q. Like a JPEG or a --

22 A. Whatever, right. Yes.

23 Q. And then the user can manipulate that image and
24 overlay things to kind of create whatever ultimate image
25 they want; right?

STEVEN SHATTUCK JULY 10, 2020

1 MS. DAVIS: Form. Foundation.

2 THE WITNESS: Yes. They are called layers, yes.
3 You can do that.

4 BY MR. MESTAZ:

5 Q. So it's like a layering type of process; correct?

6 A. That's correct. Yes.

7 Q. And then you can save it as an image file; right?

8 A. You can, yes.

9 Q. And then that's the kind of image you can, then
10 drag and drop into a Word document; right?

11 A. That is correct. Yes.

12 Q. So you don't remember precisely, you know, what
13 you did with Photoshop in helping Dakota with the RFP,
14 only that you may have used it in order to drop financial
15 statements image into the Word document?

16 MS. DAVIS: Foundation.

17 THE WITNESS: Yes. That's all I did, yes.

18 BY MR. MESTAZ:

19 Q. Okay. So I'm going to share my screen --
20 hopefully share my screen here.

21 Let me see how I want to do this.

22 So I'm going to show you one. I hope it works.

23 Do you see a Zoom logo?

24 A. Yes.

25 Q. Okay. Great. So I'm going to show you some

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1 Q. And you see the application is PFU scan stop
2 manager 6.5.40, No. iX500?

3 A. I do.

4 Q. And I'll ask you to take my word for it that if
5 you Google the 6.5.40 iX500, it's a Fujitsu scanner.

6 Do you trust that, or does it sound right to you?

7 A. I will take your word for it, yes.

8 Q. So it appears -- Well, let me just ask you this
9 way.

10 The e-mail was sent 10:01 a.m., and it attaches a
11 document that at least the metadata says was created at
12 10:59 a.m.; right?

13 A. Okay.

14 Q. Do you have any idea whether Marc Sterling had a
15 computer or a Fujitsu scanner that was shipped where the
16 Daylight Savings Time setting defaulted to "On" as opposed
17 to "Off"?

18 A. Answer, no.

19 MS. DAVIS: Objection. Form. Foundation.
20 BY MR. MESTAZ:

21 Q. You don't know, do you?

22 A. Answer, no. I had no idea who Marc Sterling was.
23 I had no idea about his scanners, about his office. I had
24 no idea.

25 Q. You don't know whether the real time was

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1 9:59 a.m., when this document was created, on a scanner
2 and then e-mailed to the Brunners at 10:01 a.m.

3 You don't know that, do you?

4 A. No, sir, I do not.

5 Q. At least it appears from what we are looking at
6 that Marc Sterling's office created these financial
7 statements, printed them out, signed them, scanned them
8 with the Fujitsu scanner, and then e-mailed them to the
9 Brunners.

10 Isn't that --

11 MS. DAVIS: Form. Foundation.

12 BY MR. MESTAZ:

13 Q. -- from what we are looking at?

14 A. Again, if I discern the metadata, I would have to
15 say and agree with you, yes, it appears that way.

16 Q. And then if -- if we are -- if we go back to the
17 e-mail, and we see the Brunners having received the
18 financial statements at 10:01 a.m., that's the 10:01 a.m.,
19 on the morning that the RFP proposal is due; correct?

20 MS. DAVIS: Form. Foundation.

21 THE WITNESS: I believe it was due on the 31st of
22 May, yes.

23 BY MR. MESTAZ:

24 Q. And that is when they got you the financial
25 statements that you then dropped into the RFP proposal in

STEVEN SHATTUCK JULY 10, 2020

1 order to get it to SOCAA that day; correct?

2 A. Then at that exact moment, I don't believe so. I
3 believe it was later in the morning, more towards noon.

4 Q. Okay.

5 A. Or past noon, perhaps. We were under a deadline
6 to get it in.

7 Q. And do you know how -- after having looked at
8 this, because maybe your recollection is refreshed in some
9 way, do you know how, if at all, or do you know how the
10 Brunners got you these financial statements that they
11 received from Mr. Sterling?

12 MS. DAVIS: Form. Foundation.

13 THE WITNESS: I'm sorry. Say the question again.

14 BY MR. MESTAZ:

15 Q. Yeah.

16 Do you know how the Brunners got the financial
17 statements they received from Mr. Sterling to you that
18 day, May 31, 2017, after having gotten then?

19 MS. DAVIS: Objection. Form. Foundation.

20 THE WITNESS: Answer, I do not recollect how that
21 happened, no.

22 BY MR. MESTAZ:

23 Q. In any case, you do agree that you did finish the
24 RFP proposal that day and delivered it to SOCAA; correct?

25 A. Eric and I drove up to Sedona and he delivered

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1 it, yes.

2 Q. Well, I'm going to pull up an e-mail Bates number
3 CL000122 from Steve Shattuck to Eric Brunner, May 31,
4 2017, 4:30 p.m.

5 (Exhibit Bates No. CL000122 was marked for
6 identification.)

7 BY MR. MESTAZ:

8 Q. Do you see that?

9 A. I do.

10 Q. And that is an e-mail from you to Mr. Brunner at
11 that time on that day attaching the RFP submittal receipt;
12 correct?

13 A. Correct.

14 Q. If we go to the attachment, that is the submittal
15 receipt that you e-mailed to Mr. Brunner at 4:30 p.m.,
16 that day; correct?

17 A. It would have been, yes.

18 Q. If we look at the e-mail, it says to
19 Eric Brunner, and that's the attached submittal receipt;
20 correct?

21 A. Yeah. There's something not tracking because in
22 the e-mail, I would have sent that to him before or -- was
23 it -- see, what I'm having difficulty with, at 4:30 p.m.,
24 according to this e-mail, I sent to him the RFP submittal
25 receipt. Okay, there it is.

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1 So, yeah, we got it up there at 2:20. I would
2 have gotten that to Eric at 4:30. That makes sense, yes.

3 Q. So the Brunners get signed financial statements
4 from Mr. Sterling at 10 a.m., and you deliver the finished
5 product to SOCAA in Sedona by 2:20 p.m.?

6 MS. DAVIS: Form. Foundation.

7 THE WITNESS: That's correct. Yes.

8 BY MR. MESTAZ:

9 Q. So between -- sometime between 10 a.m. and
10 2:20 p.m., you would have a dropped an image file of the
11 financial statements that the Brunners received from
12 Mr. Sterling into the RFP proposal Word document you
13 prepared; correct?

14 MS. DAVIS: Form. Foundation.

15 THE COURT REPORTER: I missed the answer.

16 BY MR. MESTAZ:

17 Q. You said that's correct?

18 A. That's correct. Yes.

19 Q. I'm going to show you the document you have
20 already seen. This is CL000129. This is your e-mail to
21 Mr. Weech June 7, 2019, 9:29 a.m.

22 Do you see that?

23 A. I do.

24 Q. And this is where you're attaching the Word
25 document; right? Do you see that, CL000131?

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1 A. Yes, I do.

2 Q. So we can deduce from all this that between the
3 time that the Brunners received the financial statements
4 from Mr. Sterling at 10:01 a.m. and the 2:20 p.m. delivery
5 of the entire package to SOCAA, the financial statements
6 changed with regard to the signature blocks on the bottom
7 left of each page of the financial statements; correct?

8 A. That would be an accurate assessment, yes.

9 Q. Now, I'm going to show you another native -- this
10 is the CL000159, which is the native pdf of the first page
11 of the financial statement that you sent to Mr. Weech in
12 June of 2019.

13 I will drag that over here on the screen.

14 Do you see that, CL000159, to the right of the
15 screen?

16 A. Yes, I do.

17 Q. Okay. And you can see that it's the same
18 document. It's just in sort of a -- presented differently
19 because it's a native form as opposed to being in the
20 state of presentation program; right?

21 A. Okay.

22 Q. And if you go to file properties, do you see the
23 created 5/31/2017, 10:59 a.m.

24 Do you see that?

25 A. I do.

1 Q. And under 2, application Adobe Photoshop to
2 application pdf; right?

3 A. Yes.

4 Q. And then under 3 and 4, there are some references
5 to stuff being saved; right?

6 Do you see that?

7 A. I do.

8 Q. It references Adobe Photoshop CS6 Macintosh;
9 right?

10 A. Correct.

11 Q. And, again, Adobe Photoshop CS6 Macintosh, which
12 you had on your computer at the time you were helping with
13 the RFP proposal?

14 A. Also correct, yes.

15 Q. Now, doesn't this suggest to you that the changes
16 to Mr. Sterling's signature and the addition of the
17 signature block was done with Photoshop CS6 for Macintosh?

18 MS. DAVIS: Form. Foundation.

19 THE WITNESS: It does not, no.

20 BY MR. MESTAZ:

21 Q. Why do you say that?

22 A. Well, as I understand it, when you take an image
23 from Photoshop and drop it, whether that is pdf or JPEG,
24 into the Word document, if you look at the metadata,
25 that's the entire document. It's not a signature block.

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1 It's not any portion of it that has changed.

2 Do you understand what I'm saying?

3 Q. Somewhat. I'm -- I'm all ears, but, you know,
4 I'm going to fail the test, so I'm not going to play.

5 A. And, again, I preference I'm not a computer
6 expert by any stretch, but regardless of individual
7 pixels, in this case what we're talking about is a
8 signature block down here, regardless, the entire image
9 has been converted, and, in this instance, in a Photoshop
10 CS6 and then dropped into. It does not mean that that
11 individual signature block has been changed.

12 Again, if that makes sense.

13 Q. Could it be? Could it mean based on the metadata
14 we looked at, e-mails we have looked at, and the financial
15 statements we have looked at, is it possible that the
16 signature block at CL000159 was inserted there with Adobe
17 CS6 for Macintosh?

18 A. It's possible, yes.

19 Q. You didn't observe the Brunners using a Macintosh
20 to insert the signature block, did you?

21 A. I did not, no.

22 Q. As far as you know, they don't use Mac, do they?

23 A. I believe they do at home, yes.

24 Q. Do you know if they use Macintosh at home or are
25 you just speculating?

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1 A. No. I heard that they had Macintosh at home. I
2 was never to their home, so I didn't -- I wasn't there. I
3 don't know.

4 Q. You don't have personal knowledge?

5 A. That's correct.

6 Q. But Ann-Marie Brunner was working at the
7 Cottonwood offices with you that day, May 31, 2017,
8 between 10 a.m. and around 2 p.m., when you were finishing
9 up the RFP proposal; isn't that true?

10 A. I do not recall when she was there and when she
11 wasn't. She was there on that day, but the times that she
12 was there, I don't know.

13 And I will further that, she has a special needs
14 child that she has to take care of, and so she would
15 frequently leave the Cottonwood hangar to go do that. So,
16 again, the exact times that she was there, I don't know.

17 And I would further that again, I don't know the
18 exact times that Eric was there. He would come and go as
19 well.

20 Q. Isn't it possible that you would have inserted
21 the signature block using Photoshop for Macintosh but just
22 don't recall having done it?

23 MS. DAVIS: Form. Foundation.

24 THE WITNESS: Possible, yes; probable, no.
25 Absolutely not.

EXHIBIT C

(SOCAA's Reply in Support
of its Motion for Sanctions)

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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF YAVAPAI**

14 **DAKOTA TERRITORY TOURS, ACC,**

Case No.: V1300CV201780201

15 Plaintiff,

16 vs.

17 **SEDONA-OAK CREEK AIRPORT**
18 **AUTHORITY, INC.,** an Arizona non-
19 profit corporation, **AMANDA**
20 **SHANKLAND** and **JOHN DOE**
21 **SHANKLAND,** husband and wife,

22 Defendants.

23 **DEFENDANT SOCAA'S REPLY**
24 **IN SUPPORT OF ITS MOTION FOR**
25 **SANCTIONS DUE TO DAKOTA'S**
26 **VIOLATION OF THIS COURT'S**
ORDERS, DISCOVERY AND
DISCLOSURE OBLIGATIONS

(Assigned to the Honorable John D. Napper)

SOCAA has resoundingly demonstrated: 1) a violation of this Court's order, disclosure, or discovery obligations; and 2) prejudice. Sanctions are mandated. The only question is what type would be sufficient to address a concerted, multi-year, and almost total discovery failure. SOCAA's motion suggested appropriate sanctions -- but that was before Dakota's production of thousands of pages of documents which proved that Dakota's failures were caused by their principals, were intentional, and corrupted all of SOCAA's discovery and motion practice. SOCAA now asks that this Court dismiss because the prejudice to SOCAA cannot be undone, Dakota's malfeasance is on-going, and there is no reason to believe that will change.

1 **I. DAKOTA'S MALFEASANCE IS UNDENIABLE.**

2 Almost a year after discovery closed in December 2019, Dakota now admits it
3 violated this Court's direct order **AND** its discovery **AND** disclosure obligations. Now,
4 by its silence and/or admission, Dakota concedes that it violated Your Honor's May 21,
5 2019 order (to produce internal emails relating to its RFP response), failed to disclose
6 persons with relevant information (and identify persons who assisted with Dakota's RFP
7 response) as required by Rule 26.1, and failed to answer non-uniform interrogatories
8 (regarding the \$1,396,725.31 in other income, or to identify persons involved in its RFP
9 response and accurately describe their contribution), or produce documents (the RFP
10 emails and communications with the FAA) in response to production requests. Dakota
11 has yet to produce all the documents. Response fn.29, 11/25/2020 email. **Exhibit 1.**
12 Dakota is still delinquent or stonewalling, seven months after obtaining new counsel.

13 SOCAA is not complaining about a few documents that were overlooked. Dakota
14 has produced 2,343 pages of emails. Of those 2,343, a mere 161 pages were produced
15 before the Shattuck deposition¹ on July 10, 2020 (and even some of the Shattuck emails,
16 were produced after his deposition). Over 2,000 pages were produced after this motion
17 was filed (and perhaps only because of it). SOCAA cannot explain the impact of all of
18 this new information in an 11-page reply. But examples prove that the failure to produce
19 documents were the only issue, Dakota would have revealed the same information
20 everywhere else: in disclosure statements, answers to interrogatories, or in depositions.
21 That did not happen. When deposed, Dakota's principals feigned total ignorance or flat
22 out lied. That behavior should be met with the most severe consequences. Dakota
23 should not be rewarded by getting a second bite at the apple.

24
25
26 ¹ Former Dakota pilot Steve Shattuck was deposed after the close of discovery because Dakota failed to accurately describe his role, produce his emails, or provide his contact information.

1 **II. THE PREJUDICE IS ENORMOUS AND INCURABLE.**

2 **A. Two Years Of Work Would Have To Be Re-Done.**

3 Permitting SOCAA to retake a few depositions is not a fix; it is insult to injury.
4 As explained below, these documents affect all aspects of the case. Dakota would have
5 to re-answer most of its written 6/18/2018 and 6/28/2019 discovery. SOCAA would have
6 re-map its entire discovery strategy, retake every single deposition (because the late
7 produced documents affect all of them), depose others whose identity and/or true role
8 was concealed, re-draft its expert report(s), and if it were allowed, re-write its motions for
9 summary judgment and motions in limine. This equates to re-doing two years of work.
10 That is cost prohibitive and an intolerable burden to impose upon SOCAA and this Court.
11 Dakota has already been on the airport 18 months longer than the 2-year lease it sought.

12 Moreover, there is no reason to believe that re-opening discovery would result in
13 anything but a new round in this never-ending game of whack-a-mole. From the onset,
14 Dakota *and* its counsel misled this Court and completely stonewalled SOCAA. Each
15 time Dakota gets caught, its story changes. Even now, Dakota's Response contains gross
16 mischaracterizations, statements contradicted elsewhere in its brief, or avowals of counsel
17 contradicted by the actual evidence.

18 **B. The Newly Produced RFP Email May be Case Dispositive. They Prove
19 Dakota's Principals Lied In Depositions.**

20 As noted at Motion p.9, in a 05/31/2017 email exchange (the day the RFP
21 response was due) between bookkeeper Marc Sterling and the Brunners, Ann-Marie
22 Brunner authorized Sterling to "justify changes" to the "P&L" (profit and loss statement
23 required by the RFP to permit assessment of financial stability) to turn a \$522,000 loss
24 into an "around 200k+" profit. With the Brunners' approval, Sterling added
25 \$1,395,725.31 in other income to the bottom of the profit and loss statement. Eric
26 Brunner was copied on all of those emails. Knowing the "other income" had been added
to come up with an "around 200k+" profit, and after someone altered the signature blocks

1 to misspell Sterling's name and company and add a CPA designation and license number
2 (despite knowing this was false²), Eric Brunner certified to SOCAA that its financial
3 statement was a "complete and accurate" financial statement signed by the preparer.

4 In its response, Dakota contends that this is much ado about nothing because
5 "Dakota clearly explained [the "other income"] in the June 2019 Sterling declaration"
6 (Response p.12:13), the numbers roughly match (they do not), this is consistent with one
7 part of Dakota's answer to the 6/28/2019 interrogatory re "Ann-Marie Brunner *contacted*
8 Marc Sterling to provide financial information needed for the RFP." Response fn. 12.
9 But none if that was disclosed or is supported by actual evidence. Sterling's declaration
10 does not say that the \$1,396,725 is an accurate estimate of other income. Sterling's
11 declaration says he cannot vouch for the numbers. **Exhibit 3** Sterling Decl. If Dakota's
12 most recent explanation were true, Dakota should have produced the Sterling email
13 exchanges, explained how it formulated its P&L in its disclosure statements, answered
14 NUI#9 in July of 2018 (identifying the source of that money), or explained in principals'
15 depositions in September 2018, or in the 30 (b) (6) depositions in October 2019.³
16 Instead, Dakota offered bookkeeper Logan Acciavatti who testified that she confirmed
17 the number was the result of journal errors after asking Marc Sterling and Eric and Ann-
18 Marie. Motion Exh. 13-14. If Dakota intentionally altered the P&L to capture "other
19 income," then Ann-Marie lied when she testified that neither she nor Dakota knew how
20 the \$1,396,725.31 number got on that page. Motion Exh. 11 p.9:3-23. As explained at
21 Motion p. 12:9-24, this also exposes other lies. Ann-Marie did not "merely discuss"
22 providing financials – she instructed Sterling to change them! Her "only role" in the RFP

23 ² See, **Exhibit 2**, Eric Brunner's 02/12/2020 Declaration, also discussed below.

24 ³ Dakota's objection to NUI#9, and the fact that this Court did not explicitly rule on that portion
25 of SOCAA's discovery dispute, is no excuse. Sanctions are warranted because Dakota failed to
26 disclosed, refused to answer and never supplemented a key interrogatory. See, Rule 37(f)(2)
"Unacceptable Excuses for Failing to Act. A failure described in Rule 37(f)(1)(A) is not excused
or mitigated on the ground that the discovery sought was objectionable, unless the party failing
to act has a pending motion for a protective order under Rule 326(c)." Motion p. 6:6-7.

1 response was not gathering bank and credit card statements. Dakota intentionally
2 deprived SOCAA of the ability to discover whether Dakota added a wholly made-up
3 number. SOCAA's second summary judgment (re submitting an inaccurate and
4 incomplete financial) may have been successful. At the very least, how Dakota arrived at
5 that number was key to determining whether Dakota's operations at the airport were
6 profitable and relevant to Dakota's desirability as a bidder and to Dakota's damages.

7 In addition to withholding the Sterling emails, Dakota failed to identify persons
8 who were assisted in the RFP response (despite an NUI asking Dakota to identify them),
9 or produce internal email with them and others relating to the RFP. That failure can only
10 be described as intentional. The emails were always readily available. Dakota knew they
11 were at issue. Emails explaining how Dakota created its RFP response should have been
12 produced with Dakota's initial disclosure in *April 2018*, or at the very latest by *June 26,*
13 *2018* in response to Your Honor's order. They were not produced until AFTER Eric
14 Brunner's deposition in September 2018, AFTER the 30(b) (6) depositions in October
15 2019, and AFTER Steve Shattuck's deposition on July 20, 2020. Dakota had reason to
16 withhold them. They are not exculpatory. Contrary to Response fn 48, the emails prove
17 that Steve Shattuck cannot have added the fake signature blocks "without Dakota's
18 knowledge." The Brunners now claim that they received the first version of the financials
19 from Sterling (signed but without signature blocks) at 10:01 a.m. Eric forwarded
20 Sterling's file to Shattuck. Response pp.12:15-13:7. Whatever Shattuck did to the file,
21 Eric Brunner had to look at Shattuck's version before Eric signed the page with a wet
22 blue ink signature certifying that the P&L was "complete and accurate." Eric Brunner's
23 02/12/2020 declaration (offered in response to SOCAA's 2nd MSJ), compared to
24 (previously withheld) contemporaneous email, proves that Eric Brunner knew the P&L
25 contained intentional misstatements when he submitted it. In ¶9 of the Declaration, Eric
26 swore he knew in May 2017 that Marc Sterling's name was spelled wrong, that Sterling
was not a CPA, and that the entity name was non-existent. **Exhibit 2**, 02/20/2020

1 Declaration ¶¶7-9. In ¶11, Eric says Shattuck was not cooperating. The emails disprove
2 that. In ¶5, Eric claims Dakota cannot “certifiably confirm” whether Shattuck altered the
3 financial statement without permission. If all the emails have been produced, then only
4 Eric and Shattuck were then working on Dakota’s RFP response. Either Eric Brunner
5 made the alteration or Shattuck did so with his knowledge. With the email, SOCAA
6 would have won that second MSJ.

7 **C. The Newly Produced FAA Communication Disproves Dakota’s Claim**
8 **to Be a Part 135 Operator and Prove SOCAA’s Prejudice.**

9 The previously omitted FAA email is not routine communication with the FAA.
10 Contrary to Response at p.2:8-9, those documents do not prove that Dakota can conduct
11 Part 135 operations “under the certificate of its affiliate, Solid Edge Aviation.” The
12 emails prove the opposite: the FAA was never aware that Dakota was conducting Part
13 135 operations for Solid Edge.

14 SOCAA issued an RFP to conduct Part 135 operations. Dakota began its bid and
15 this litigation by lying, claiming that the FAA issued a Part 135 certificate to Plaintiff
16 Dakota Territory Tours, A.C.C. In its RFP response Dakota said:

17 Dakota Territory Tours, A.C.C., has been issued an Operating Certificate and Federal Aviation
18 Administration Operations Specifications in accordance with US Code: Title 49, 14 CFR, Part
19 135, et seq., as an “On Demand” Charter operator and Economic Authority as provided by
20 regulations established by the US Department of Transportation, Office of Economic Authority.

21 Injunction Exhibit 66. Dakota obtained the injunction claiming “its” Part 135 operations
22 had to be conducted on the airport. On the second day of the preliminary injunction, Eric
23 Brunner testified that “we” (meaning the Plaintiff Dakota) was a “commercial part 135
24 operator.” **Exhibit 4**, Transcript 08/23/2017 p. 46:20-24. Brunner testified that Dakota
25 would have to shut down and its 31 employees would lose their jobs if Dakota lost its
26 building at the airport because the FAA required Dakota to maintain the building as its
Part 135 base of operations. **Exhibit 5**, 08/18/2017 Transcript p. 186:24, **Exhibit 4**,
08/23/2017 Transcript p.64:18-65:6). On the last day of the preliminary injunction

1 hearing, SOCAA obtained a September 6, 2017 letter from the FAA confirming that
2 Dakota did not have a part 135 certificate or Letter of Authorization (meaning it has no
3 “base of operations with the FAA”). **Exhibit 6**, TRO Exh. 99. In April 2018, SOCAA
4 sent Dakota a request for production and a subpoena to Solid Edge in July to obtain all of
5 its correspondence with the FAA to discover whether the FAA considered Dakota to be a
6 part 135 operator due to its “affiliation” with Solid Edge. In its 6/18/2018 response,
7 Dakota indicated it would produce the FAA communications. Dakota did not (Response
8 p.3:3).

9 With the new documents, SOCAA would have shown that Eric never told the
10 FAA that Solid Edge was a shell and Dakota was operating. Instead, he falsely told the
11 FAA that Dakota’s pilots were employees of Solid Edge. See, e.g. **Exhibit 7**, CL000889-
12 891; **Exhibit 8**, CL002168; **Exhibit 9**, CL002205. Both Eric and Ann-Marie Brunner
13 testified that Solid Edge employed no pilots and had no employees. **Exhibit 10**,
14 9/14/2018 E. Brunner Depo. p. 113:8-23; **Exhibit 11**, 9/12/2018 A. Brunner Depo.
15 p.20:11-20. Lying about employment may be a crime, making any contract between
16 SOCAA and Dakota to conduct Part 135 operations void/voidable due to illegality.
17 Solid Edge’s operations specifications require all pilots to be “employed by Solid Edge
18 Aviation, LLC.” **Exhibit 12**, Dakota 1147. Far from approving the joint operation, in an
19 8/25/2017 email, the FAA asked Eric Brunner, “Eric, who is Dakota Territory Tours?
20 We may have to issue you everything under this new name if they are going to be holding
21 the certificate (its more than a simple name change).” **Exhibit 13**, CL000842.

22 But for this discovery abuse, the case could have ended in 2018. At oral argument
23 on October 29, 2018, Dakota’s counsel avowed to Your Honor that “the FAA had no
24 problem” with the certificate being in Solid Edge’s name under Dakota’s operation.
25 Transcript 10/29/2018 p.36:4-13. This Court accepted the avowal, found disputed facts,
26 and denied SOCAA’s motion for summary judgment. If Eric Brunner’s lies to the FAA

1 had been exposed in 2018, SOCAA suspects that Your Honor would have ruled
2 differently. At the very least, all of the depositions would have gone very differently.

3 Moreover, key documents are still missing! In November of 2017, in response to
4 SOCAA's query, the FAA wrote to Mr. Brunner and asked him to explain Dakota's and
5 Solid's Edge's organizational structure in detail, and asked Brunner to fill out a 10-page
6 questionnaire. **Exhibit 14**, 11/03/2017 letter from Henley to Brunner, CL0002157-2162.
7 Dakota has not produced its response to the FAA or the FAA's reply. If the FAA "had
8 no problem" with the arrangement, as Dakota insists, Dakota would have produced it.

9 **III. BLAMING FORMER COUNSEL DOES NOT HELP DAKOTA.**

10 **A. The Brunners Were Responsible.**

11 The Brunners, not former counsel, are responsible. Brad Weech, Dakota's former
12 counsel, told the Brunners that this Court ordered production of "any internal
13 communications that discuss the RFP process," sent the Brunners that transcript, (**Exhibit**
14 **15**, DM000134-135, 142), and sent the Brunners copies of SOCAA's discovery requests.
15 **Exhibit 16**, DM00001, 17-18. "[T]he obligation to disclose under Rule 26.1 and the
16 related discovery rules falls squarely on the [litigant] and is non-delegable. *Rivers v.*
17 *Solley*, 217 Ariz. 528, 532, ¶23, 177 P.3d 270, 274 (App. 2008) (it was not an abuse of
18 discretion to dismiss when the plaintiff failed to disclose another accident, the trial date
was set, and the defendant would have to revamp her defense).

19 Despite this, *Ann-Marie Brunner sent former counsel only 12 emails relating to*
20 *the RFP* (a small portion of what Dakota had), and that the Brunners were later told that
21 even some of those 12 had been withheld. Response p. 10:12-11:6. On June 20, 2019,
22 Ann-Marie discussed producing the Sterling emails with counsel. **Exhibit 17**,
23 DM000095-96). But she withheld them. On June 25, 2019, Ann-Marie told Weech's
24 office that there really was no email communication relating to the RFP. **Exhibit 18**,
25 DM000099. In her current declaration, Ann-Marie admits the Sterling email was readily
26 available if she had bothered to look. Dakota Exhibit 2 ¶6. Ann-Marie lied when she

1 testified on 09/12/2018 that she had “no role” in preparing Dakota’s response to the RFP.
2 If Ann-Marie was not lying when she testified that Dakota had no idea how the
3 \$1,396,725.31 number got on the page, the most charitable explanation is that she
4 appeared for a 30 (b) (6) deposition without preparing. Such conduct justifies dismissal.
5 *See, e.g. Groat v. American Equity*, 180 Ariz. 342, 346, 884 P.2d 228, 232 (App. 1994)
6 (dismissal was an appropriate sanction for producing a 30 (b) (6) who knew nothing
7 about the topics; “when a deponent does not answer legitimate questions asked at a
8 deposition, the conduct is the same as if he did not attend at all, allowing the court to
9 impose sanctions pursuant to Rule 37(d)”); *Gulf Homes, Inc. v. Beron*, 141 Ariz. 624, 688
10 P.2d 632 (1984) (it was not an abuse of discretion to dismiss the case when the
11 corporation president provided “evasive or incomplete answers” at his deposition and
12 denied knowing anything about the company’s business.)

13 That Dakota now blames SOCAA for trying to trick its 30(b)(6) witness into an “I
14 don’t know answer,” or tries to pass off Ann-Marie’s failure to identify the persons
15 involved in creating the RFP as an “on the spot failure” proves that the obstruction
16 continues. Rule 30 (b) (6) required Dakota to produce a witness who is prepared to
17 testify to all information readily available to the entity. Dakota should have known. It
18 was required to identify all who assisted in the RFP in the 6/28/2019 answer to NUI #1.

19 Former counsel telling the Brunners to produce only FAA emails “about the case”
20 is no excuse. The Brunners had copies of the discovery requests (**Exhibit 16**,
21 DM000001), as well as the answers to the document requests (**Exhibit 19** DM000347-
22 352) and the non-uniform interrogatories. **Exhibit 20** DM000353 – 364. Further, Dakota
23 did not produce the FAA emails “about the case.” The Brunners withheld the November
24 2017 email that begins “We received the letter from the Sedona-Oak Creek Airport
25 Authority” and then asks Dakota and Solid Edge to explain its corporate structure in
26 detail. **Exhibit 14**, CL002157-2166. Similarly, Dakota knew or should have known that
representing Dakota pilots as employees of Solid Edge to the FAA was part of the case.

1 **III. SOCAA IS ENTITLED TO SANCTIONS.**

2 Dakota contends that its blatant disregard for the authority of this Court and its
3 perversion of the judicial process should be overlooked because SOCAA has not
4 produced a “smoking gun.” That is untrue and contrary to the rules. The rules do not
5 permit one party to stonewall for years and then request a do-over when the case is set for
6 trial. The Court should not accept the wrong-doer’s assessment of the impact of its
7 failure. Dakota would not admit that SOCAA found a smoking gun under any
8 circumstance. The rules mandate sanctions for such admitted failures, and permit each of
9 the ones initially requested by SOCAA. Each of the sanctions requested in the motion
10 are more than warranted. Dakota concedes that it may not use any of the late disclosed
11 evidence. It cannot prove “good cause” for the late disclosure. Similarly, Dakota cannot
12 offer a new explanation for the \$1,396,725.31 in income because it was never disclosed.
13 The jury should be instructed that Dakota failed to comply with this Court’s order and its
14 disclosure and discovery obligations because that is what happened. Dakota’s character
15 is relevant to SOCAA’s defense and counterclaims. Dakota claims to be the more
16 desirable bidder. The cover up is relevant. The fact that Dakota hid evidence makes it
17 more likely that Dakota did so to cover up the problems in its bid. SOCAA has
18 countersued for abuse of process. Dakota’s discovery failures are part of that claim.
19 SOCAA is entitled to recover the cost of all of its discovery disputes that should have
20 resulted in production of these documents and this information. To grant this motion, the
21 Court need only conclude that Dakota failed to comply, and that SOCAA’s discovery and
22 case strategy would have been markedly different. That much is undeniably true.

23 Lastly, this Court should consider dismissing Dakota’s claims in their entirety with
24 prejudice as a sanction for its misconduct. Dismissal is an appropriate sanction for
25 violation of a Court order, considering the following factors: (1) prejudice to the other
26 party; (2) whether the party or counsel were responsible; (3) whether the conduct was
willful, in bad faith, and the violations were repeated and continuous; (4) the public

1 interest in the integrity of the judicial system; (5) prejudice to the judicial system, (6)
2 efficacy of lesser sanctions (7) whether the party was warned, and (8) public policy
3 favoring resolution on the merits. *Green v Lisa Frank, Inc.* 221 Ariz. 138, ¶¶45-47, 154-
4 155 (App. 2009). Here, the prejudice is severe. The Brunners were responsible and
5 warned. The conduct was willful and continuous. Lesser sanctions will not work
6 because SOCAA would have to start over.

7 By producing communications with its counsel (selectively redacted), and by
8 blaming former counsel for its failures, Dakota has waived the attorney client privilege as
9 to all of their communications with former counsel. Waiver occurs when the party
10 claiming the privilege injects the issue of advice of counsel into the litigation and seeks to
11 use the protect information as both a sword and a shield. *Robert W. Baird & Co. Inc. v,*
12 *Whitten*, 244 Ariz. 121, 127, ¶17, 418 P.3d 894, 900 (App. 2017). Waiver also occurs
13 when the party voluntarily discloses otherwise privileged information, as Dakota has
14 done here by producing that communication. SOCAA asks that this Court find waiver as
15 to all communications with former counsel (if it intends to point blame), order Dakota to
16 produce counsel's entire file (without redaction), permit SOCAA to depose Mr. Weech
17 (at a minimum), and set an evidentiary hearing if the Court feels that the current record is
warrant dismissal based upon the Brunner's discovery and disclosure abuse.

18 Dated this 7th day of December, 2020.

19 **KOELLER, NEBEKER, CARLSON**
20 **& HALUK, PLC**

21 By: /s/ Ellen B. Davis

22 J. Daniel Campbell
23 Ellen B. Davis
24
25
26

1 **ORIGINAL** e-filed/e-served via
2 TurboCourt this 7th day of December,
2020.

3 The Honorable John D. Napper

4 Daryl Williams
5 Daniel Mestaz
6 William Mestaz, LLP
7 6225 N. 24th Street, Suite 125
8 Phoenix, AZ 85016
9 dwilliams@williamsmestaz.com
10 dmestaz@williamsmestaz.com
11 *Attorneys for Plaintiff Dakota Territory*
12 *Tours, ACC*

13 Kiersten A. Murphy
14 HENZE COOK MURPHY, PLLC
15 722 East Osborn Road, Suite 120
16 Phoenix, Arizona 85014
17 *Attorney for Defendant Sedona-Oak Creek*
18 *Airport Authority, Inc.*

19 Tony S. Cullum
20 LAW OFFICE OF TONY S. CULLUM, PLLC
21 14 East Dale Avenue
22 Flagstaff, Arizona 86001
23 *Attorney for Defendant Sedona-Oak*
24 *Creek Airport Authority, Inc.*

25 By: /s/ Kim Miller
26

EXHIBIT 1

EXHIBIT 1

Ellen Davis

From: Daniel Mestaz [dmestaz@WilliamsMestaz.Com]
Sent: Wednesday, November 25, 2020 4:59 PM
To: Ellen Davis; Dan Campbell; Kiersten Murphy; tony@tonycullumlaw.com
Cc: Rick Boyle; Kim Miller; Diana Clark; Jeff Elder
Subject: Dakota/SOCAA - documents

Counsel: Jeff Elder just drop-boxed you documents Bates numbered CL002190-CL002343. These are all of the RFP and FAA emails from info@sedonaairtours.com and lynn@sedonaairtours.com. There were no privileged documents.

We are still trying to get access to the elliott@sedonaairtours.com email for any other RFP or FAA emails. I also intend to search Dakota's on-site computers for responsive documents. I hope to complete those tasks by the time of the hearing.

Happy Thanksgiving!

Daniel B. Mestaz
WILLIAMS | MESTAZ, L.L.P.

COMMERCIAL TRIAL BOUTIQUE

BET-THE-COMPANY • AVIATION • CONTRACT DISPUTES

6225 N. 24th Street, Suite 125, Phoenix, Arizona 85016

602-445-7722 (direct); 480-720-4515 (cell)

602-256-9400 (main); 800-251-8243 (toll free)

Diana, legal secretary, 602-445-7735 (direct)

www.williamsmestaz.com

EXHIBIT 2

EXHIBIT 2

 **Davis Miles**

McGuire Gardner

40 E. Rio Salado Pkwy., Ste. 425

Tempe, AZ 85281

Telephone: (480) 733-6800

Fax: (480) 733-3748

efile.dockets@davismiles.com

Bradley D. Weech, SBN: 011135

Marshall R. Hunt, SBN: 031060

Attorneys for Plaintiff and Solid Edge

**STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT**

Dakota Territory Tours, ACC

Plaintiff,

vs.

Sedona-Oak Creek Airport Authority,
Inc., an Arizona non-profit corporation;
Amanda Shankland and John Doe
Shankland, husband and wife,

Defendants.

Sedona-Oak Creek Airport Authority,
Inc., an Arizona non-profit corporation;

Counterclaimant,

vs.

Dakota Territory Tours, ACC

Counterdefendant.

CASE NO. V1300CV201780201

Declaration of Eric Brunner

I, Eric Brunner, state and declare:

1. I am over the age of 18 and am competent to make this declaration.
2. I am the President of Plaintiff Dakota Territory Tours, ACC.
3. Dakota submitted a proposal to a Request for Proposals ("RFP") issued by Sedona-Oak Creek Airport Authority, Inc.

1 4. The proposal included a profit and loss statement covering Dakota's
2 operations.

3 5. Unbeknownst to me or any other owner/office of Dakota, someone
4 attempted to append the signature of a financial professional used by Dakota, Marc
5 Sterling, to the profit and loss statement.

6 6. On information and belief, Dakota believes was former Dakota employee
7 Steve Shattuck, who helped Dakota with the finalization of the proposal, was the
8 responsible individual.

9 7. Unbeknownst to me or SOCAA, Mr. Shattuck misspelled Mr. Sterling's
10 name as "Mark Stearling," and listed Mr. Sterling as a CPA, despite Mr. Sterling not
11 being a CPA. *Id.*

12 8. And the person, believed to be Mr. Shattuck, listed Mr. Sterling as
13 representing "Stearling Financial Services LLC," which is a non-existent entity.

14 9. I and the other officers/owners of Dakota know this information and
15 would not have made these errors, and regardless I and the officers/owners of
16 Dakota lack the technical wherewithal to add a signature to documents.

17 10. When SOCAA raised this issue in the course of this investigation, Dakota
18 attempted to discover the source of the signature stamp.

19 11. Dakota identified Mr. Shattuck as the likely source, but has been unable
20 to certifiably confirm due to Mr. Shattuck moving to Florida and refusing to cooperate
21 with Dakota.

22 12. Separate and apart from the RFP issues, Dakota continues to undergo and
23 pass yearly inspections with its FAA Principle Operations Inspector, and to conduct
24 Part 135 operations, most recently in 2019.

1 I declare under penalty of perjury that the foregoing is true and correct to the
2 best of my knowledge.

3
4 Executed on February 12, 2020.

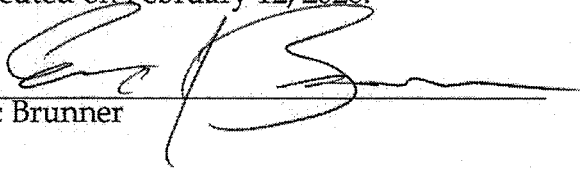
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Eric Brunner
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EXHIBIT 3

EXHIBIT 3

1
2
3 **Davis Miles**
4 **McGuire Gardner**

40 E. Rio Salado Pkwy., Ste. 425
Tempe, AZ 85281

Telephone: (480) 733-6800

Fax: (480) 733-3748

efile.dockets@davismiles.com

Bradley D. Weech, SBN: 011135

Marshall R. Hunt, SBN: 031060

Attorneys for Plaintiff

8
9 **STATE OF ARIZONA**
YAVAPAI COUNTY SUPERIOR COURT

10 Dakota Territory Tours, ACC

11 Plaintiff,

12 vs.

13 Sedona-Oak Creek Airport Authority, Inc.,
14 an Arizona non-profit corporation; Amanda
Shankland and John Doe Shankland, husband
and wife,

15 Defendants.
16

CASE NO. V1300CV201780201

Declaration of Marc S. Sterling

Assigned to: Hon. John Napper

17 I, Marc S. Sterling, declare as follows:

18 1. I am over the age of 18 and am competent to make this declaration.

19 2. I am the Trustee of the Sterling Living Trust dated 5/26/2009.

20 3. I have thirty-five (35) years of experience with the IRS and public accounting,
21 including employment with the IRS in the early 1980s. I am not a Certified Public
22 Accountant.

23 4. I, through my revocable living trust, owned a membership interest in Sterling
24 Financial Services, LLC.

25 5. On or about January 1, 2017, the assets of Sterling Financial Services, LLC,
26 including the tradename of "Sterling Financial Services" were sold to Four Peaks Wealth
27

1 Sedona, LLC dba Four Peaks Wealth & Accounting ("**Four Peaks**"). Much of the staff at
2 Sterling Financial Services, LLC continued as employees of Four Peaks.

3 6. For a period of time, including May of 2017, I was a part-time employee of Four
4 Peaks. My work there included services provided to Dakota Territory Tours, ACC ("**Dakota**").

5 7. I reviewed the Profit & Loss Statement and Balance Sheet attached hereto as
6 Exhibit 1.

7 8. While I was a part-time employee of Four Peaks, the QuickBooks file for Dakota
8 was located at Four Peaks and Dakota personnel did not have remote access to the file.

9 9. Ann-Marie Brunner was a client of Sterling Financial Services, LLC, and then
10 became a client of Four Peaks after the asset sale. She provided payroll information quarterly
11 on a thumb drive, which she or one of the staff would input in order to generate quarterly
12 reports. Various bookkeepers at Sterling Financial Services, LLC and then Four Peaks had
13 access to the Dakota QuickBooks file. All used the same login credentials and there was no
14 record kept as to who accessed the Dakota QuickBooks file.

15 10. I discussed the content of an interim financial report approximately April of 2017
16 with Ann-Marie Brunner prior to the report being generated. We specifically discussed that if
17 income from Dakota's Sedona Airport operations, only, was listed separately at the top of a
18 Profit & Loss Statement, and then ALL expenses of the company were listed (due to the
19 difficulty in separating them in the short amount of time available), that the negative number
20 would not be representative of the company's profit either at the Sedona Airport or overall, and
21 would, in fact, show as a loss. We discussed and decided that the company's income from
22 other operations should be included in order to show the company's overall profit. That
23 additional other income is what is labeled as "Management Fee." The label should more
24 appropriately have been something such as "Income for Other Operations."

25 11. I have also reviewed that portion of each page of Exhibit 1 at the lower left hand
26 corner, which bears a copy of my signature. I remember signing *one* page of an interim Profit
27 and Loss Statement, and may have signed the first page of the copy of the Quick Books Report

1 that is part Exhibit 1. I do not have access to the records to compare the information.
2 However, I did not sign the subsequent pages, and the information that is typed next to my
3 signature is incorrect. The typed information is not correct in that my first and last names are
4 spelled wrong, as is the name of the company. My first name is spelled with a "c" and not a
5 "k"; my last name does not include an "a," and the company name also does not contain an "a"
6 in "Sterling." Further, since Sterling Financial Services, LLC had sold the tradename as of
7 1/1/17, the company name should have been Four Peaks Wealth & Accounting, LLC. And I
8 am not now, nor have I ever been, a Certified Public Accountant.

9 12. I did not add the typed information and I did not have the computer knowledge to
10 have modified the QuickBooks report to include the incorrect information. Also, I am familiar
11 with the computer skills of the staff at Four Peaks at the time and, based on conversations and
12 interactions, that of Ann-Marie Brunner. I do not believe any of them to have had the skills to
13 have modified the document in the way that it was modified.

14 13. Further, Ann-Marie Brunner and the staff at Four Peaks were familiar with the
15 correct spelling of my name and my credentials, and would not have made such errors.

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18
19 Executed on JUNE 10, 2019.

20 
21 _____
22 Marc S. Sterling
23
24
25
26
27

Exhibit D3
(continued)

EXHIBIT 1

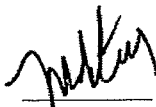
DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 1 of 3

9:37 AM
05/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C
Profit & Loss
April 2016 through March 2017

	Apr '16 - Mar 17
Ordinary Income/Expense	
Income	
Services	1,171,908.98
Total Income	1,171,908.98
Cost of Goods Sold	
Mdae Purchases	3,910.24
Total COGS	3,910.24
Gross Profit	1,167,998.74
Expense	
Advertising	77,843.47
Aircraft Fuel	127,695.81
Aircraft Repairs & Maintenance	165,454.60
Automobile Expense	37,902.62
Bank Charges	708.97
Merchant Charges	51,521.24
Commission	48,448.37
Continuing Education	450.00
Dues & Subscriptions	278.61
Equipment Rental	9,868.16
Flight Fees	157,212.49
Freight	44,000.00
Insurance	
Business Liability	150,102.41
Employee Insurance	9,366.30
Total Insurance	159,468.71
Janitorial	37.41
Legal & Accounting	69,938.05
Meals & Entertainment	4,587.87
Office Supplies	29,311.08
Outside Services	320,834.78
Payroll Taxes	42,404.08
Payroll Processing Fees	1,085.27
Penalties & Fines	10,000.00
Pension Expense	6,000.00
Postage & Delivery	576.09
Promotional	5,236.00
Rent	101,262.53
Repairs & Maintenance	35,421.74
Salaries & Wages	427,958.10
Supplies	14,865.70
Taxes & Licenses	28,913.60
Telephone	12,453.47
Tour Fees	167,699.83
Travel	2,545.94
Uniforms	4,407.31
Utilities	10,801.16
Total Expense	2,195,167.84
Net Ordinary Income	-1,027,169.10
Other Income/Expense	
Other Income	
Management Fee	1,398,725.31
Interest Income	10.33
Total Other Income	1,398,735.64
Other Expense	
Depreciation Expense	120,289.00

 Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 1

Exhibit D3
(continued)

DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 2 of 3

8:37 AM
06/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C
Profit & Loss
April 2016 through March 2017

	Apr '16 - Mar 17
Interest Expense	36,821.74
Total Other Expense	157,110.74
Net Other Income	1,239,624.90
Net Income	212,455.80


Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

Page 2

Exhibit D3
(continued)

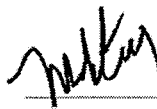
DAKOTA TERRITORY TOURS A.C.C.

V. FINANCIAL DATA Page 3 of 3

9:38 AM
08/31/17
Cash Basis

DAKOTA TERRITORY TOURS A C C
Balance Sheet
As of March 31, 2017

	<u>Mar 31, 17</u>
ASSETS	
Current Assets	520,935.88
Fixed Assets	<u>279,307.49</u>
TOTAL ASSETS	<u><u>800,243.37</u></u>
LIABILITIES & EQUITY	800,243.37



Mark S. Stearling
Certified Public Accountant
Stearling Financial Services LLC

EXHIBIT 4

EXHIBIT 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, AAC,)

Plaintiff,)

vs.)

Case No. V1300CV201780201

SEDONA-OAK CREEK AIRPORT
AUTHORITY, INC., et al.,)

Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOHN NAPPER

CONTINUED EVIDENTIARY HEARING

AUGUST 23, 2017

Camp Verde, Arizona

RECORDED BY
FTR GOLD
TRANSCRIBED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

Mina G. Hunt

(928) 777-3095

1 THE COURT: I get that. But that doesn't have
2 anything to do with the dirt patch.

3 MR. WEECH: I'm trying to tell you. Next in
4 the RFP we find out halfway through May, halfway
5 through the process, that they're going to put a new
6 building up. And then we learn just a couple of weeks
7 ago that on July 26 they submit a lease to the county
8 that says it's going to be bare dirt. There is not
9 going to be anything on there at all, and there is no
10 requirement by either SOCAA or Guidance to ever put a
11 building on there during the two-year lease.

12 So they're paying \$2,000 a month, Guidance is,
13 \$24,000 a year, for bare dirt. And my question is what
14 in the world would they use it for for commercial
15 operations? It's just bare dirt.

16 THE COURT: I get it.

17 I sustain the objection. It's speculative.

18 Next question.

19 MR. WEECH: All right.

20 Q. My question to you, Eric, and I'm going to try
21 not to repeat this in a way that's objectionable. What
22 use can you put as your commercial -- you're a
23 commercial part 135 operator; right?

24 A. Yes, we are.

25 Q. What use could you put bare ground in this

1 A. Varies. All around. From international to
2 local. Just varies.

3 Q. Are these people who have made vacation plans?

4 A. Absolutely.

5 Q. And what you do for them is part of their
6 vacation plan?

7 A. Correct.

8 Q. How far in advance do they schedule with you?

9 A. We have reservations well over a year out.

10 Q. And what happens if you're not able to take
11 them up on the day and time that they'd scheduled for
12 you?

13 A. We will cancel the flight.

14 Q. I'm sorry?

15 A. We will cancel the flight.

16 Q. Does that happen often?

17 A. No.

18 Q. What else can you tell me about the impact of
19 having to move out of and back into another building?

20 A. Again, it will disturb our air carrier
21 certificate. For me to be compliant as a 135 air
22 carrier, I will have to submit to the FAA where our
23 principal base of operation for that term will be.

24 So the impact will be great. We'll have to
25 cease and desist on 135 flights.

1 Q. Does that mean you have to shut down these
2 tours that we're talking about?

3 A. We would have to shut down the 135 flights.
4 Yes.

5 Q. During the transition to a new building?

6 A. Yes.

7 Again, Brad, our documents also for our 135
8 certificate are all kept --

9 MR. CULLUM: Objection, Your Honor. There is
10 no question in front of him.

11 THE COURT: Sustained.

12 Q. BY MR. WEECH: Are you trying to answer more
13 of the last question?

14 A. Yes, I am.

15 Q. Go ahead.

16 A. A principal operations inspector at any given
17 time -- it's an open-door policy. He can come visit
18 our location. If we're not there, we can not adhere to
19 the open-door policy of FAA.

20 So the inspector would not be able to inspect
21 my flight crew, my equipment, if we are not based
22 there.

23 Again, all documents are kept on site at all
24 times.

25 Q. You testified earlier about emergency and

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I am a
5 Certified Reporter within the State of Arizona and
6 Certified Shorthand Reporter in California.

7 I further certify that these proceedings were
8 recorded by FTR Gold, subsequently transcribed by me
9 and thereafter reduced to typewritten form and that the
10 foregoing constitutes a true and correct transcript to
11 the best of my ability.

12 I further certify that I am not related to,
13 employed by, nor of counsel for any of the parties or
14 attorneys herein, nor otherwise interested in the
15 result of the within action.

16 In witness whereof, I have affixed my
17 signature this 4th day of September, 2017.

18
19
20
21
22 /s/ Mina G. Hunt

23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

EXHIBIT 5

EXHIBIT 5

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,

Plaintiff,

vs.

SEDONA-OAK CREEK AIRPORT
AUTHORITY, INC., an ARIZONA
non-profit corporation;
AMANDA SHANKLAND AND JOHN DOE
SHANKLAND, husband and wife,

Defendants.

YAVAPAI COUNTY SUPERIOR COURT
CASE NUMBER: V1300CV201780201

BEFORE: THE HONORABLE JOHN NAPPER
JUDGE OF THE SUPERIOR COURT, DIVISION TWO
REPORTER'S TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING - DAY ONE

Camp Verde, Arizona
August 18, 2017
9:36 o'clock a.m.

PREPARED BY:

M. LISA EDGAR, RPR, CSR, CR
ARIZONA CERTIFIED REPORTER
ARIZONA CSR NUMBER 50273

PREPARED FOR:

MR. TONY S. CULLUM, ESQ.
Attorney at Law

COPY

1 Q. And probably would not permit the equipment based on
2 zoning issues?

3 A. Correct. The other location is nothing but a sales and
4 marketing location. Its sole duty is to -- if we have any
5 empty seats, to promote those empty seats for our airport
6 location.

7 Q. Is there anything else about the Sedona location that
8 makes it impossible for you to move there?

9 A. I assume you're talking about the uptown Sedona
10 location?

11 Q. Yes.

12 A. Absolutely. Our -- our leasehold itself is stipulating
13 that it's for sales and marketing.

14 Q. So you don't have a contract to run your operations out
15 of that?

16 A. No.

17 Q. Other than sales and marketing?

18 A. Correct.

19 Q. Anything else?

20 A. I really can't think of much more. It's just not
21 adequate. Again, to have 10 employees in a 275-square-foot
22 office would just not work.

23 Q. How many total employees does Dakota have right now?

24 A. I believe that we're at about 31.

25 Q. Let's jump to this Cottonwood location that was asked

C E R T I F I C A T E

STATE OF ARIZONA }
COUNTY OF YAVAPAI }

I, M. Lisa Edgar, certify that I am an Official Reporter for the Superior Court of Yavapai County, State of Arizona; that I was present and took down in shorthand all proceedings had in the above-entitled matter, and that the foregoing pages contain a full, true and correct transcript of my shorthand notes so taken, all done to the best of my skill and ability.

DATED at Camp Verde, Arizona, this 4th day of September, 2017.

_____/s/____

M. LISA EDGAR, R.P.R., C.P.
Certified Reporter
Arizona License Number 50273

EXHIBIT 6

EXHIBIT 6



U.S. Department
of Transportation
Federal Aviation
Administration

Scottsdale Flight Standards District Office
Western Pacific Region

17777 N. Perimeter Dr., Ste. 101
Scottsdale, AZ 85255
Phone: (480) 419-0330 x316
Fax: (480) 419-0800

SEP - 6 2017

Ms. Amanda Shankland
Sedona-Oak Creek Airport Authority
235 Air Terminal Drive
Sedona, AZ 86366

Dear Ms. Shankland:

With regards to the letter, dated August 28, 2017, you asked the following questions:

1. Does Dakota Territory Tours, A.C.C. hold a 135 Air Carrier Certificate? No.
2. Does Dakota Territory Tours, A.C.C. hold a 91 Air Tour LOA? No.
3. Does Solid Edge Aviation, L.L.C. list its principal base of operations as 1225 Airport Road, Sedona, AZ? Yes.

Sincerely,

Darren D. Henley
Aviation Safety Inspector

99

EXHIBIT 7

EXHIBIT 7

To: Darren.Henley@faa.gov[Darren.Henley@faa.gov]
From: World Wide Helicopter Service Inc.
Sent: Sun 6/9/2019 8:51:02 AM
Subject: Fwd: Updated resume with solid edge
Joshuas resume 1904.pdf
ATT00001.htm

Darren,
Please find revised resume for Mr. Mock...

Thank you,
Eric Brunner
Solid Edge Aviation

Sent from my iPhone

Begin forwarded message:

From: Joshua M <joshuamock@gmail.com>
Date: June 7, 2019 at 1:20:02 PM MST
To: Eric Brunner <eric@sedonaairtours.com>
Subject: Updated resume with solid edge

Joshua Mock
806.790.6726
joshuamock@gmail.com

Certificates and Ratings	Pilot Flying Weight: 185 lbs
Commercial Instrument – Helicopter	<i>2nd Class Medical 03-2019</i>
CFI and CFII – Helicopter	Private SEL – Airplane
Total Time: 5789	Sim Instrument: 54
Total Helicopter: 5707	As a CFI: 804
PIC Hours: 5739	Cross Country: 1246
Total Turbine: 4689	Night: 345
Total Bell 206 L: 1351	Day: 5444
Total Bell 206 B3: 2161	Mountain: 3232
Total EC130: 430	Total Airplane: 82
Total Bell 407: 247	NVG: 91

Education

2000 – 2001: 1 year of Electrical Engineering at Seattle Pacific University
2001 – 2002: 1 year of the Fixed Wing Aviation Program at Metropolitan State College of Denver
2003 – 2006: Private through CFII helicopter training
September 9, 2008: Private Pilot add-on SEL airplanes

Work History

Pilot

July 2014 – Present

Solid Edge Aviation Phone: (928)204-5939

Operating the Bell 206 B3 & L3 over the Sedona area in high DA in mountain winds, giving personalized tours

Pilot

May 2014 – July 2014

Minuteman Aviation, 5225 HWY 10 W. Airport Box 16 Missoula, MT Phone: (406)387-4149

Operating the Bell 206 B3 & L3 over Glacier National Park at high DA in mountain winds, giving personalized tours

Pilot

November 2012 – March 2014

Med-Trans, 209 State Highway 121 Bypass Suite 21 Lewisville, TX 75067 Phone: 972-459-4919

Operating the Bell 407 in a HEMS role, safe and efficient launch times, utilize CRM, work well with others

Pilot

October 2009 – November 2012

Helicopters Inc., 5000 Omega Dr Cahokia IL, Phone: (618)337-2903

Operating the Bell 206 B3 in a news gathering role, safe and efficient launch times, excellent product supplier

Pilot

May 2009 – August 2009

Minuteman Aviation, 5225 HWY 10 W. Airport Box 16 Missoula, MT Phone: (406)387-4149

Operating the Bell 206 B3 & L3 over Glacier National Park at high DA in mountain winds, giving personalized tours

Pilot

April 2008 – November 2008

Maverick Helicopters, Grand Canyon Airport, Phone: (928)638-2622

Operating the EC 130 B4 over the Grand Canyon at high DA in mountain winds, giving personalized tours

CFII

June 16, 2006 – April 11, 2008

RotorWay International, 7150 W. Erie Street, Chandler, Arizona 85226 Phone: (480)961-1001

Flight instruction, ground instruction

Full time Student

2000 – 2006

References: Available upon request.

EXHIBIT 8

EXHIBIT 8

To: darren.henley@faa.gov[darren.henley@faa.gov]; eric@sedonaairtours.com[eric@sedonaairtours.com]
From: Terry Tyner
Sent: Thur 5/10/2018 12:02:48 PM
Subject: 135 Check Ride

Hi Darren,

Are you available anytime during the week of the 28th to do a checkride for me.

Thank you,

Terry J. Tyner
Solid Edge Aviation
6026176010

EXHIBIT 9

EXHIBIT 9

To: jacob.a.hansen@faa.gov[jacob.a.hansen@faa.gov]
From: info@sedonaairtours.com
Sent: Thur 3/27/2014 1:40:32 PM
Subject: Solid Edge Aviation
Eric Scan 2.pdf
Eric Scan.pdf

Jacob, this is for your file for active pilots on Solid Edge Aviation. If you have any questions please call me anytime.

Thank you,
Eric Brunner

AIRMAN COMPETENCY/PROFICIENCY CHECK FAR 135				LOCATION KFFZ		DATE OF CHECK 2-1-2014	
NAME OF AIRMAN (last, first, middle initial) FORK, WILLIAM, K				TYPE OF CHECK FAR 135.293 ☒ FAR 135.297 ☐ FAR 135.299 ☒			
PILOT CERTIFICATION INFORMATION:		Grade <u>Comm</u> Number <u>558725624</u>		MEDICAL INFORMATION: Date of Exam. <u>09/19/2013</u> Date of Birth <u>08/20/1953</u> Class <u>II</u>			
EMPLOYED BY <u>EDGE</u> <u>SOLID EDGE AVIATION</u>		BASED AT (City, State) <u>SEDONA, AZ</u>		TYPE AIRPLANE (Make/Model) <u>BELL 206</u> Simulator/Training Device (Make/Model)			
NAME OF CHECK AIRMAN <u>Terry J. Tyner</u>		SIG. OF CHECK AIRMAN <u>[Signature]</u>		FLIGHT TIME <u>9</u>		<u>N150F</u>	
FLIGHT MANEUVERS GRADE (S—Satisfactory U—Unsatisfactory)							
PILOT						Air-craft Simu-lator Trng. Dev.	
PREFLIGHT				HELICOPTER			
1. Equipment Examination (Oral or written) <u>S</u>				1. Ground and/or Air Taxi <u>S</u>			
2. Preflight Inspection <u>S</u>				2. Hovering Maneuvers <u>S</u>			
3. Taxiing <u>S</u>				3. Normal & Crosswind T.O. & Landings <u>S</u>			
4. Powerplant Checks <u>S</u>				4. High Altitude Takeoffs & Landings <u>S</u>			
TAKEOFFS				5. Sim. Engine Failure <u>S</u>			
5. Normal				6. Confined Areas, Slopes, & Pinnacles <u>S</u>			
6. Instrument				7. Rapid Deceleration (Quick Stops) <u>S</u>			
7. Crosswind				8. Autorotations (Single Engine) <u>S</u>			
8. With Simulated Powerplant Failure				9. Hovering Autorotations (Single Engine) <u>S</u>			
9. Rejected Takeoff				10. Tail Rotor Failures (Oral) <u>S</u>			
INFLIGHT MANEUVERS				11. Settling With Power (Oral or Flight) <u>S</u>			
10. Steep Turns				SEAPLANE OPERATIONS			
Approaches to Stalls				1. Taxiing, Sailing, Docking			
Specific Flight Characteristics				2. Step Taxi & Turns			
13. Powerplant Failure				3. Glassy/Rough Water T.O./Landings			
LANDINGS				4. Normal Takeoff & Landings			
14. Normal				5. Crosswind T.O. & Landings			
15. From an ILS				OTHER			
16. Crosswind				6. Ski Plane Ops. (when applicable)			
17. With Simulated Powerplant(s) Failure				GENERAL			
18. Rejected Landing				7. Judgment <u>S</u>			
19. From Circling Approach				8. Crew Coordination <u>S</u>			
EMERGENCIES				AIRMAN COMPETENCY INFORMATION:			
20. Normal and Abnormal Procedures <u>S</u>				Demonstrated Current Knowledge FAR 135.293(a)			
21. Emergency Procedures <u>S</u>				Make/Model Expires <u>BELL 206B</u> (12 months) (FEB 2015)			
INSTRUMENT PROCEDURES				Demonstrated Competency FAR 135.293(b)			
22. Area Departure				Make/Model Expires <u>BELL 206B</u> (12 months) (FEB 2015)			
23. Holding				Satisfactorily Demonstrated Line Checks			
24. Area Arrival				FAR 135.299 Expires <u>BELL 206B</u> (12 months) (FEB 2015)			
25. ILS Approaches				Satisfactorily Demonstrated IFR Proficiency			
26. Other Instrument Approaches				FAR 135.297 Expires (6 months) ()			
Approaches: NDB/ADF				Use of Autopilot (is) (is not) Authorized.			
VOR				Expires (12 months) ()			
ILS				REMARKS			
Other (Specify) <u>RADAR VECTORS</u> <u>S</u>				<u>INITIAL BASE MONTH FEB</u>			
27. Circling Approaches							
28. Missed Approaches							
29. Comm./Nav. Procedures							
Use of Auto. Pilot							
RESULT OF CHECK		☒ Approved ☐ Disapproved		CHECK AIRMAN'S PERFORMANCE (FAA Only)		☐ Satisfactory ☐ Unsatisfactory	
REGION		DISTRICT OFFICE		FAA INSPECTOR'S SIGNATURE			

AIRMAN COMPETENCY/PROFICIENCY CHECK FAR 135				LOCATION KFFZ		DATE OF CHECK 2-1-2014	
NAME OF AIRMAN (last, first, middle initial) VOELZEL, GARRET, J				TYPE OF CHECK FAR 135.293 ☒ FAR 135.297 ☐ FAR 135.299 ☒			
PILOT CERTIFICATION INFORMATION:		Grade Commercial		MEDICAL INFORMATION: Date of Exam. 08/08/2013			
		Number 3041578		Date of Birth 08/25/81 Class II			
EMPLOYED BY EOGA		BASED AT (City, State) SEDONA, AZ		TYPE AIRPLANE (Make/Model) BELL 206			
NAME OF CHECK AIRMAN TERRY J. TYNER		SIG. OF CHECK AIRMAN <i>[Signature]</i>		Simulator/Training Device (Make/Model)			
				FLIGHT TIME 1.2		NISOF	
FLIGHT MANEUVERS GRADE (S-Satisfactory U-Unsatisfactory)							
PILOT							
				Air-craft	Simu-lator	Trng. Dev.	
PREFLIGHT				HELICOPTER			
1. Equipment Examination (Oral or written)				S			
2. Preflight Inspection				S			
3. Taxiing				S			
4. Powerplant Checks				S			
TAKEOFFS							
5. Normal							
6. Instrument							
7. Crosswind							
8. With Simulated Powerplant Failure							
9. Rejected Takeoff							
INFLIGHT MANEUVERS							
10. Steep Turns							
Approaches to Stalls							
Specific Flight Characteristics							
13. Powerplant Failure							
LANDINGS							
14. Normal							
15. From an ILS							
16. Crosswind							
17. With Simulated Powerplant(s) Failure							
18. Rejected Landing							
19. From Circling Approach							
EMERGENCIES							
20. Normal and Abnormal Procedures				S			
21. Emergency Procedures				S			
INSTRUMENT PROCEDURES							
22. Area Departure							
23. Holding							
24. Area Arrival							
25. ILS Approaches							
26. Other Instrument Approaches							
Approaches: NDB/ADF							
VOR							
ILS							
Other (Specify)							
27. Circling Approaches							
28. Missed Approaches							
29. Comm./Nav. Procedures							
Use of Auto. Pilot							
				SEAPLANE OPERATIONS			
				1. Taxiing, Seiling, Docking			
				2. Stop Taxi & Turns			
				3. Glassy/Rough Water T.O./Landings			
				4. Normal Takeoff & Landings			
				5. Crosswind T.O. & Landings			
				OTHER			
				6. Ski Plane Ops. (when applicable)			
				GENERAL			
				7. Judgment			
				8. Crew Coordination			
				AIRMAN COMPETENCY INFORMATION:			
				Demonstrated Current Knowledge FAR 135.293(a)			
				Make/Model Expires BELL 206B (12 months) (FEB 2015)			
				Demonstrated Competency FAR 135.293(b)			
				Make/Model Expires BELL 206B (12 months) (FEB 2015)			
				Satisfactorily Demonstrated Line Checks			
				FAR 135.299 Expires BELL 206D (12 months) (FEB 2015)			
				Satisfactorily Demonstrated IFR Proficiency			
				FAR 135.297 Expires (6 months) ()			
				Use of Autopilot (is) (is not) Authorized.			
				Expires (12 months) ()			
				REMARKS FIRST RUNWAY LANDINGS (L) - RETRAIN SECOND ATTEMPT (S)			
				INITIAL BASE MONTH FEB			
RESULT OF CHECK		☒ Approved ☐ Disapproved		CHECK AIRMAN'S PERFORMANCE (FAA Only)		☒ Satisfactory ☐ Unsatisfactory	
REGION		DISTRICT OFFICE		FAA INSPECTOR'S SIGNATURE			

EXHIBIT 10

EXHIBIT 10

In The Matter Of:

*Dakota Territory Tours vs.
Sedona-Oak Creek Airport*

Eric Brunner

September 14, 2018

Videotaped

Griffin & Associates Court Reporters, LLC

2398 E. Camelback Road

Suite 260

Phoenix, AZ 85016

Original File EB091418.txt

Min-U-Script® with Word Index

01:12:51 1 Q. Is there any -- is there any answer that you
2 previously gave this morning under oath that you now wish to
3 change after talking to your counsel?

4 A. No.

01:13:00 5 MR. WEECH: Objection.

6 BY MR. CAMPBELL:

7 Q. Okay. All right. Just a second for a minute.

8 How many employees does Solid Edge have?

9 A. How many employees?

01:13:34 10 Q. Uh-huh.

11 A. Me, myself, and my wife.

12 Q. And those are the only two?

13 A. I don't understand your question.

14 Q. Well, does Solid Edge have any pilots that it
01:13:49 15 employs?

16 A. Dakota employs the pilots.

17 Q. No. Does Solid Edge have any pilots that it
18 employs?

19 A. Dakota employs the pilots.

01:13:59 20 Q. Does Solid Edge have any pilots on its payroll?

21 A. No.

22 Q. Does Solid Edge have a payroll?

23 A. No.

24 Q. Okay. How is Solid Edge compensated for its
01:14:09 25 services? Does it give services? How does Solid --

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

3
4 BE IT KNOWN that the foregoing proceedings were
5 taken before me; that the witness before testifying was duly
6 sworn by me to testify to the whole truth; that the foregoing
7 pages are a full, true, and accurate record of the
8 proceedings, all done to the best of my skill and ability;
9 that the proceedings were taken down by me in shorthand and
10 thereafter reduced to print under my direction.

11 I CERTIFY that I am in no way related to any of the
12 parties hereto, nor am I in any way interested in the outcome
13 hereof.

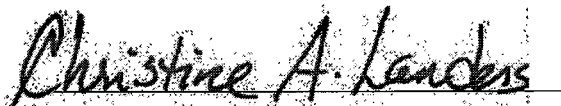
14 [X] Review and signature was requested.

15 [] Review and signature was waived.

16 [] Review and signature not required.

17 I CERTIFY that I have complied with the ethical
18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206
19 J(1)(g)(1) and (2).

20 Dated at Phoenix, Arizona, this 28th day of
21 September, 2018.

22 

23 CHRISTINE A. LANDERS, RPR
24 Certified Reporter
25 Certificate No. 50924

26 * * * * *

27 I CERTIFY that GRIFFIN & ASSOCIATES, LLC, has
28 complied with the ethical obligations set forth in ACJA
29 7-206(J)(1)(g)(1) through (5).

30 

31 GRIFFIN & ASSOCIATES, LLC
32 Registered Reporting Firm
33 Arizona RRF No. R1005

EXHIBIT 11

EXHIBIT 11

In The Matter Of:

*Dakota Territory Tours vs.
Sedona-Oak Creek Airport*

*Ann-Marie Brunner
September 12, 2018*

*Griffin & Associates Court Reporters, LLC
2398 E. Camelback Road
Suite 260
Phoenix, AZ 85016*

Original File AB091218.txt

Min-U-Script® with Word Index

1 BY MS. DAVIS:

2 Q. So you do payroll, accounts payable, job postings,
3 and screening for positions. Anything else?

4 A. I can assist with marketing as needed. Picking up
5 supplies sometimes.

6 Q. Do you go into the office on a daily basis?

7 A. No.

8 Q. In a typical week, how often do you go into the
9 office, if there is any typical pattern?

10 A. There is no typical pattern. It's just as needed.
11 I could be working from home, from there. It just really
12 depends on what's -- what needs to be done or if anything
13 does need to be finished.

14 Q. How many hours a month would you say you spend
15 working on Dakota work?

16 A. It really varies. It depends on the month and
17 what's going on. It could be anywhere between, really, 30 to
18 a hundred hours. It just really depends.

19 Q. Do you receive a salary?

20 A. No.

21 Q. Are you paid for your work?

22 A. Dakota pays Solid Edge for the work in which I do.

23 THE REPORTER: Pays who?

24 THE WITNESS: Solid Edge Aviation.

25 (Next page, please.)

1 foreclosed on our house.

2 So that's why I was confused with being a
3 defendant in a case because we were trying to get a
4 modification, and that's what happened.

5 Q. But you haven't personally been a defendant in any
6 Dakota-related litigation?

7 A. No. Not at all.

8 MR. HUNT: I have nothing else.

9 MS. DAVIS: I'm not going to ask any follow-up
10 questions. We're done. Thank you for your time.

11 THE WITNESS: Sure.

12 (The deposition was concluded at 12:36 p.m.)

13 * * * *

14

15

16

ANN-MARIE BRUNNER

17

18

19

20

21

22

23

24

25

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA) ss.

3
4 BE IT KNOWN that the foregoing proceedings were
5 taken before me; that the witness before testifying was duly
6 sworn by me to testify to the whole truth; that the foregoing
7 pages are a full, true, and accurate record of the
8 proceedings, all done to the best of my skill and ability;
9 that the proceedings were taken down by me in shorthand and
10 thereafter reduced to print under my direction.

11 I CERTIFY that I am in no way related to any of the
12 parties hereto, nor am I in any way interested in the outcome
13 hereof.

14 [X] Review and signature was requested.

15 [] Review and signature was waived.

16 [] Review and signature not required.

17 I CERTIFY that I have complied with the ethical
18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206
19 J(1)(g)(1) and (2).

20 Dated at Phoenix, Arizona, this 25th day of
21 September, 2018.

22
23
24 CHRISTINE A. LANDERS, RPR
25 Certified Reporter
Certificate No. 50924

26 * * * * *

27 I CERTIFY that GRIFFIN & ASSOCIATES, LLC, has
28 complied with the ethical obligations set forth in ACJA
29 7-206(J)(1)(g)(1) through (6).

30
31
32 GRIFFIN & ASSOCIATES, LLC
33 Registered Reporting Firm
34 Arizona RRF No. R1005

EXHIBIT 12

EXHIBIT 12

Solid Edge Aviation, LLC.

Section A Management and Operational Control

Part 135 General Operations Manual

This section contains the name of each management person required under Sec. 119.69(a) who is authorized to act for Solid Edge Aviation, LLC., the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operational control under Sec. 135.77.

a) Operational Control (ref. 135.23(a), 135.77)

Operational Control is the exercise of Management Authority for initiating, terminating, conducting, and diverting company flights.

Facilities utilized by Solid Edge Aviation, LLC. to exercise Operational Control during business hours are Solid Edge Aviation, LLC. Principal Operations Facilities, however, any facility where telephonic, fax or internet communications can be established with a person authorized to exercise Operational Control for Solid Edge Aviation, LLC., may be utilized.

The communications system and procedures utilized for the exercise of Operational Control shall consist **of**, verbal and/or written instructions, applicable FCC aircraft communication frequencies, aircraft Flite Fone, fax and telephonic communications, Internet instant messaging or email.

The following management positions have been designated to exercise Operational Control for Solid Edge Aviation, LLC. Names of Personnel in these positions are listed in para. A006 of the Operations Specifications.

President: Eric Brunner
Director of Operations:
Chief Pilot:

A.1.1 Elements of Operational Control (ref. OpSpec A008)

1. Crewmember Requirements

- a. The person exercising operational control will designate a pilot in command and a second in command if one is required.
- b. Solid Edge Aviation, LLC. will use only pilots employed by Solid Edge Aviation, LLC. when operating under Part 135.
- c. Solid Edge Aviation, LLC. pilots must be trained, tested, and qualified to conduct flights under Part 135.
- d. Each pilot must be listed by name and airman certificate number in a document maintained by Solid Edge Aviation, LLC..
- e. Emphasize to the crewmembers the importance of following procedures established in Solid Edge Aviation, LLC. General Operations Manual when contact with the air carrier is not practical (remote locations, trans-oceanic flights, etc.).
- f. Ensure Solid Edge Aviation, LLC. crewmembers and support staff are educated in Solid Edge Aviation, LLC. operational control procedures and procedures for ensuring that operational control remains Solid Edge Aviation, LLC..

EXHIBIT 13

EXHIBIT 13

To: gohelisedona@outlook.com[gohelisedona@outlook.com]
From: Kurt.Skultin@faa.gov
Sent: Fri 8/25/2017 10:55:27 AM
Subject: RE: LOA for 91/147 Changes Needed

Eric,

Who is Dakota Territory Tours? We may have to issue you everything under this new name if they are going to be holding the certificate (it's more than a simple name change).

Also, can you give me a telephone contact for you. No one at Red Rock Tours knows how to get a hold of you.

Thank you,

Kurt Skultin
Aviation Safety Inspector – Operations
Scottsdale FSDO
480-419-0330 X 319

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Friday, August 25, 2017 10:15 AM
To: Skultin, Kurt (FAA)
Subject: LOA for 91/147 Changes Needed

Kurt,

Please see attached Waiver or Letter of Authorization and LOA. Please change the operator of Red Rock Biplane and Helicopter Tours to Dakota Territory Tours and Solid Edge Aviation dba Sedona Air Tours. Also reflect that the documents are issued to (change from Red Rock Biplane Tours to Dakota Territory Tours and Solid Edge Aviation dba Sedona Air Tours.

Also, In Table 4 A49-3 to reflect Joseph Elliott Cluff as responsible persons.

Thank you.

Sincerely,

Eric Brunner
Director of Operations

EXHIBIT 14

EXHIBIT 14

To: mad_duck@hotmail.com[mad_duck@hotmail.com]
From: Darren.Henley@faa.gov
Sent: Fri 11/3/2017 3:33:15 PM
Subject: Organizational Structure
Solid Edge Aviation LLC DBA Question Set 1.doc
Solid Edge Aviation LLC DBA Question Set 2.doc
Solid Edge Aviation LLC DBA Question Set 3.doc

Mr. Bruner,

We received letter that we received from the Sedona-Oak Creek Airport Authority, regarding some concern about your operation. During research about how best to respond to those questions, it became difficult to define a clear organizational structure between your Part 91 Air Tour and your Part 135 operations. It also became difficult to differentiate the use of DBAs, corporate entities and other business names. Please provide us a clear organizational structure chart also indicating principal members.

Also included are a series of questionnaires. Please complete to ensure the accuracy of your organization.

Solid Edge Aviation LLC DBA Question Set 1: Confirm this list of names. If there are additional names, add them to the list.

Solid Edge Aviation LLC DBA Question Set 2: For each name in the above list, prepare a Question Set 2. Answer each of the appropriate questions. A yes or no answer will direct you to a different question path.

Solid Edge Aviation LLC DBA Question Set 3: Fill out for each of your names in Set 1. If there additional names, add them to the list.

Once complete, return each of the items to me.

I also need to coordinate a site visit for a SAS evaluation.

Darren Henley
Aviation Safety Inspector - Operations
Flight Standards District Office

17777 N. Perimeter Drive, Suite 101
Scottsdale, AZ 85255
Tel: 480 419-0330 ext. 316
Fax: 480 419-0800
Email: darren.henley@faa.gov



Questions for Air Carriers/Operators

QUESTION SET # 1: Ask the operators to list every business/company/entity they do business under. They should list - as a minimum – the companies enumerated below.

COMPANIES	
1.	Dakota Territory Tours
2.	Red Rock Biplane and Helicopter Tours
3.	Solid Edge Aviation, LLC
4.	Sky Safari
5.	Sky Safari Charter
6.	Sedona Air Tours
7.	
8.	

QUESTION SET # 2: For EACH business/company/entity listed under Question Set #1, ask if the **COMPANY** is a legal entity (i.e., corporation, limited liability company, or other)? If it is another type of legal entity, ask the operator to describe it.

A) IF THE ANSWER TO QUESTION SET #1 is: YES:

Question	Answer
a. What is the true/full legal name of the COMPANY or ENTITY ? (i.e., Red Airways, Inc.)	
b. When was the COMPANY or ENTITY created? (i.e., June 25, 2014.)	
c. What type of legal entity is the COMPANY or ENTITY ? (i.e., corporation)	
d. Where is the COMPANY or ENTITY registered? (i.e., New York State Department of State)	
e. Is the COMPANY or ENTITY certificated under part 135? If so, which type? What is the certificate number? (i.e., Yes, as a part 135, single-pilot in command, 02152)	
f. Does the COMPANY or ENTITY have a 91.147 LOA? (i.e., no)	
g. Is the COMPANY or ENTITY registered in any jurisdiction, as a trade name, business mark, or similar, of another company?	
	If the answer is NO: Keep going
	If the answer is YES: Ask:
	1. Where? (i.e., New York State Department of State)
	2. Is the COMPANY registered as a pseudonym, assumed name, or trade name of another entity? If so, of which entity? Is the registration active? (i.e., Yes, Yellow Air is the trade name under which Red Airways, LLC conducts business and markets itself. As of the date hereof, it is still registered and used)
h. Has the COMPANY or ENTITY EVER operated under a different name or registered a trade name or dba, to conduct its own operations under such fictitious name?	
	If the answer is NO: Keep going
	If the answer is YES: Ask:
	1. Has the company ever marketed itself or operated under a fictitious name that has not been registered? If

	2. so, which? <i>(i.e., Yes, Red Airways, Inc. marketed its services and operated under the fictitious name "Silver Airways" from 2015-2017, but Silver Airways was never registered as a trade name.)</i>	
	3. If the company registered a dba in any jurisdiction, state the name of the dba(s) it operated under, and whether the registration is still active. <i>(i.e., Yes, Red Airways, Inc. registered the dba of Orange Air with the New York State Department of State, and so conducts business and markets itself as Orange Air.)</i>	
	4. If the company operated at some point or marketed itself in any jurisdiction, under a dba that is now inactive, state the dba(s) it operated or marketed itself under, and when it was unregistered? <i>(i.e., Yes, Red Airways, Inc. registered the dba of Orange Air with the New York State Department of State, and conducted its operations and marketed itself as Orange Air, until June 17th, 2017, when it unregistered the trade name.)</i>	

B) IF THE ANSWER TO QUESTION SET #1 is: NO: Ask whether the **COMPANY** is registered in any jurisdiction as a fictitious name, trade name, business mark, or similar, of another company?

Question	Answer
<u>If the answer is NO:</u> Keep going	
<u>If the answer is YES:</u> Ask:	
a. Where? (i.e., New York State Department of State)	
b. Is the COMPANY registered as a pseudonym, assumed name, or trade name of another entity? If so, of which entity? (i.e., Yes, Yellow Air is the trade name under which Red Airways, LLC conducts business and markets itself.)	
c. Was the COMPANY ever registered as a legal entity (i.e., corporation, limited liability company, or other)?	
	<u>If the answer is NO:</u> Keep going
	<u>If the answer is YES:</u> Ask:
a. What was the true/full legal name of the COMPANY ? (i.e., Red Airways, Inc.)	
b. What type of legal entity was the COMPANY ? (i.e., corporation)	
c. When was the COMPANY created? (i.e., June 21, 2014)	
d. Where was the COMPANY registered? (i.e., New York State Department of State)	
e. When was the COMPANY terminated? (i.e., April 6, 2017)	
f. Was the COMPANY certificated under part 135? If so, which type? What was the certificate number?	

	(i.e., Yes, as a part 135, single-pilot in command, 02152)	
	g. Did the COMPANY have a 91.147 LOA? (i.e., no)	
	h. Was the COMPANY registered in any jurisdiction, as a fictitious name, trade name, business mark, or similar, of another company?	
	<u>If the answer is NO:</u> Keep going	
	<u>If the answer is YES:</u> Ask:	
	1. Where? (i.e., New York State Department of State)	
	2. Was the COMPANY ever registered as a pseudonym, assumed name, or trade name of another entity? If so, of which entity? During which period of time? (i.e., Yes, Yellow Air is the trade name under which Red Airways, LLC conducts business and markets itself. It was registered from September 1 2013 through November 15, 2016)	
	i. Did the COMPANY <u>EVER</u> operate under a different name or register a trade name or dba, to conduct its own operations under such fictitious name?	
	<u>If the answer is NO:</u> Keep Going	
	<u>If the answer is YES:</u> Ask	
	1. Did the company market itself or operate under a NON-registered trade name? If so, which? (i.e., Yes, Red Airways, Inc. marketed its services and operated as Silver Airways from 2015-2017, but Silver Airways was never registered as a trade name.)	
	2. If the company registered a dba in any jurisdiction, state the name of the dba(s) it operated under, and when it was unregistered? (i.e., Yes, Red Airways, Inc. registered the dba of Orange Air with the New York State Department of State, and conducted business as Orange Air, until June 2017, when it unregistered the trade name.)	

EXHIBIT 15

EXHIBIT 15

To: World Wide Helicopter Service Inc. (mad_duck@hotmail.com)[mad_duck@hotmail.com]; Gohelisedona@outlook.com[Gohelisedona@outlook.com]
Cc: Marshall Hunt[mhunt@davismiles.com]; Ashley J. Barnard[Abarnard@davismiles.com]
From: Bradley D. Weech
Sent: Thur 6/27/2019 12:50:46 PM
Subject: FW: Dakota v SOCAA / Discovery disputes
Report On 5/21/19 Hearing and Transcript and Other Matters

Eric/Anne-Marie:

Ellen Davis just sent the email at the bottom of this email. We did not send her anything because we did not receive anything from you and we do not believe any exist. However, so that I can respond to her, please confirm that you searched and that there are no Emails, Memos or Letters, etc. BETWEEN DAKOTA and SOLID EDGE regarding the following two items (and, yes, it is asinine to expect that you sent yourselves, emails, memos or letters regarding:

1. the agreement between Solid Edge and Dakota as to the C-135 operations; and
2. as to the RFP process.

The detail is in my 5/31/19 email to your (attached) where I listed this item as follows – and see the Court's actual orders below as well (captured here for use with Ms. Davis as well):

3. Produce by 6/25/19:

a. Any internal communications that discuss (1) the RFP Process and (2) the 135 operation agreement between Solid Edge and Dakota (excludes attorney-client communications)

- i. If none exist, then Dakota will NOT be allowed to use any later on, and SOCAA will, if they are discovered to exist.
- ii. **Eric/Ann-Marie: All you need to do is run a word search in your email program for terms that might bring up such messages; You can scroll through them as well. We will need to provide the words used to search.**

Judge Napper's Actual Order: Also, here is what Judge Napper actually said (and I'm pulling these out here for my email to go back to Ms. Davis). He did not include this in his formal order, but, it still controls:

THE COURT: I think their -- hang on. I think their internal e-mails related to the RFP submission would certainly be relevant, but when you say you want e-mails related to their operations, that's every e-mail that they've ever generated.

Transcript: 45:24 to 46:2

THE COURT: I agree with that. So when you say internal e-mail related to the RFP, I agree. They should go through their e-mails and look through that and anything they have related to the RFP process should be disclosed.

Transcript: 46:8-12

THE COURT: Okay, So Mr. Weech, seems to me that your client needs to go through the e-mail and find

e-mails related to the RFP process and related to the agreement related to the 135 operation between Solid Edge and Dakota. Do you have any disagreement with that?
MR. WEECH: None.

Transcript: 47:4-9

THE COURT: I think 30 days -- I mean, you can just simply type in search terms and should be able to pull it out pretty quickly.

MR. WEECH: Possibly, but Your Honor, it may require hiring someone to come in and do that. I'm not

sure -- I would doubt that Dakota's personnel have the ability to do that, but they may. By putting in a search term and just in accumulated e-mails?

THE COURT: What I'm going to do is I'll give you 30 days from today's date to search the e-mails and disclose the e-mails that are related to [1] the agreement between Solid Edge and Dakota as to the C-135 operations and [2] as to the RFP process. So let me calculate 30 days from today's date would be June 25th.

Transcript: 47:17-19 (Emphasis added.)

MS. DAVIS: Would that mean memos as well as e-mails? So for instance, if there was a memo or a letter, would your order encompass that?

THE COURT: Communications between Dakota and Solid Edge on those two topics will be due to be disclosed by June 25th. If nothing's disclosed by June 25th, the assumption will be that they do not exist, and anything disclosed after the 25th will be precluded unless SOCAA wants to use the information.

Transcript: 48:20 to 49:3 (Emphasis added.)

Part 135 Agreement: I've understood from previous discussions with you that there is no formal, written agreement "related to the C-135 operations" between Solid Edge and Dakota." We've represented to the Court before that there is no written agreement between the two, and Judge Napper did not order you to produce something that doesn't exist.

Emails, Memos, Letters re Two Items: And, I doubt there are any emails, memos or letters where you sent yourselves emails, memos or letters on behalf of Solid Edge on the one hand and Dakota on the other related to:

1. the agreement between Solid Edge and Dakota as to the C-135 operations; and
2. as to the RFP process.?

Please confirm that you searched and that there are no internal emails, memos or letters, etc. that fit these two limited items and I'll email Ms. Davis back, correct her on her claim that the court ordered the disclosure of any written agreement (but that, still, as previously stated, none exists), and I'll tell her that there are no emails, memos or letters between the two companies related to the two items noted above. I don't think we'll give the words you used to search -- the Court didn't actually order that.

Thanks,
Brad

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DAKOTA TERRITORY TOURS, ACC,)

Plaintiff,)

vs.)

SEDONA-OAK CREEK AIRPORT)
AUTHORITY, INC., an Arizona)
non-profit corporation; AMANDA)
SHANKLAND and JOHN DOE)
SHANKLAND, husband and wife,)

Defendants.)

Yavapai County
Superior Court
No.
V1300CV201780201

BEFORE: THE HONORABLE JOHN D. NAPPER
JUDGE OF THE SUPERIOR COURT
DIVISION 2
YAVAPAI COUNTY COURTHOUSE

PRESCOTT, ARIZONA
TUESDAY, MAY 21, 2019
9:03 A.M. SESSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Re: Hearing Regarding Pending Scheduling Orders,
Discovery and Disputes

SHAYNA MONTGOMERY, (CA) CSR, RPR, CRR
Certified Reporter
Certificate No. 50913

EXHIBIT 16

EXHIBIT 16

To: World Wide Helicopter Service Inc.[mad_duck@hotmail.com]; Ann-Marie Klein-Brunner[gohelisedona@outlook.com]
Cc: Yvonne Salatas[ysalatas@davismiles.com]; Marshall Hunt[mhunt@davismiles.com]; Bradley D. Weech[bweech@davismiles.com]
From: Ashley J. Barnard
Sent: Tue 6/18/2019 2:38:54 PM
Subject: Dakota's Discovery
[3550-DOC019.pdf](#)
[3550-DOC018.pdf](#)

Hi, Eric and Ann Marie! I am following up on these discovery requests (Non-Uniform Interrogatories and Request for Production) that were emailed to you on May 20th. Our deadline slipped by but we have until the end of the week to get our responses in. We're doing what we can with what we have; if you can answer any of the interrogatories or provide any of the documentation requested on the Request for Production, that would be awesome. Again, our deadline is the end of this week. Thank you!!

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com



40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-0976
Fax: (480) 733-3748

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Please consider the environment before printing this email.

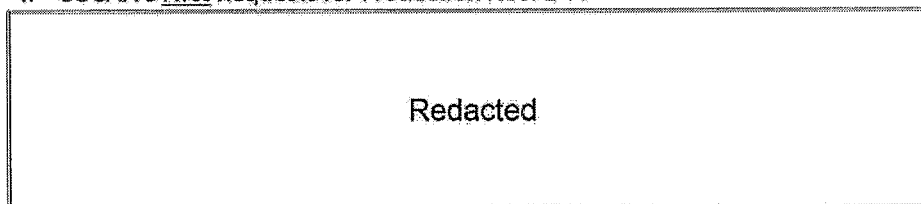
To: World Wide Helicopter Service Inc.[mad_duck@hotmail.com]; Ann-Marie Klein-Brunner[gohelisedona@outlook.com]; Marshall Hunt[mhunt@davismiles.com]; Yvonne Salatas[ysalatas@davismiles.com]; Ashley J. Barnard[Abarnard@davismiles.com]
From: Bradley D. Weech
Sent: Tue 6/18/2019 3:09:32 PM
Subject: RE: Dakota's Discovery
DF RFP02 to PL 19-04-24.pdf

FYI: We've cleared up a confusion with SOCAA's discovery requests caused by their attorneys. It's important that everyone understand the following. In addition to the ones that Ashley just sent, attached is a third – but, which has been mostly dealt with in the recent hearing. Anyway, here is what they have done. Marshall and Ashley will be working with you on the bolded items in the next few days. And, I'll be sending an email to Kiersten Murphy, which I will BCC everyone on.

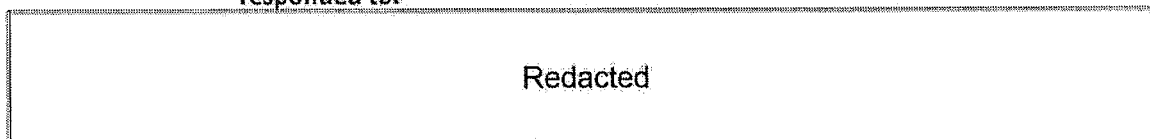
1. There have been three sets of requests to produce – mislabeled and duplicate numbered.

a. On 5/4/18, Ellen Davis sent:

i. SOCAA's First Requests for Production Nos. 1-7.



iii. On 4/24/19, Murphy & Cullum sent requests to produce that were ALSO labelled SOCAA's First Requests for Production Nos. 1-6. These are NEW and need to be responded to.



Thanks,
Brad

Bradley D. Weech



bweech@davismiles.com

<http://www.davismiles.com>



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McGuire Gardner

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DM000017

Please consider the environment before printing this email.

From: Ashley J. Barnard
Sent: Tuesday, June 18, 2019 2:39 PM
To: World Wide Helicopter Service Inc.; Ann-Marie Klein-Brunner
Cc: Yvonne Salatas; Marshall Hunt; Bradley D. Weech
Subject: Dakota's Discovery

Hi, Eric and Ann Marie! I am following up on these discovery requests ([Redacted] Request for Production) that were emailed to you on May 20th. Our deadline slipped by but we have until the end of the week to get our responses in. We're doing what we can with what we have; if you can, [Redacted] [Redacted] provide any of the documentation requested on the Request for Production, that would be awesome. Again, our deadline is the end of this week. Thank you!!

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
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EXHIBIT 17

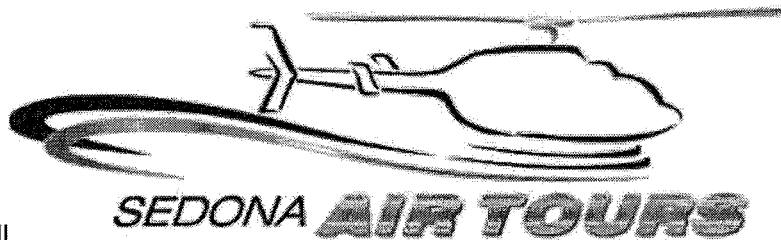
EXHIBIT 17

To: Duck Mad[mad_duck@hotmail.com]
From: Ann-Marie Klein-Brunner
Sent: Thur 6/20/2019 5:49:14 PM
Subject: Dakota Request for Production
REQUEST FOR PRODUCTION BY DAKOTA 6-2019.docx

Eric,

I went through this with Marshall today and broke down specifically in the attached documents what they are looking for. We do have until next week to get this completed but he wants this and the Nui's ASAP.

Ann-Marie Brunner



(928) 300-2336 Direct Cell

REQUEST FOR PRODUCTION BY DAKOTA 6-2019

- 1) Any and ALL communication- notes, emails, voicemails, recordings: YCBOS, Yavapai Employees, reps, attorneys, Sedona City Council, City of Sedona employees, reps or attorneys, Guidance Air/Westwind employees, agents, reps, attorneys, FAA-employee agent, reps or attys., Any past or present SOCAA board Member, employee or former employee. MARSHALL SAID IT NEEDS TO RELATE TO THE CASE. NOT GENERAL COMMUNICATIONS OR PRIVILEGED
- 2.) Any and ALL communications/documents related to RFP and Dakota's response (internal, non - privileged emails, notes, voicemails, recordings. (Marc Sterling, etc.)

Redacted

EXHIBIT 18

EXHIBIT 18

To: Ashley J. Barnard[abarnard@davismiles.com]
From: Ann-Marie Klein-Brunner
Sent: Tue 6/25/2019 10:29:20 AM
Subject: Re: Dakota's Discovery

Redacted

Trying to decipher precisely which email communications we need to hand over. If it only pertains to the REP there really is nothing. Redacted

Redacted

Is there a streamlined way to put all of the emails into one file? I couldn't seem to figure it out.

On Jun 25, 2019 at 10:23 AM, <Ashley J. Barnard> wrote:

Hello, my dear. We're still working on the discovery over here, so I'm not being pushy but just checking in to see how it's going on your end.

Ashley J. Barnard

Legal Assistant to Emma Chalverus
and Marshall Hunt
abarnard@davismiles.com

 **Davis Miles**
McGuire Gardner

40 E. Rio Salado Parkway
Suite 425
Tempe, AZ 85281
Tel: (480) 344-0976
Fax: (480) 733-3748

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Please consider the environment before printing this email.

From: Ann-Marie Klein-Brunner [mailto:gohelisedona@outlook.com]
Sent: Tuesday, June 18, 2019 4:58 PM
To: Ashley J. Barnard
Subject: RE: Dakota's Discovery

** External Sender **

Ashley,

DM000099

EXHIBIT 19

/

EXHIBIT 19

1  **Davis Miles**
2 **McGuire Gardner**
3 40 E. Rio Salado Parkway, Suite 425
4 Tempe, AZ 85281
5 Telephone: (480) 733-6800
6 Fax: (480) 733-3748
7 efile.dockets@davismiles.com
8 **Bradley D. Weech, SBN 011135**
9 **Marshall R. Hunt, SBN 031060**
10 *Attorneys for Plaintiff*

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STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT

28 **DAKOTA TERRITORY TOURS, A.C.C.,**
29 **an Arizona close corporation,**

30 **Plaintiff,**

31 **vs.**

32 **SEDONA-OAK CREEK AIRPORT**
33 **AUTHORITY, an Arizona corporation,**

34 **Defendant.**

CASE NO. V1300CV201780201

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUEST
FOR PRODUCTION
OF DOCUMENTS**

**(Assigned to the Honorable
John Napper)**

35 Plaintiff, Dakota Territory Tours, A.C.C., by counsel, responds to Defendant's
36 First Request for Production of Documents to Plaintiff ("Request").

37
38 **General Objection:** Dakota objects to SOCAA's prefatory definitions and
39 instructions as excessive and unnecessary. Dakota further objects to the
40 definitions and instructions to the extent they contradict or exceed the
41 requirements of Ariz. R. Civ. P. 34. Dakota further objects to the Requests as they
42 exceed the 10 requests permitted by Ariz. R. Civ. P. 34 when considered in
43 conjunction with the Requests served by SOCAA's co-counsel.¹ Dakota's answers

44
45 ¹ Ariz. R. Civ. P. 34(b)(1) is clear that the presumptive limits on discovery
46 apply to "parties" – the Rules make no differentiate between requests supposedly
47 served in furtherance of a party's defenses, as opposed to requests served in
furtherance of a party's counterclaims.

1 below are a good faith effort to answer the interrogatories to the extent they are
2 not objectionable and should not be construed as a waiver of these objections.

3
4 REQUEST FOR PRODUCTION NO. 1 Any and all Documents or
5 Communications (including, but not limited to, emails, notes, voicemails, and
6 recordings) between Dakota or any of its employees, principals, members, owners,
7 agents, or attorneys, and any of the following:

- 8 a. Any member of the Yavapai County Board of Supervisors;
9 b. Any Yavapai County employee, representative, or attorney, including but not
10 limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;
11 c. Any member of the Sedona City Council;
12 d. Any City of Sedona employee, representative, or attorney;
13 e. Any Guidance Air Service, LLC employee, agent, representative, or attorney;
14 f. Any Federal Aviation Administration employee, agent, representative, or
15 attorney.
16 g. Any Westwind Aviation, Inc. employee, representative, or attorney.
17 h. Any past or present SOCAA Board Member, employee, or former employee.

18
19 RESPONSE:

20 Dakota objects to this request as seeking irrelevant information—every
21 “communication” (especially in light of the broad definition given that term)
22 with all the people listed is not relevant to the specific claims and counterclaims
23 at issue in this case. This request is further overbroad, unduly cumulative, and
24 disproportionate to the needs of this case, given the time and expense that would
25 be required to produce the requested documents as compared to the minimal
26 benefit of some or all of the requested documents.

1 Without waiving these objections, see the documents disclosed with this
2 response. Due to the overbreadth of the request, Dakota is continuing to search
3 its records, and will supplement this response as it discovers further
4 communications.

5
6 REQUEST FOR PRODUCTION NO. 2: Any and all Communications or
7 Documents related to the SOCAA May 2017 Part 135 Request for Proposals ("RFP"),
8 and Dakota's response thereto, including internal, non-privileged emails, notes,
9 voicemails, and recordings.

10
11 RESPONSE:

12 Dakota notes that the Request seeks "non-privileged" communications, and
13 therefore understands the request not to seek attorney-client, work product or
14 other privileged documents. To the extent this understanding is inaccurate, to
15 avoid waiver, Dakota objects to this Request to the extent it seeks such privileged
16 information. Dakota further objects to this Request as overbroad and unduly
17 cumulative. Dakota further objects to any request for communications directed at
18 SOCAA or SOCAA's own agents/attorneys, as these documents can be obtained
19 more easily from another source – namely SOCAA itself.

20 Without waiving these objections, see documents already disclosed in this matter.
21 See also the documents disclosed with this response. Due to the overbreadth of
22 the request, Dakota is continuing to search its records, and will supplement this
23 response as it discovers further communications.

24
25 REQUEST FOR PRODUCTION NO. 3: Any and all Communications or Documents
26 related to or concerning Guidance Air Service, LLC, Westwind Aviation, Inc., Eddie

1 Ochoa, Yavapai County, the City of Sedona, and/or Amanda Shankland, including
2 internal, non-privileged emails, notes, voicemails, and recordings.

3 **RESPONSE:**

4 Dakota notes that the Request seeks "non-privileged" communications, and
5 therefore understands the request not to seek attorney-client, work product or
6 other privileged documents. To the extent this understanding is inaccurate, to
7 avoid waiver, Dakota objects to this Request to the extent it seeks such privileged
8 information. Dakota further objects to this Request as overbroad and unduly
9 cumulative. Dakota further objects to any request for communications directed at
10 SOCAA or SOCAA's own agents/attorneys, as these documents can be obtained
11 more easily from another source—namely SOCAA itself.

12 Without waiving these objections, see documents already disclosed in this matter.
13 See also responsive documents disclosed in response to Request #1 above. See
14 also all other documents disclosed with this response. Due to the overbreadth of
15 the request, Dakota is continuing to search its records, and will supplement this
16 response as it discovers further communications.

17
18 **REQUEST FOR PRODUCTION NO. 4:**Any Document used in preparing your
19 answers to Counterclaimant's First Set of Non-Uniform Interrogatories, dated April
20 4, 2019.

21 **RESPONSE:**

22 Dakota objects to this Request as vague as to its reference to "preparing."
23 Without waiving this objection, see the documents referenced in the Non-
24 Uniform Interrogatories, which are either part of the Court record (such as the
25 transcript of the Preliminary Injunction) or are being produced in response to
26 other Requests in this Request for Production.

1 **REQUEST FOR PRODUCTION NO. 5:**Any and all Communications or Documents
2 related to or concerning your retention of any private investigator, contractor of
3 other personnel hired to research or investigate Amanda Shankland and/or any
4 other SOCAA Board Member, employee, former employee, or representative.

5 **RESPONSE:**

6 Dakota objects to this interrogatory as attempting to invade the work product
7 privilege set out in Ariz. R. Civ. P. 26(b)(3); SOCAA may not discover information
8 that a party or its representative prepared in anticipation of litigation or for trial.
9 This interrogatory likewise violates the privileges and limitations on divulging
10 information specific to private investigators under Arizona law. *See* A.R.S. § 32-
11 2455. Dakota further objects to this interrogatory as seeking irrelevant
12 information under Ariz. R. Civ. P. 26(b).

13
14 **REQUEST FOR PRODUCTION NO. 6:**Any and all Communications or Documents
15 with the City of Cottonwood, or any of its Council members, employees,
16 representatives, or attorneys regarding Dakota's operations at the Cottonwood
17 Airport.

18 **RESPONSE:**

19 Dakota objects to this Request as irrelevant to this case—there are no claims or
20 counterclaims in this matter that relate to the City of Cottonwood generally, or
21 Dakota's operations at the Cottonwood Airport. Dakota further objects to this
22 Request as overbroad, unduly cumulative and burdensome, and disproportionate
23 to the needs of this case in light of the considerations set out in Ariz. R. Civ. P.
24 26(b).

1 RESPECTFULLY SUBMITTED this 28th day of June, 2019.

2
3 DAVIS MILES MCGUIRE GARDNER, PLLC

4 By: /s/ Bradley D. Weech

5 Bradley D. Weech

6 Marshall R. Hunt

Attorneys for Plaintiff

7 ORIGINAL of the foregoing e-mailed
8 and mailed this 28th day of June, 2019, to:

9 Tony S. Cullum
10 Law Office of Tony S. Cullum, PLLC
11 14 E. Dale Avenue
12 Flagstaff, AZ 85001
13 *Attorneys for Defendant SOCAA*

J. Daniel Campbell
Ellen B. Davis
O'Connor & Campbell, P.C.
7955 South Priest Drive
Tempe, AZ 85284
*Attorneys for Defendants SOCAA and
Shanklands*

12 Kiersten Murphy
13 Henze Cook Murphy, PLLC
14 722 East Osborn Road, Suite 120
15 Phoenix, AZ 85014
16 *Attorneys for Defendant SOCAA*

17 /s/ Ashley Barnard

EXHIBIT 20

EXHIBIT 20

 **Davis Miles**
McGuire Gardner
40 E. Rio Salado Parkway, Suite 425
Tempe, AZ 85281
Telephone: (480) 733-6800
Fax: (480) 733-3748
efile.dockets@davismiles.com
Bradley D. Weech, SBN 011135

Attorneys for Plaintiff

STATE OF ARIZONA
YAVAPAI COUNTY SUPERIOR COURT

DAKOTA TERRITORY TOURS, A.C.C.,
an Arizona close corporation,

Plaintiff,

vs.

SEDONA-OAK CREEK AIRPORT
AUTHORITY, an Arizona corporation,

Defendant.

CASE NO. V1300CV201780201

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
NON-UNIFORM
INTERROGATORIES**

**(Assigned to the Honorable
John Napper)**

Plaintiff, Dakota Territory Tours, A.C.C., by counsel, responds to
Defendant/Counterclaimant Sedona-Oak Creek Airport Authority's ("SOCAA")
First Set of Non-Uniform Interrogatories to Plaintiff ("Request")¹.

**General Objection: Dakota objects to SOCAA's prefatory definitions and
instructions as excessive and unnecessary. Dakota further objects to the
definitions and instructions to the extent they contradict or exceed the**

¹ The interrogatories answered in this response are actually SOCAA's second set of interrogatories – SOCAA served its first set in May 2018. SOCAA has attempted to differentiate these interrogatories as coming from SOCAA as a "Counterclaimant," as opposed to coming from SOCAA as a "Defendant." But the Rules of Civil Procedure are clear that the requirements and limitations on interrogatories apply to "parties," without differentiation as to a party's role as plaintiff, defendant, counterclaimant, counterdefendant, etc. *See* Ariz. R. Civ. P. 33(a)(2).

1 requirements of Ariz. R. Civ. P. 33. Dakota further objects to the interrogatories to
2 the extent they exceed, when including all subparts, 40 interrogatories permitted
3 by law. Dakota's answers below are a good faith effort to answer the
4 interrogatories to the extent they are not objectionable and should not be
5 construed as a waiver of these objections.

6
7 NON-UNIFORM INTERROGATORY NO. 1: Identify each and every person who
8 assisted in preparing, reviewing, authorizing, and/or submitting Dakota's response
9 to SOCAA's May 2017 Part 135 Request for Proposals ("RFP"); and, for each person
10 so identified, describe the nature and extent of that person's role in preparing and
11 submitting Dakota's RFP response.

12 ANSWER:

- 13 • Eric Brunner was the primary source of information regarding the RFP. He
14 dictated and delegated to Steve Shattuck instructions regarding formatting
15 the response.
- 16 • Ann-Marie Brunner: Contacted Marc Sterling to provide financial
17 information needed for the RFP. Verbal communications with Eric Brunner
18 and Steve Shattuck to ensure they were on target with their timelines for
19 the RFP.
- 20 • Steve Shattuck worked directly with Eric Brunner and compiled the
21 necessary information and data to create the format and actual hard copy of
22 the RFP response. Mr. Shattuck had conversations with Eric and Ann-Marie
23 Brunner regarding historical data for Dakota,
- 24 • Marc Sterling: Contacted by Eric and Ann-Marie Brunner to discuss his
25 timeline for production of financials needed for the RFP.
- 26 • Steve Kerr at CSNA to provide current copies on all applicable insurance to
27 submit with the RFP.

- 1 • Wells Fargo Bank: Eric Brunner worked with a business banker, Alberto
- 2 Salas, to obtain a financial statement for Dakota submitted for the RFP.
- 3 • Brian Sinnott provided Dakota with general information regarding RFPs,
- 4 and attended the pre-bid meeting.
- 5

6 **NON-UNIFORM INTERROGATORY NO. 2:** Identify each and every person who
7 authorized the filing and/or submission of the following matters:

- 8 a. The lawsuit entitled Dakota Territory Tours, ACC v. Sedona Oak Creek
- 9 Airport Authority, LLC, Case No. V1300CV201780201;
- 10 b. The lawsuit entitled Dakota Territory Tours, ACC v. Sedona Oak Creek
- 11 Airport Authority, LLC, et al, Case No. 3:17-cv-08162-DWL;
- 12 c. The FAA Part 16 Complaint entitled Dakota Territory Tours, ACC and Solid
- 13 Edge Aviation v. Yavapai County, Arizona and Sedona Oak Creek Airport
- 14 Authority, Docket No. 16-17-18;
- 15 d. The FAA Part 13 Complaint submitted by Dakota Territory Tours, A.C.C.
- 16 against Yavapai County, Arizona, through and with the Sedona-Oak Creek Airport
- 17 Authority, dated March 8, 2019.
- 18 e. The Notice of Appeal to the Arizona Court of Appeals, No. 1 CA-CV 17-0767.
- 19 f. The Special Action to the Arizona Court of Appeals, No. 1 CA-SA 17-0316.

20 **ANSWER:**

21 Dakota objects to the above interrogatory and each of its subparts as irrelevant.
22 Dakota objects to this interrogatory to the extent it seeks attorney-client or work
23 product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502
24 and/or Ariz. R. Civ. P. 26.

25 Without waiving these objections, Dakota through one or more of its officers or
26 directors would be the authorizing party for all. In addition, the Notice of Claim
27

1 for the previous litigation between the parties was filed by Larry Brunner in May
2 2014.

3
4 **NON-UNIFORM INTERROGATORY NO. 3:** For each of the matters identified in
5 NUI#2, please list and describe:

6 a. Each and every factual basis that you claim supported initiating and/or
7 maintaining the matter;

8 b. Each and every legal basis that you claim supported initiating and/or
9 maintaining the matter;

10 c. The nature and amount of any and all damages you contend you suffered in
11 connection with each matter.

12 **ANSWER:**

13 Please see Dakota's Amended Complaint and Disclosure Statements for this
14 action; the pleadings and disclosures in the anti-trust action; the relevant filings
15 in the Part 13 and Part 16 Complaint actions; and the briefs in the appeal and
16 special action.

17
18 **NON-UNIFORM INTERROGATORY NO. 4:** From March 1, 2017 to present, list
19 each and every time you or any of your employees, principals, members, owners,
20 agents, or attorneys spoke in person, by telephone, or in writing to any of the
21 following regarding SOCAA, the SOCAA RFP, or any of the matters identified in
22 NUI No. 2:

23 a. Any member of the Yavapai County Board of Supervisors;

24 b. Any Yavapai County employee, representative, or attorney, including but not
25 limited to, Jack Fields, Phil Bordoun, Tom Stoxen, and Martin Brennan;

26 c. Any Guidance Air Service, LLC employee, agent, representative, or attorney;
27

- d. Any Federal Aviation Administration employee, agent, representative, or attorney;
- e. Any Westwind Aviation, Inc. employee, representative, or attorney;
- f. Any past or present SOCAA Board Member, employee, or former employee.

ANSWER:

Dakota objects to this interrogatory as overbroad – both the scope of the request and the range of topics encompassed in the request are unduly burdensome and disproportionate to the needs of this case considering the (lack of) importance of the information requested and the extreme cost and resources required to recreate the information. Dakota objects to this interrogatory to the extent it seeks irrelevant information outside the scope of the claims asserted in the parties' respective pleadings.

Without waiving this objection, as to written communications, please see documents produced in response to SOCAA's Requests for Production served concurrently with this response. *See* Ariz. R. Civ. P. 33(d).

As to in person or telephone communications:

- a. Eric Brunner spoke with Mike Trepasso (former employee of SOCAA and then Dakota) regarding the information testified to by Mr. Trepasso in the evidentiary hearing in this matter, including Ms. Shankland's statement that she was hired to get rid of Dakota.
- b. Eric Brunner spoke with Amanda Shankland
- c. Ann-Marie Brunner spoke with Amada Shankland in the lobby of the terminal building at the Airport when picking up an audio copy of the pre-submittal meeting in April 2017. Ms. Brunner asked Ms. Shankland why the RFP was for a two-year lease only, and that Dakota had had a two-year lease with a two-year renewal, expressing Dakota's desire for a longer lease term. Ms. Shankland explained that because Guidance's

1 current lease was a two-year lease, the RFP had to be the same. She also
2 explained that the RFP was a starting point and that every lease would
3 have to undergo an RFP when it expired so the leases would be valid.
4 She also expressed that she was excited about the RFP and wanted
5 everyone to get along and move forward. The conversation was very
6 friendly and professional, as if it were a formality to be "fair and legal"
7 so the RFP would match Guidance's lease.

- 8 d. Although not specifically responsive to the interrogatory, Ann-Marie
9 spoke with a Yavapai County employee in an effort to get a copy of
10 Guidance's lease with SOCAA, and also called requesting information
11 regarding the Yavapai County Board of Supervisors' meeting schedule
12 and procedures.
- 13 e. Eric Brunner and Randy Garrison (of the Yavapai County Board of
14 Supervisors) conducted a meeting to discuss issues between Dakota and
15 SOCAA in or around March 2017.
- 16 f. Eric Brunner spoke with Josh Boyce in July 2017 regarding the
17 information testified to by Mr. Boyce in the evidentiary hearing in this
18 matter.
- 19 g. Brad Weech, attorney for Dakota spoke with Jack Fields and Tom Stoxen
20 by phone in 2017 regarding the matters set out in their concurrently
21 disclosed emails; spoke with counsel for Guidance, Mr. Donald Zavala,
22 regarding this litigation many times in 2017-18, generally in the presence
23 of SOCAA and/or its counsel; spoke with the principals for Westwind in
24 2017 several times regarding the information testified to in the
25 evidentiary hearing in this matter; and Mr. Weech, or his office, spoke
26 with Mr. Trepasso in preparation for the evidentiary hearing.
- 27

1 NON-UNIFORM INTERROGATORY NO. 5: Identify and describe each and
2 every factual and legal basis for naming Amanda Shankland and her husband Dr.
3 Paul Shankland as defendants in this action, and Amanda Shankland as a defendant
4 in the federal anti-trust action identified in NUI #2(b).

5 ANSWER:

6 Dakota objects to this interrogatory as irrelevant to the present dispute. The
7 Shanklands have long been dismissed from this case. The Shanklands are no
8 longer parties, and no longer have any claims asserted by or against them in this
9 dispute.

10 Without waiving this objection, see Amended Complaint generally, including ¶¶
11 160-176.

12
13 NON-UNIFORM INTERROGATORY NO. 6: Identify each and every person who
14 authorized Dakota's attorney to contact the Yavapai County Attorneys' office and
15 inform the office of potential litigation against SOCAA if SOCAA refused to extend
16 Dakota's sublease, as set forth in Dakota's Amended Complaint ¶ 130.

17 ANSWER:

18 Dakota objects to this interrogatory as misstating the facts set out in Dakota's
19 Amended Complaint ¶ 130; the Amended Complaint states that Dakota
20 investigated means of resolving this dispute short of litigation (which Dakota
21 had already determined was necessary due to SOCAA's breach of the parties'
22 Settlement Agreement); ¶ 130 does not state that Dakota threatened litigation
23 only if SOCAA refused to extend Dakota's sublease. Dakota objects to this
24 interrogatory to the extent it seeks attorney-client or work product privileged
25 information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ.
26 P. 26. Dakota objects to this interrogatory as irrelevant.

1 Without waiving this objection, Dakota through one or more of its officers or
2 directors.

3
4 NON-UNIFORM INTERROGATORY NO. 7: Identify each and every person who
5 authorized Dakota's attorney to contact Yavapai County and accuse SOCAA of
6 contempt of court and of violating the Court's temporary restraining order.

7 ANSWER:

8 Dakota objects to this interrogatory as argumentative to the extent the word
9 "accuse" implies anything other than what actually occurred: that Dakota
10 reasonably concluded based on the Court's injunction barring SOCAA from
11 "taking any action to evict Dakota from its leased premises" or from otherwise
12 "interfer[ing] with Dakota's business operations..." that SOCAA's action in
13 executing a lease with Guidance for Dakota's business premises violated that
14 injunction. Dakota further objects to this interrogatory as vague as to the date,
15 time and circumstances surrounding the alleged occurrence. Dakota objects to
16 this interrogatory to the extent it seeks attorney-client or work product privileged
17 information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ.
18 P. 26. Dakota objects to this interrogatory as irrelevant.

19 Without waiving this objection, Dakota does not specifically recall the specific
20 occurrence and cannot answer the interrogatory without further information.

21
22 NON-UNIFORM INTERROGATORY NO. 8: Identify each and every person who
23 authorized the filing of a Motion for Contempt of Court against SOCAA for
24 allegedly violating the Temporary Restraining Order, and each and every person
25 who authorized Dakota's refusal to withdraw that Motion until January 16, 2018.

26 ANSWER:

1 Dakota objects to this interrogatory as irrelevant under Rule 26(b). Dakota further
2 objects to this interrogatory as misstating the record: Dakota filed the motion; the
3 Court then clarified that he did not view SOCAA's action in signing a lease with
4 Guidance for Dakota's business premises as violative of the preliminary
5 injunction; SOCAA then responded to the motion stating that it had *requested*
6 Dakota withdraw the motion; the parties included the motion on a joint filing
7 regarding pending matters to the Court, in which Dakota indicated there was no
8 reason to file a reply or have oral argument on the motion; and then at the January
9 16, 2018 hearing, SOCAA noted that the motion was "technically" still pending,
10 and that "as a matter of housekeeping," the Court should deny the motion;
11 Dakota agreed, indicated it thought it had already indicated the motion was moot,
12 and ensured the record at the hearing was clear that the motion was withdrawn as
13 moot. Dakota objects to this interrogatory to the extent it seeks attorney-client or
14 work product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid.
15 502 and/or Ariz. R. Civ. P. 26.
16 Without waiving this objection, Dakota through one or more of its officers or
17 directors authorized the filing.

18
19 NON-UNIFORM INTERROGATORY NO. 9: Identify each and every person who
20 authorized: (a) The Rule 45 subpoena to Guidance Air Service, LLC, (b) the threat of
21 a Motion to Compel against Guidance, and (c) that the potential for additional
22 litigation with "additional parties" would be forthcoming.

23 ANSWER:

24 Dakota objects to this interrogatory as vague and ambiguous – Dakota is not
25 certain as to the "threat of a Motion to Compel" and the threat of "litigation with
26 'additional parties'" to which this interrogatory refers. Moreover there were two
27 subpoenas issued to Guidance in this matter. Dakota objects to this interrogatory

1 to the extent it seeks attorney-client or work product privileged information as
2 defined in A.R.S. § 12-2234, Ariz. R. Evid. 502 and/or Ariz. R. Civ. P. 26. Dakota
3 objects to this interrogatory as irrelevant.

4 Without waiving these objections, Dakota through one or more of its officers or
5 directors authorized the subpoena. To the extent Dakota is correct in its
6 assumptions regarding the subpoena and the communications to which SOCAA
7 refers, Dakota through one or more of its officers or directors authorized the
8 communication to Guidance just prior to the filing of the anti-trust case.

9
10 **NON-UNIFORM INTERROGATORY NO. 10:** Identify each and every person
11 who authorized: (a) the Rule 45 subpoena for documents to Westwind Aviation,
12 Inc.; and (b) the trial subpoena to a Westwind Aviation, Inc. representative to testify
13 at the preliminary injunction hearing.

14 **ANSWER:**

15 Dakota objects to this interrogatory to the extent it seeks attorney-client or work
16 product privileged information as defined in A.R.S. § 12-2234, Ariz. R. Evid. 502
17 and/or Ariz. R. Civ. P. 26. Dakota objects to this interrogatory as irrelevant.
18 Without waiving these objections, Dakota through one or more of its officers or
19 directors.

20
21 **NON-UNIFORM INTERROGATORY NO. 11:** Identify the source and describe
22 the factual basis of your contention in the Amended Complaint, ¶¶ 105 & 106, that
23 Nelson Durkee stated that "he advised the others that Guidance's bid was
24 financially substantially lower than Dakota's bid and expressed his concern about
25 the SAA's intent to award the bid to Guidance given Dakota's financial superior
26 bid" and that "it would force Dakota out of business and Guidance would get 'all of
27 Dakota's customers.'"

1 ANSWER:

2 Dakota objects to this interrogatory to the extent it seeks work product
3 information.

4 Without waiving this objection, the source was Albert Comello, and the factual
5 basis is set out in the transcript of Preliminary Injunction proceedings from
6 August 18, 2017 at pp. 107-115.

7
8 NON-UNIFORM INTERROGATORY NO. 12: Identify any and all private
9 investigators, contractors, consultants, or other personnel you have contacted or
10 retained to research or investigate SOCAA, Amanda Shankland and/or any other
11 past or present SOCAA Board Member, employee, or representative.

12 ANSWER:

13 Dakota objects to this interrogatory as attempting to invade the work product
14 privilege set out in Ariz. R. Civ. P. 26(b)(3); SOCAA may not discover information
15 that a party or its representative prepared in anticipation of litigation or for trial.
16 This interrogatory likewise violates the privileges and limitations on divulging
17 information specific to private investigators under Arizona law. *See* A.R.S. § 32-
18 2455. Dakota further objects to this interrogatory as seeking irrelevant
19 information under Ariz. R. Civ. P. 26(b).

20
21 NON-UNIFORM INTERROGATORY NO. 13: Identify every legal and factual
22 basis for your contention that Dakota is or was authorized by the FAA or applicable
23 FAA regulations either as a Part 135 operator or as part of a Part 135 operation.

24 ANSWER:

25 Dakota objects to this interrogatory as it is outside the scope of discovery under
26 Ariz. R. Civ. P. 26(b)(1); Dakota's status as a Part 135 operator is not relevant to the
27 claims or defenses in this case.

1 Without waiving this objection, see Eric Brunner's testimony at the Preliminary
2 Injunction hearing in this matter; see also Dakota's response to SOCAA's motion
3 for summary judgment in this matter.
4
5

6 RESPECTFULLY SUBMITTED this 28th day of June, 2019.

7 DAVIS MILES MCGUIRE GARDNER, PLLC

8 /s/ Bradley D. Weech
9 Bradley D. Weech
10 Marshall R. Hunt
Attorneys for Plaintiff

11 ORIGINAL of the foregoing e-mailed
12 and mailed this 28th day of June, 2019, to:

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22

23 /s/ Ashley Barnard
24
25
26
27

EXHIBIT D

(Court of Appeals Decision
Regarding Forcible Entry &
Detainer)

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SEDONA-OAK CREEK AIRPORT AUTHORITY INC.,
Plaintiff/Appellee,

v.

DAKOTA TERRITORY TOURS ACC,
Defendant/Appellant.

No. 1 CA-CV 20-0158
FILED 1-12-2021

Appeal from the Superior Court in Yavapai County
No. V1300CV201980119
The Honorable Krista M. Carman, Judge

AFFIRMED

COUNSEL

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By Kiersten A. Murphy
Co-Counsel for Plaintiff/Appellee

Law Office of Tony S. Cullum PC, Flagstaff
By Tony S. Cullum
Co-Counsel for Plaintiff/Appellee

Ahwatukee Legal Office PC, Phoenix
By David L. Abney
Counsel for Defendant/Appellant

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MEMORANDUM DECISION

Presiding Judge James B. Morse Jr. delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge Paul J. McMurdie joined.

M O R S E, Judge:

¶1 Dakota Territory Tours AAC ("Dakota") appeals from an order granting summary judgment and finding it guilty of forcible detainer. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Dakota conducts a helicopter and fixed-wing air tour business out of the Sedona Airport under a lease agreement with Sedona-Oak Creek Airport Authority Inc. ("SOCAA"), which manages the airport's operations. In 2012, Dakota entered into a 24-month commercial activity lease with SOCAA for property on the Sedona Airport ("the Property"). The parties later extended the lease to expire in April 2017.

¶3 In 2014, Dakota initiated a civil lawsuit against SOCAA over a lease dispute. The parties reached a settlement agreement ("Settlement Agreement") in April 2017, before the lease expired. In pertinent part, the Settlement Agreement provided the following:

[SOCAA] has agreed, and hereby confirms that it has agreed to continue leasing the existing property pursuant to the existing lease on a month-to-month basis until an RFP issues. In the event Dakota is the successful bidder, then a new lease will issue to Dakota and its use of the premises will not be interrupted. In the event Dakota is not the successful bidder, Dakota must vacate the premises no later than thirty (30) days after receipt of the (30) day notice . . . which [SOCAA] may provide at any time on or after the date of the award . . . advising of the date of the award and that Dakota must vacate

¹ Dakota filed a "Motion to Reschedule Oral Argument" on November 9, 2020, then filed a "Withdrawal of the Motion to Reschedule Oral Argument." It is ordered accepting Dakota's withdrawal and denying the motion as moot.

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the premises within thirty (30) days. No other notice of termination shall be required from [SOCAA].

¶4 SOCAA issued a request for proposals ("RFP") in May 2017. The RFP provided that "[t]he 'best responsible proponent' shall be that proponent which [SOCAA] and Yavapai County may determine," and "[t]he Yavapai County Board of Supervisors will consider the proposals on or before June, 2017," and that "any proposal will be subject to Federal Aviation Administration review and approval prior to commencement of any lease/agreement." SOCAA received proposals from both Dakota and Guidance Air Service ("Guidance"). On June 26, 2017, SOCAA notified Guidance it had been selected. SOCAA did not consult either the Yavapai County Board of Supervisors ("Board") or the Federal Aviation Administration ("FAA") before deciding the best proponent. SOCAA notified Dakota that its proposal was not chosen and it had thirty days to vacate the Property.

¶5 Instead of vacating the premises, Dakota initiated another civil lawsuit ("the 2017 lawsuit") in Yavapai County Superior Court seeking a temporary restraining order precluding SOCAA from evicting Dakota, arguing that SOCAA breached the RFP because the Board and FAA had not participated in selecting the Guidance proposal. The superior court initially granted a temporary restraining order and held a three-day evidentiary hearing on Dakota's claims. At the end of the hearing, the court invited SOCCA "to file a motion with the Court to lift the injunction."

¶6 SOCAA then filed a motion to dissolve the injunction. The court held argument, found that SOCAA established that the Board was given the requisite opportunity to participate and the FAA was not required to approve, and dissolved the injunction in November 2017.

¶7 SOCAA immediately sent Dakota a new termination notice demanding Dakota vacate the Property. But Dakota appealed, and the matter stayed until this court affirmed the dissolution of the preliminary injunction in April 2019. *See Dakota v. Sedona-Oak Creek Airport Auth. Inc.*, 1 CA-CV 17-0767, 2019 WL 1499853 (Ariz. App. Apr. 4, 2019) (mem. decision).

¶8 After this court issued its decision, SOCAA notified Dakota it would bring a forcible entry and detainer ("FED") action if Dakota did not vacate the Property. Dakota failed to vacate the Property, and SOCAA filed a FED complaint. The superior court stayed the FED action until this court issued a mandate for the 2017 lawsuit. We issued an amended mandate in October 2019.

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¶9 Dakota requested a jury trial in the FED action. The superior court initially granted Dakota's request for a jury trial in a preliminary ruling before the oral argument. SOCAA then moved for summary judgment, which Dakota opposed. The court granted summary judgment in favor of SOCAA and found Dakota guilty of forcible detainer under A.R.S. §§ 12-1171(3) and -1173(1). The court denied Dakota's request for a jury trial, noting that after considering the motions and oral arguments, it determined there was "no material question of fact related to the right to possession":

Dakota's right to remain on the property extinguished when SOCAA completed the RFP process by presenting the proposals to the County Board of Supervisors. Importantly, Judge Napper lifted the injunction in the civil cases finding that SOCAA had complied with the RFP. The tenancy clearly terminated after SOCAA issued the RFP and selected Guidance as the winner of the RFP. Following the appeal and issuance of the mandate, written notice to vacate was sent to Dakota and Dakota failed to vacate the premises. The Settlement Agreement provided for 30 days' notice to vacate the property following the issuance of the RFP if the winner was not Dakota. SOCAA has provided notice in excess of that time. Dakota stated at oral argument that it did not dispute notice. The court finds based on the facts that Dakota has retained possession after its tenancy has terminated and after it received written demand of possession by SOCAA.

¶10 A signed judgment was filed on March 6, 2020. The judgment found Dakota guilty of forcible detainer of the Property and awarded SOCAA attorney fees and costs. Dakota timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶11 Dakota claims the superior court erred by failing to grant its request for a jury trial, overlooking genuine issues of material fact, and finding that SOCAA has the right of actual possession of the Property.

I. Denial of Jury Trial.

¶12 Dakota claims the superior court violated its statutory and constitutional right to a jury trial when it entered summary judgment. "Interpreting rules, statutes, and constitutional provisions raises questions

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of law, which we review de novo." *State v. Hansen*, 215 Ariz. 287, 289, ¶ 6 (2007).

A. Right to Jury Trial Under A.R.S. § 12-1176.

¶13 Dakota argues that A.R.S. § 12-1176 grants parties to FED actions "a substantive, absolute right to a jury trial" that, if timely exercised, no trial court can deny.

¶14 A.R.S. § 12-1176 provides:

(A) If a jury trial is requested by the plaintiff, the court shall grant the request. If the proceeding is in the superior court, the jury shall consist of eight persons, and if the proceeding is in the justice court, the jury shall consist of six persons. The trial date shall be no more than five judicial days after the aggrieved party files the complaint.

(B) If the plaintiff does not request a jury, the defendant may do so on appearing and the request shall be granted.

(C) The action shall be docketed and tried as other civil actions.

¶15 Dakota argues that the repeated use of "shall" in A.R.S. § 12-1176(B) highlights the substantive nature of the right to a jury trial in FED actions. However, the language in A.R.S. § 12-1176(B) that a request for a jury trial "shall be granted" is not dispositive. See *Orme Sch. v. Reeves*, 166 Ariz. 301, 308-09 (1990) (finding that when there are no material issues of fact, summary judgment does not offend the Arizona Constitution's guarantee that "the right to jury trial 'shall remain inviolate'" (quoting Ariz. Const. art. 2, § 23); *Goldman v. Kautz*, 111 Ariz. 431, 432 (1975) (interpreting statutory language that "[a] trial by jury shall be had if demanded" as being procedural, rather than substantive).²

² Dakota's reliance on cases recognizing a right to a jury trial in criminal cases is misplaced. See *Highway Prods. Co. v. Occupational Safety & Health Review Bd.*, 133 Ariz. 54, 57-58 (App. 1982) ("[T]he constitutional rights of a criminal defendant have nothing to do with proceedings . . . which may result in the imposition of civil penalties."); cf. also *Hoyle v. Superior Court*, 161 Ariz. 224, 226-27 (App. 1989) (noting historical distinction between civil and criminal actions in determining whether there

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¶16 Rule 11(d) of the Arizona Rules of Procedure for Eviction Actions ("Eviction Rules") provides that "[i]f no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues or may [be] disposed of by motion or in accordance with these rules, as appropriate." Dakota argues this rule conflicts with the right to a jury trial provided in A.R.S. § 12-1176 and, therefore, the rule must fail. We disagree. If the statute provides a procedural, as opposed to a substantive, right to a jury trial, then the rule prevails. See *Duff v. Lee*, --- Ariz. ---, 476 P.3d 315, 318, ¶ 12 (2020) (stating that if there is a conflict "between a procedural statute and a rule, the rule prevails") (quoting *Seisinger v. Siebel*, 220 Ariz. 85, 88-89, ¶ 8 (2009)); see also Ariz. Const. Art. 6, § 5(5) (conferring power on the supreme court "to make rules relative to all procedural matters in any court"). Thus, we "first must determine whether an irreconcilable conflict exists between the statute and rule," and only "then determine whether the statute is procedural or substantive." *Duff*, --- Ariz. ---, 476 P.3d at 318, ¶ 12.

¶17 There is no irreconcilable conflict between A.R.S. § 12-1176 and Eviction Rule 11(d). See *id.* at ¶ 14 ("[W]e avoid interpretations that unnecessarily implicate constitutional concerns." (internal quotation marks and citation omitted)); *Marianne N. v. Dep't of Child Safety*, 243 Ariz. 53, 57, ¶ 18 (2017) (deciding whether a statute is substantive or procedural is not necessary where they can be harmonized); *Hansen*, 215 Ariz. at 289, ¶ 7 ("Rules and statutes should be harmonized wherever possible and read in conjunction with each other." (internal quotation marks and citation omitted)). Read together, A.R.S. § 12-1176 and Eviction Rule 11(d) provide that a court "shall grant the request" for a jury trial if "factual issues exist for the jury to determine." See also *Brewster-Greene v. Robinson*, 34 Ariz. 547, 552 (1929) ("But in this [forcible detainer action] . . . there was nothing for a jury to pass upon. The salient or controlling facts appear from the pleadings, the lease, and the subsequent compromise agreement. The question to be decided was one of law and for the court."). Because the use of "shall" does not confer a right to a jury trial under any circumstance, but rather a right to a jury trial if there are contested issues of fact, there is no conflict. See *Montano v. Luff*, --- Ariz. ---, 2020 WL 7488071, *4, ¶¶ 15-16 (App. Dec. 21, 2020) (finding no irreconcilable conflict between the mandatory language of A.R.S. § 12-1176(B) and Eviction Rule 11(d)).

is a right to a jury trial in paternity actions); *State ex rel. Wanberg v. Smith*, 211 Ariz. 101, 104, ¶ 10 (App. 2005) (emphasizing the need "to distinguish between the two settings in which the language pertaining to jury trials is placed").

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B. Constitutional Right to a Jury Trial.

¶18 Dakota also argues the superior court deprived it of its constitutional right to a jury trial when it entered summary judgment. *See* Ariz. Const. art. 6, § 17 ("The right of jury trial as provided by this constitution shall remain inviolate . . ."). However, the Arizona Supreme Court has long held that disposition on summary judgment "does no violence to our guarantee of trial by jury" under the Arizona Constitution. *Orme Sch.*, 166 Ariz. at 309.

¶19 If summary judgment was proper, the superior court did not deprive Dakota of its statutory or constitutional rights by denying it a jury trial. *Id.* We, therefore, turn to an analysis of whether the superior court erred in granting summary judgment.

II. Summary Judgment.

¶20 Dakota argues the superior court was precluded from entering summary judgment. First, Dakota argues the Eviction Rules categorically preclude courts from entering summary judgment in FED actions. Second, Dakota claims the superior court overlooked a host of genuine issues of material fact that made summary judgment improper.

A. Summary Judgment in FED Actions.

¶21 Dakota claims the superior court was not entitled to issue summary judgment, arguing the Eviction Rules do not incorporate Arizona Rule of Civil Procedure 56.

¶22 Dakota correctly notes the Eviction Rules replace the Arizona Rules of Civil Procedure ("Civil Rules") in eviction actions. *Bank of New York Mellon v. Dodev*, 246 Ariz. 1, 8, ¶ 22 (App. 2018). The Civil Rules apply in eviction actions "only when incorporated by reference" in the Eviction Rules. Eviction Rule 1. But even if the superior court erred in citing Civil Rule 56, Dakota's argument fails because Eviction Rules 9(h) and 11(d) expressly contemplate the summary-judgment procedure employed in this case. Eviction Rule 11(d) provides "[i]f no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues or may [be] disposed of by motion or in accordance with these rules, as appropriate."³ Further, Eviction Rule 9 permits either party

³ Under the facts of this case, we discern no meaningful difference between the procedures contemplated by Civil Rule 56 ("The court shall

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to make "appropriate motions" and provides the court power to "dispose of the motion summarily." We need not consider whether Civil Rule 56 is incorporated because Eviction Rule 11(d) expressly authorizes judges to dispose of the matter by motion if no factual issues exist. Accordingly, the superior court did not err in employing a summary-judgment procedure in this case.

B. Genuine Issues of Material Fact.

¶23 Dakota argues that a host of contested, genuine, and material facts precluded summary judgment under Eviction Rule 11(d). The superior court entered summary judgment, finding that Dakota's tenancy clearly terminated after SOCAA selected Guidance as the winner of the RFP and Dakota received written demand of possession by SOCAA.

¶24 "We review *de novo* whether summary judgment is warranted, including whether genuine issues of material fact exist and whether the superior court correctly applied the law." *Specialty Cos. Grp. LLC v. Meritage Homes of Ariz. Inc.*, 248 Ariz. 434, 438, ¶ 7 (App. 2020). We consider the evidence and all reasonable inferences in the light most favorable to Dakota, the nonmoving party. *Id.*

¶25 "On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into." A.R.S. § 12-1177(A). The purpose of FED actions is to afford "a summary, speedy, and adequate remedy for obtaining possession of premises withheld by tenants" *Old Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 204-05 (1946). This purpose "would be entirely frustrated if the defendant were permitted to deny his landlord's title, or to interpose customary and usual defenses permissible in the ordinary action at law." *Id.* at 205.

¶26 A person is guilty of forcible detainer if he:

Wilfully and without force holds over any lands, tenements
or other real property after termination of the time for which
such lands, tenements or other real property were let to him

grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law."), and those contemplated by Eviction Rule 11(d) ("If no factual issues exist for the jury to determine, the matter . . . may [be] disposed of by motion or in accordance with these rules, as appropriate.").

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Decision of the Court

or to the person under whom he claims, after demand made in writing for the possession thereof by the person entitled to such possession.

A.R.S. § 12-1171(3). Forcible detainer is also established when "[a] tenant at will or by sufferance or a tenant from month to month or a lesser period whose tenancy has been terminated retains possession after his tenancy has been terminated or after he receives written demand of possession by the landlord." A.R.S. § 12-1173(1).

¶27 Dakota's brief lists fifteen issues it claims are genuine issues of material fact, but Dakota does not provide citation, argument, or authority to explain why these factual issues should have precluded summary judgment. Thus, Dakota has waived these claims. *See* ARCAP 13(a)(7) ("An 'argument' . . . must contain . . . contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the [party] relies."); *see also Stafford v. Burns*, 241 Ariz. 474, 483, ¶ 34 (App. 2017) (finding appellant's failure to develop an argument in a meaningful way constituted waiver).

¶28 Moreover, we find these fifteen factual issues to be primarily subsumed within or duplicative of an additional six issues raised by Dakota related to the validity and enforceability of the RFP. In summary, Dakota asserts the following six issues were contested, genuine, and material issues of fact that the superior court overlooked: (i) the Board and FAA did not review and approve the RFP;⁴ (ii) the RFP featured an illegal provision; (iii) the RFP was for a different building and site than the Property; (iv) Dakota's business would have been interrupted had it been awarded the RFP; (v) Guidance's bid did not comply with the RFP's stated requirements; and (vi) the RFP was a "sham" and just a pretext to eject Dakota from the Property.

¶29 We agree with the superior court that Dakota's asserted issues are impermissible counterclaims related to the Settlement Agreement and "are already subject of an existing case between the parties" Such "counterclaims, offsets and cross complaints are not available either as a defense or for affirmative relief" in this FED action. *See Old Bros. Lumber Co.*, 64 Ariz. at 204-05. Because the claimed factual disputes are not

⁴ SOCAA asserts that this issue has already been resolved in its favor in prior proceedings. *See Dakota*, 2019 WL 1499853, at *3, ¶ 19. Because we conclude these issues are not pertinent to the FED action, we do not address SOCAA's argument.

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pertinent to the FED proceedings, they are not material issues of fact precluding summary judgment.

C. Right of Actual Possession.

¶30 The parties agree that the Settlement Agreement determined the right of actual possession. Because the Settlement Agreement allowed Dakota "to continue leasing the existing property . . . until an RFP issues[.]" Dakota argues the RFP for a different facility was not valid and it retains a right of possession under the Settlement Agreement until SOCAA issues a valid RFP.

¶31 We disagree. "[T]he right to actual possession is the only issue to be determined in [an FED] action." *Old Bros. Lumber Co.*, 64 Ariz. at 204. The Settlement Agreement provided Dakota with a right of possession only until the RFP was issued, a winner selected, and notice provided. The Settlement Agreement does not define or set forth requirements for the RFP. Thus, the only factual issues relevant to the FED action are whether SOCAA issued an RFP, selected Guidance as the winner, and provided Dakota notice to vacate. Although Dakota contests the terms of the RFP, it admits one was issued, SOCAA notified Guidance that its proposal had been selected, SOCAA notified Dakota that its proposal had not been selected, and SOCAA provided Dakota notice that its lease had been terminated.⁵ Thus, under the Settlement Agreement, Dakota's right to possession of the Property ended. Dakota's claims that the RFP was flawed may give rise to damages claims for breach of contract or the covenant of good faith and fair dealing, and are currently being litigated in a separate civil action. See *Curtis v. Morris*, 184 Ariz. 393, 398 (App. 1995) ("Because an FED action does not bar subsequent proceedings between the parties to determine issues other than the immediate right to possession, those issues are better resolved in proceedings designed to allow full exploration of the issues involved."). But those claims do not provide a right to continued possession of the Property after the RFP was awarded and provide no defense to forcible detainer under A.R.S. §§ 12-1171(3) and -1173(1). The superior court did not err in finding Dakota had no right to continued possession of the Property. See *Taylor v. Stanford*, 100 Ariz. 346, 349 (1966) (disapproving of litigants who "seek to convert unlawful detainer into a suit for specific performance"). Thus, we affirm the court's judgment in its entirety.

⁵ Although Dakota acknowledges that SOCAA sent notices, it does not concede that "the notice was accurate or effective."

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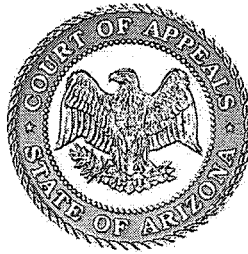
III. Attorney Fees and Costs on Appeal.

¶32 SOCAA requests an award of attorney fees and costs incurred on appeal pursuant to ARCAP 21, ARCAP 25, and A.R.S. § 12-349(A)(3). Aside from the unsupported statements that Dakota's appeal "was solely for the purpose of delay" and "unreasonably expanded and delayed this FED proceeding," SOCAA does not develop an argument for an award of attorney fees. Thus, we exercise our discretion and decline to award attorney fees to either party. See ARCAP 13(a)(7); *Bank of New York Mellon*, 246 Ariz. at 12, ¶¶ 39-41 (declining to impose sanctions under ARCAP 25 where the requesting party had failed to offer argument justifying sanctions).

¶33 As the prevailing party, SOCAA is entitled to costs upon compliance with ARCAP 21.

CONCLUSION

¶34 We affirm the judgment of the superior court.



AMY M. WOOD • Clerk of the Court
FILED: AA

EXHIBIT E

(August 12, 2020 Informal
Complaint Determination)



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Office of Airports
Phoenix Airports District Office

3800 N. Central Avenue
Suite 1025, 10th Floor
Phoenix, AZ 85012

August 12, 2020

VIA EMAIL – (christopher@ds4law.com) (Dan.Cherry@yavapai.us)
(pam.fazzini@sedonaairport.org)

R. Christopher Harshman
Law Offices of David M. Shalby II & Associates
Representatives of Dakota Territory Tours, A.C.C.
11949 Jefferson Boulevard, Suite 104
Culver City, California 90230

Mr. Dan Cherry P.E., CFM
Director
Public Works Department
Yavapai County
1100 Commerce Drive
Prescott, Arizona 86305

Ms. Pam Fazzini
President
Sedona-Oak Creek Airport Authority
235 Terminal Drive
Sedona, Arizona 86336

Dear Mr. Harshman, Mr. Cherry and Ms. Fazzini:

**Sedona Airport (SEZ)
Sedona, Arizona
Part 13.1 Informal Complaint Determination**

This letter provides an informal determination in accordance with Title 14 Code of Federal Regulations (C.F.R.), Part 13.1, Report of Violations, in response to a complaint filed by Mr. R. Christopher Harshman on behalf of Dakota Territory Tours, A.C.C. (“Complainant” or “Dakota”), against the Yavapai County, owner and the Sedona-Oak Creek Airport Authority (“Respondent” or “Airport Authority”), operator of Sedona-Oak Creek Airport (Airport).

Allegations

The Complainant provided several allegations, received via letter dated March 8, 2019. The allegations consist of the following:

1. The Airport Authority is in violation of 49 United States Code (U.S.C.) §§ 47133 and 47107(b);
2. The Airport Authority is in violation of Federal Aviation Administration (FAA) Order 5190.6B, FAA Airport Compliance Manual, Section 15.9(d) requiring any fees paid for with airport revenue to have been incurred “for services in support of airport capital or operating costs that are otherwise allowable”; and
3. The Airport Authority is in violation of Grant 25, *Airport Revenues*.

Information Sources

Our office reviewed the following documents during the course of investigating this complaint:

1. Initial complaint, with one attachment, submitted by Complainant, dated March 8, 2019,
2. The Sedona-Oak Creek Airport Authority 2019 Revenue and Expenditure Budget, Approved and adopted by the Sedona-Oak Creek Airport Authority Board of Directors on October 15, 2018,
3. Pending FAA Part 16 complaint, submitted November 27, 2017, by Dakota Territory Tours A.C.C., an Arizona Corporation and Solid Edge Aviation LLC, an Arizona Limited Liability Company vs. Yavapai County, Arizona, through and with the Sedona-Oak Creek Airport Authority, an Arizona non-profit corporation.
4. FAA Order 5190.6B, FAA Airport Compliance Manual
5. FAA Airport Sponsor Assurances 3/2014
6. FAA Part 16 Complaint Docket No. 16-14-09, Consent Order, Compliance with Federal Obligations by the City of Chicago, Illinois.
7. FAA Part 16 Complaint Docket No. 16-01-96, Record of Determination, Revenue Diversion by the City of Los Angeles International, Ontario, Van Nuys, and Palmdale Airports,
8. Sedona Airport, Airport Master Plan, June 2017

Background

Dakota consists of two companies (Dakota and Solid Edge Aviation LLC) that operate helicopter and fixed wing tour businesses at the Airport. Dakota is also known as Sedona Air Tours, Red Rock Biplane, Helicopter, and Sky Safari Charters. Yavapai County is the owner of the Airport. The Sedona-Oak Creek Airport Authority operates and manages the Airport.

Multiple State and Federal court cases that have been litigated or are pending between Dakota Territory Tours, A.C.C. and the Airport Authority over a variety of issues including antitrust violations, breach of contract and government procurement and bidding processes. In November 2017, Dakota filed a 14 C.F.R. Part 16.23 (Part 16) Complaint against the County and Airport Authority. This Part 16 Complaint claims that the Airport Authority has violated Grant Assurance 22, Economic Nondiscrimination and Grant Assurance 23, Exclusive Rights through a number of actions allegedly taken by the Airport Authority. The Part 16 case is currently pending. This is our preliminary determination under 14 C.F.R Part 13, and has no relation or bearing on the pending Part 16 case.

Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107, *et seq.* sets forth the statutory sponsorship requirements to which an airport sponsor receiving federal financial assistance must comply.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. FAA Order 5190.6B, *FAA Airport Compliance Manual*, issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements are not be fully realized due to inherent restrictions on aeronautical activities.¹

Discussion

The complainant made three allegations in its letter dated March 8, 2019. Each of these three allegations are discussed below:

Allegation One: The Airport Authority is in violation of 49 U.S.C. § 47133 (Restriction on use of revenues) and § 47107(b) [Project grant application approval conditioned on assurances about airport operations (Written Assurances on Use of Revenue)].

49 U.S.C. § 47133 states that “Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of: (1) the airport; (2) the local airport system; or (3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

¹ Federal Aviation Administration, Order 5190.6B, *FAA Airport Compliance Manual*, 30 September, 2009, page 8-4.

49 U.S.C. § 47107(b)(1) states that “The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of - (A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.”

The 2019 Revenue and Expenditure Budget (2019 Budget) approved and adopted by the Sedona-Oak Creek Airport Authority Board of Directors on October 15, 2018, identifies \$350,000 for Legal Consulting. Neither 49 U.S.C. § 47133 nor § 47107(b) prohibit the use of airport revenues for legal services.

Additionally, Section V(B)(4) of FAA’s Policy and Procedures Concerning the Use of Airport Revenue, 64 FR 7696, February 16, 1999 (Revenue Use Policy), states “Central service costs, such as accounting, budgeting, data processing, procurement, *legal services*, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above.” (Emphasis added.)

Therefore, 49 U.S.C. § 47133, § 47107(b), as well as, the FAA’s Revenue Use Policy all allow the Airport Authority to use airport revenue to pay for legal services.

This allegation is dismissed.

Allegation Two: The Airport Authority is in violation of FAA Order 5190.6B, *FAA Airport Compliance Manual*, Section 15.9(d) requiring any fees paid for with airport revenue to have been incurred “for services in support of airport capital or operating costs that are otherwise allowable.”

The FAA Airport Compliance Manual is a handbook that provides guidance to FAA personnel on interpreting and administering the various continuing commitments airport sponsors make to the United States Government when they accept grants of federal funds or federal property for airport purposes. It does not carry any enforcement authority.

Complainant references two Part 16 cases in support of its second allegation - *City of Chicago (In the Matter of Compliance with Federal Obligations by the City of Chicago, Illinois*, FAA Docket No. 16-14-09, Notice of Investigation, at 2 (October 1, 2004); and *City of Los Angeles (City of Los Angeles International, Ontario, Van Nuys, and Palmdale Airports*, FAA Docket No. 16-96-01, Record of Determination, at 12 (March 17, 1997), . The *City of Chicago* case involved an allegation that the City misused airport revenues in connection with the closure of Meigs Field. The *City of Los Angeles* case focused on the transfer of airport funds to reimburse city general funds for previously alleged costs without justification and supporting documentation. While both cases related to revenue diversion, they are not relevant to the instant complaint. Here, the Complainant has not shown how the Airport Authority used airport revenue for inappropriate costs and not for services incurred in support of airport capital or operating costs or costs that were otherwise allowable.

The Airport Authority is budgeting for the upcoming fiscal year along with a proposed Five-Year Capital Improvement Plan, and identifies anticipated “legal consulting” costs. The Complainant has not shown how identification of proposed legal costs in its forecasted budget constitutes a misuse of airport revenue, especially in light of the fact that the budget relates to services that might be incurred in support of airport capital or operating costs or that are otherwise allowable.

Section 205(a) of FAA Advisory Circular 150/5070-6B, Change 2 to *Airport Master Plans* is instructional because it states, “Acceptance of the master plan by the FAA does not constitute a commitment on the part of the United States to participate in any development depicted in the plan, nor does it indicate that the proposed development is environmentally acceptable in accordance with appropriate public law.” The Vista Overlook Expansion is discussed in Chapter 5, *Recommended Concept of the Sedona Airport Master Plan*, and states that the determination on the ultimate redevelopment will be made later by the County and the Airport Authority. Additionally, the Vista Overlook Expansion is not identified in any of the Airport Development Schedule or Cost Summaries in Chapter 6, *Financial/Capital Improvement Program*. There is no misuse of airport revenues since the Vista Overlook Expansion is speculative, and the budgeting for litigation is part of the Airport Authority’s operating costs.

The Complainant’s reliance on Section 15.9(d) of the Compliance Manual is misplaced. Section 15.1 of that order clearly states that the Compliance Manual “supplements, but does not supersede,” the guidance issued in FAA’s Revenue Use Policy. As stated above, Section V(B)(4) of the Revenue Use Policy allows for legal services as indirect costs.

This allegation is dismissed.

Allegation Three: The Airport Authority is in violation of Grant 25, *Airport Revenues*.

FAA’s Revenue Use Policy defines airport revenue and implements the requirements of the Airport and Airway Improvement Act of 1982 (AAIA) and its subsequent authorizations. Section V(B)(4) of the Revenue Use Policy states that “Central service costs, such as accounting, budgeting, data processing, procurement, *legal services*, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above.” (Emphasis added.)

This allegation is dismissed.

Findings

Based on our evaluation of the allegations, we find Yavapai County and the Sedona-Oak Creek Airport Authority have not violated FAA policies and procedures or its Grant Assurances associated with its budgeting of funds for legal services.

Conclusion

This preliminary determination is not a final agency decision, subject to judicial review. If you believe this office has erred, you may file a formal complaint under 14 C.F.R. § 16, *Rules of Practice for Federally-assisted Airport Enforcement Proceedings*. Should you choose this option, be mindful to ensure you fulfill the filing requirements, the complaint package is complete, and it is sent to the following address:

Office of Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

If you have any questions, please contact Mr. Victor Globa, Airports Compliance Specialist, at (424) 405-7272, or via e-mail at victor.globa@faa.gov.

Sincerely,

**MICHAEL N
WILLIAMS**

Mike N. Williams, A.A.E.
Manager, Phoenix Airports District Office
FAA, Western-Pacific Region

 Digitally signed by MICHAEL N
WILLIAMS
Date: 2020.08.12 09:06:29 -07'00'

cc: AWP-620
ACO-100
Ed Rose, General Manager, Sedona Oak Creek Airport Authority

EXHIBIT F

(February 25, 2021
FAA Letter)



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Airports Division
Phoenix Airports District Office

3800 N. Central Avenue
Suite 1025, 10th Floor
Phoenix, AZ 85012

February 25, 2021

Via E-Mail: roy.goldberg@stinson.com

Mr. Roy Goldberg
Partner
Stinson LLP
1775 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

Dear Mr. Goldberg:

As you are aware, the Federal Aviation Administration (FAA) has received a 14 CFR Part 16 formal complaint against Sedona-Oak Creek Airport Authority as the operator and Yavapai County, Arizona as the owner and sponsor of the Sedona-Oak Creek Airport (SEZ) in Sedona, Arizona. It was filed on behalf of Dakota Territory Tours, A.C.C. and, Solid Edge Aviation, LLC, (Dakota and Solid Edge) on November 27, 2017.

The FAA Western-Pacific Region Airports Division also has been investigating a 14 CFR Part 13 informal complaint, which your firm filed on September 29, 2020, and in several subsequent e-mails alleging unjust discrimination and exclusive rights against Sedona-Oak Creek Airport.

There are similarities in the allegations in both complaints; that is, Sedona-Oak Creek Airport is allegedly taking actions that have resulted in its being in noncompliance with its federal obligations. When there are such similarities in allegations between a Part 16 and Part 13 complaints by the same complainant, the FAA holds the Part 13 informal complaint in abeyance while the Part 16 administrative process proceeds.

Consequently, the Western-Pacific Region will take no further action on your Part 13 complaint until the Dakota and Solid Edge Part 16 administrative process is fully completed. Once the FAA issues a Director's Determination in the Dakota and Solid Edge complaint, the Western-Pacific Region will continue the Part 13 informal investigation and communicate a copy of their findings.

If you have any questions, please e-mail Victor Globa at victor.globa@faa.gov.

Sincerely,

**MICHAEL N
WILLIAMS**

Mike N. Williams
Manager, Phoenix Airports District Office

 Digitally signed by MICHAEL N
WILLIAMS
Date: 2021.02.25 10:58:21 -07'00'

Cc: Ed Rose, General Manager, Sedona-Oak Creek Airport (ed@sedonaairport.org)
Barbara Lichman, Counsel for Sedona-Oak Creek Airport (bllichman@buchalter.com)
Jack Fields, Yavapai County (jack.fields@yavapai.us)
Victor Globa, AWP Airports Compliance Specialist